

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

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

Plaintiff,

v.

Petrageous Designs,
Corporate Place Three, Ste. 11A
20 Blanchard Road
Burlington, MA 01803,

Defendant.

)
) Case No. _____

)
) Judge _____

)
) Magistrate _____

)
) **COMPLAINT FOR**
) **PATENT INFRINGEMENT, AND**
) **BREACH OF CONTRACT**

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) *(Jury Demand Endorsed Hereon)*
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NOW COMES the Plaintiff, *OurPet’s Company*, and for its Complaint against the Defendant hereby 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 Fairport Harbor, Ohio, which is in Lake County.
2. The Defendant, Petrageous Designs, upon information and belief, is a business entity located in Massachusetts, which makes, uses, sells, offers for sale, and/or imports infringing product in the United States.

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 federal question subject matter

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

4. In addition or in the alternative to this Court’s federal question jurisdiction, this Court also has subject matter jurisdiction pursuant to diversity of citizenship principles as the parties are from different states and the amount in controversy exceeds \$75,000.
5. This Court has supplemental jurisdiction over the Plaintiff’s state law claims because this United States federal court may hear claims substantially related to the original claim even though the court would lack the subject-matter jurisdiction to hear the additional claims independently. 28 U.S.C. § 1367. See also, *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978).
6. This Court has personal jurisdiction over the Defendant by virtue of their sale of products, transaction of business, and solicitation of business within the State of Ohio, within this judicial district and elsewhere.
7. Ohio’s Long-Arm Statute, RC § 2307.382(A)(1), provides that “A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person’s: (1) Transacting any business in this state.” In this case, the Defendant transacts business in this state. The Defendant supplies infringing pet bowls that are widely sold throughout the state at various big-box retailers.
8. Ohio’s Long-Arm Statute, RC § 2307.382(A)(2), provides that “A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person’s: (2) Contracting to supply services or goods in this state.” In this

1 case, the Defendant contracts to supply goods in this state. The Defendant supplies
2 infringing pet bowls that are widely sold throughout the state at various big-box retailers.

3 9. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or
4 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims
5 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this
6 district, and infringement occurred within this judicial district. Further, the Plaintiff, its
7 witnesses and evidence, are located in this district. Venue is proper here.

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9 10. Jurisdiction and venue is furthermore appropriate before this Court as the Plaintiff and
10 Defendant previously litigated a case before the ND Ohio, upon which a settlement
11 agreement was reached, and upon which agreement Plaintiff asserts Defendant has breached.

12 **FACTUAL ALLEGATIONS**

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14 11. 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 12. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical
18 link to nature.

19 13. Along with proper nutrition, mental stimulation, physical exercise, and veterinary care, the
20 Plaintiff's products help to maintain the health and wellness of pets.

21 14. The Plaintiff strives to develop truly unique and innovative products. In fact, almost all of
22 the Plaintiff's products are patented and are the only ones of their kind in the marketplace.

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

3 16. The Plaintiff sells products under various brand names, such as Smart Scoop®, Pet Zone®,
4 Durapet® stainless steel bowls, Flappy® dog toys, Cosmic Catnip™, ecoPure® naturals, and
5 Play-n-Squeak®, among others.

6 17. The Plaintiff is a publicly-traded company.

7 18. Dr. Steven Tsengas, PhD is the founder and CEO of the Plaintiff corporation.

8 19. On October 16, 2012, United States Utility Patent No. 8,286,589, entitled “Covered Bowls
9 Such as Pet Food and Water Bowls” (hereinafter referred to as the ‘589 patent) duly and
10 legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and
11 accurate copy of the ‘589 patent as issued is attached hereto as “Exhibit 1.”)

12 20. All rights to the ‘589 patent, including but not limited to, the right to recover for infringement
13 thereunder, have been assigned to the Plaintiff, OurPet’s Company.

14 21. The ‘589 patent teaches a pet bowl with a rubber or plastic cover that is permanently or
15 removeably secured to the outer surface of the bowl, to make the bowl skid resistant, among
16 other things.

17 22. The ‘589 patent teaches a bowl with rubber or plastic affixed to the bottom of said bowl
18 where the rubber or plastic extends up at least a portion of the sidewall of the bowl.

19 23. The Plaintiff has widely and continuously promoted and sold its patented products under the
20 Durapet® brand, which products embody the ‘589 patent, and are marked patented and/or
21 patent pending at times relevant. Further, Plaintiff’s website publicly lists the subject patent:
22 <http://www.ourpets.com/patents-feeding-storage>.
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1 24. The Plaintiff has invested considerable time and resources in marketing and advertising their
2 patented products.

3 25. The Defendant has had actual knowledge of the Plaintiff's intellectual property rights in the
4 Plaintiff's Durapet® product line by virtue of the Plaintiff's marking of its products as
5 patented and/or patent pending.
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7 26. The parties are competitors in that they both manufacture, source, market, and/or sell pet
8 bowls widely in the pet industry.

9 27. The Defendant has been and is currently making, using, offering for sale, selling, and/or
10 importing product that infringes the '589 utility patent.

11 28. On March 10, 2015, United States Utility Patent No. 8,973,529, entitled "Covered Bowls
12 Such as Pet Food and Water Bowls" (hereinafter referred to as the '529 patent) duly and
13 legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and
14 accurate copy of the '529 patent as issued is attached hereto as "Exhibit 2.")
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16 29. All rights to the '529 patent, including but not limited to, the right to recover for infringement
17 thereunder, have been assigned to the Plaintiff, OurPet's Company.

18 30. The '529 patent teaches a pet bowl with a rubber or plastic cover that is permanently or
19 removeably secured to the outer surface of the bowl, to make the bowl skid resistant, among
20 other things.

21 31. The '529 patent teaches a bowl with a rubber or plastic cover that need not extend up the
22 sidewall, i.e., rubber on the bottom of the bowl only.

23 32. The Defendant has been and is currently making, using, offering for sale, selling, and/or
24 importing products that infringe the '529 utility patent.
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1 33. The Plaintiff previously sued the Defendant in the ND Ohio, Case No. 1:13-cv-74-CAB. In
2 that lawsuit, the Plaintiff alleged that certain of Defendant's bowls infringed the '589 patent.
3 That case was settled via a settlement agreement in March, 2013. The terms of the settlement
4 agreement are confidential.

5 34. Plaintiff alleges that Defendant is in breach of the settlement agreement because the
6 Defendant continues to sell bowls that infringe the '589 patent. As recent as February, 2016,
7 Plaintiff saw and purchased Defendant's '589 infringing bowls. The bowls were sold at Pet
8 Valu in Twinsburg, Ohio. (See a true and accurate picture of the infringing bowl and receipt
9 attached as "Exhibit 3.")

10 35. Furthermore, Defendant has been making, using, selling, offering for sale, and/or importing
11 bowls that infringe Plaintiff's '529 patent. (See a true and accurate picture of the infringing
12 bowl offered for sale at Feeder Supply in Kentucky attached as "Exhibit 4.")

13 36. Ex. 4 depicts a bowl that infringes the '529 patent.

14 37. The Defendant has sold its infringing product in this judicial district in Ohio and elsewhere.

15 38. The aforementioned activities of the Defendant have also injured and threaten future injury to
16 the Plaintiff. More specifically, the Defendant's activities have diminished the Plaintiff's
17 goodwill and caused the Plaintiff to lose sales that it otherwise would have made but for the
18 sales of the Defendant.

19 39. The Defendant is not authorized in any way to sell their infringing products or to use the
20 patents owned by the Plaintiff.

21 40. The Plaintiff is entitled to an award of damages against Defendant, and is entitled to
22 injunctive relief.
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CLAIM NO. 1

(Patent Infringement 35 U.S.C. § 271 et seq.)

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3 41. The Plaintiff hereby incorporates by reference each statement, whether written above or
4 below, as if each is fully re-written herein.

5 42. The Defendant has been and is currently making, using, offering for sale, selling, and/or
6 importing products that infringe the '589 utility patent. (See Ex. 3.)

7 43. The Defendant's conduct is an infringement of the '589 patent, and in violation of 35 U.S.C.
8 § 271 within this judicial district and elsewhere.

9 44. The Defendant will continue to make, use, offer for sale, sell, and import their infringing
10 products unless enjoined by this Court.

11 45. The Defendant has been, and is, actively inducing infringement of the '589 patent, by
12 offering for sale and selling their infringing products to dealers at wholesale prices who have,
13 and will continue to, offer them for sale and sell them to end users.

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

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

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21 **CLAIM NO. 2**

(Breach of Contract)

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

1 49. Generally, a breach of contract occurs when a party demonstrates the existence of a binding
2 contract or agreement; the non-breaching party performed its contractual obligations; the
3 other party failed to fulfill its contractual obligations without legal excuse; and the non-
4 breaching party suffered damages as a result of the breach. *National City Bank v. Erskine*
5 & Sons (1953), 158 Ohio St. 450, 460-461.

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7 50. Upon demonstration of a breach of contract, damages should place the injured party in as
8 good a position as it would have been absent the breach. *F. Enterprises, Inc. v. Kentucky*
9 *Fried Chicken Corp.* (1976), 47 Ohio St. 2d 154, 160.

10 51. The Plaintiff and the Defendant had a settlement agreement settling their prior lawsuit, Case
11 No. 1:13-cv-74-CAB.

12 52. The Plaintiff has performed its contractual obligations under the agreement.

13 53. However, the Defendant has failed to perform their obligations and have done so without
14 legal excuse.

15 54. The Plaintiff has suffered damages as a result of the Defendant's breach.

16 55. The Court should award the Plaintiff an amount of damages to place the Plaintiff in as good
17 of a position as it would have been absent the Defendant's breach.

18 56. A copy of the settlement agreement can be provided upon request; however same was not
19 attached hereto because of a confidentiality provision at Paragraph 16 of the contract.
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22 **CLAIM NO. 3**

(Patent Infringement 35 U.S.C. § 271 et seq.)

23 57. The Plaintiff hereby incorporates by reference each statement, whether written above or
24 below, as if each is fully re-written herein.
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1 58. The Defendant has been and is currently making, using, offering for sale, selling, and/or
2 importing products that infringe the '529 utility patent. (See Ex. 4.)

3 59. The Defendant's conduct is an infringement of the '529 patent, and in violation of 35 U.S.C.
4 § 271 within this judicial district and elsewhere.

5 60. The Defendant will continue to make, use, offer for sale, sell, and import their infringing
6 products unless enjoined by this Court.

7 61. The Defendant has been, and is, actively inducing infringement of the '529 patent, by
8 offering for sale and selling their infringing products to dealers at wholesale prices who have,
9 and will continue to, offer them for sale and sell them to end users.

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

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

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17 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

18 WHEREFORE, the Plaintiff prays that this Court enter an Order against the Defendant as
19 follows:

20 A) A preliminary injunction enjoining the Defendant from making, using, selling, or importing
21 any product that infringes upon the '589 and '529 patents;

22 B) A permanent injunction enjoining the Defendant from making, using, selling, or importing
23 any product that infringes upon the '589 and '529 patents;
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- 1 C) An accounting for damages resulting from Defendant's patent infringement and the trebling
2 of such damages because of the knowing, willful, and wanton nature of the Defendant's
3 conduct;
- 4 D) An assessment of interest on the damages so computed;
- 5 E) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;
- 6 F) Judgment against Defendant indemnifying the Plaintiff from any claims brought against the
7 Plaintiff for negligence, debts, product liability, or other breaches of any duty owed by the
8 Defendant to any person who was confused as to some association between the Plaintiff and
9 Defendant as alleged in this Complaint;
- 10 G) Judgment against Defendant for an accounting and monetary award in an amount to be
11 determined at trial;
- 12 H) Requiring Defendant to account to the Plaintiff for all sales and purchases that have occurred
13 to date, and requiring the Defendant to disgorge any and all profits derived by Defendant for
14 selling infringing product;
- 15 I) Requiring Defendant to provide full disclosure of any and all information relating to its
16 supplier or suppliers of infringing product;
- 17 J) Requiring Defendant to provide the location of any and all manufacturing equipment,
18 including but not limited to, molds used to manufacture infringing product;
- 19 K) Requiring Defendant to destroy any and all manufacturing equipment used to manufacture
20 infringing product or to deliver said equipment to the Plaintiff;
- 21 L) Ordering a product recall of infringing product for destruction;
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- 1 M) Requiring Defendant to file with this Court and serve on the Plaintiff within thirty (30) days
2 of this Court's order a report setting forth the manner in which they complied with the order;
3 N) Requiring Defendant to provide to Plaintiff all sales records, including but not limited to,
4 email, mail, and advertising lists;
5 O) Damages according to each cause of action herein;
6 P) Prejudgment interest; and
7 Q) Any such other relief in law or equity that this honorable Court deems just
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9 **JURY DEMAND**

10 WHEREFORE, the Plaintiff requests a trial by jury on all issues so triable.
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12 Most Respectfully Submitted,
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14 /s/ David A. Welling

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

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