IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS

CAT CLAWS, INC., an Arkansas corporation

Plaintiff

v.

Case No. 14:16-cv-733 SWW

BIG LOTS STORES, INC., an Ohio corporation doing business as Big Lots!, and Does 1 - 10

Defendants

FIRST AMENDED VERIFIED COMPLAINT

Plaintiff Cat Claws, Inc. ("Plaintiff" and/or "CCI"), by and through its attorneys, Calhoun Law Firm, for its Complaint against Defendants Big Lots Stores, Inc. and John Does 1-10, collectively "Defendants", hereby alleges as follows:

I. THE PARTIES

- 1. Plaintiff is a corporation duly organized and existing under the laws of the State of Arkansas, with its principal place of business located in Morrilton, Arkansas.
- 2. Upon information and belief, Defendant Big Lots Stores, Inc. (hereinafter "BLSI") is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 300 Phillipi Road in Columbus, Ohio; said defendant maintains places of business, engages in infringing misconduct, and otherwise transacts business on a regular basis in at least twelve (12) retail stores in Arkansas, including in this judicial district at 150 E Oak St. in Conway, AR. Said defendant also maintains a registered agent in Little Rock in this judicial district.

- 3. Upon information and belief, Plaintiff has diligently and in good faith attempted to ascertain the identities and whereabouts of possible additional defendants, who are presently unknown to Plaintiff. Despite such efforts, the identities of other defendants whose conduct may have been a legal cause of Plaintiff's complaints and/or damages currently remain unknown to Plaintiff. John Does 1-5 could be corporations, partnerships, limited liability companies, non-profit organizations or individuals.
- 4. Upon information and belief, the conduct of the John Doe defendants was or may have been, directly or indirectly, a legal cause of the matters complained of herein, and/or the damage or loss thereby sustained by Plaintiff.
- 5. Each Defendant is joined because a right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and a question of law or fact common to all Defendants will arise in the action.

II. JURISDICTION AND VENUE

- 6. This is a civil action for design patent infringement (35 U.S.C. §§ 1 et seq.), trademark infringement in violation of the Lanham Act (15 U.S.C. § 1051, et seq.) and Arkansas common law, and unfair competition under Arkansas common law and the Lanham Act.
- 7. Since this action arises under the patent laws of the United States, 35 U.S.C. §§ 271 et seq., this Court has jurisdiction over the patent claims under 28 U.S.C. §§ 1331 and 1338(a).
- 8. This Court also has original subject matter jurisdiction over Lanham Act claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338.

- 9. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because such claims are so related to the claims in this action within this Court's original jurisdiction that they form part of the same case or controversy.
- 10. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred, or a substantial part of property that is the subject of the action is situated.

III. COMMON FACTS

- 11. In general, this case involves Defendants' unauthorized importation and sale of a product commonly referred to as a cat scratcher, and the unauthorized use of Plaintiff's name/trademark "Cat Claws" on the product.
- 12. Since the 1980s, Plaintiff has been in the business of designing, manufacturing and selling cat scratcher products under the mark Cat Claws.
- 13. Plaintiff is the owner of U.S. Trademark Registration No. 4,571,394 (the "Registration") issued on 22 July 2014 by the U. S. Patent & Trademark Office ("USPTO") for Plaintiff's trademark "Cat Claws" (& design), for use in connection with cat scratching pads; a copy of said registration is Attachment A hereto.
- 14. Plaintiff is the owner of U.S. Trademark Registration No. 2,990,971 issued on 6 September 2005 by the USPTO for Plaintiff's trademark "Cat Claws" in standard character format (the "Trademark") for use in connection with cat scratching pads, which registration has been cancelled because Plaintiff inadvertently failed to submit maintenance filings; however, another such application to register the Trademark is currently pending at the USPTO (Application No. 87/191,406).

- 15. Plaintiff has used and promoted its Cat Claws Trademark in connection with cat scratching pads, continuously since the 1980s.
- 16. Plaintiff is owner of U.S. Design Patent No. D627,112 for a Cat Scratcher (the "Fish Design Patent"); a copy of said patent is Attachment B hereto.
- 17. Since at least as early as March of 2008, Plaintiff has sold a product embodying the Fish Design Patent, including a stylistic depiction of fishbones on both lateral sides of the product (the "Fish-bones Design"), together with Plaintiff's registered Trademark; a copy of a photograph of said product (the "Fish-bones Product") is Attachment C hereto.
 - 18. Plaintiff's Fish-bones Product is manufactured in the United States.
- 19. Defendant BLSI has sold a product labeled "Cat Cardboard Scratcher" (the "Fishbones Knockoff"), that is virtually identical to Plaintiff's Fishbones Product; a copy of a photograph of the Fishbones Knockoff is Attachment D hereto.
 - 20. The Fish-bones Knockoff is manufactured in and imported from China.
 - 21. Defendants' Fish-bones Knockoff infringes Plaintiff's Fish Design Patent.
- 22. The "Cat Claws" trademark appearing on both lateral sides of the Fish-bones Knockoff infringes Plaintiff's registered Trademark and common law trademark rights.
- 23. The Fish-bones Design and "Cat Claws" trademark appearing on both lateral sides of the Fish-bones Knockoff are confusingly similar to Plaintiff's Fish-bones Design and registered Trademark, and constitute an attempt to pass off Defendants' Fish-bones Knockoff for Plaintiff's Fish-bones Product.
- 24. Plaintiff is owner of U.S. Design Patent No. D627,113 for a Cat Scratcher (the "Cheese Design Patent"); a copy of said patent is Attachment E hereto.

- 25. Since at least as early as March of 2008, Plaintiff has sold a product embodying the Cheese Design Patent, including a stylistic depiction of features of a swiss cheese slice on both lateral sides of the product (the "Cheese-slice Design"), together with Plaintiff's registered Trademark; a copy of a photograph of said product (the "Cheese-slice Product") is Attachment F hereto.
 - 26. Plaintiff's Cheese-slice Product is manufactured in the United States.
- 27. Defendant BLSI has sold a product labeled "Cat Cardboard Scratcher" (the "Cheese-slice Knockoff"), that is virtually identical to Plaintiff's Cheese-slice Product; a copy of a photograph of the Cheese-slice Knockoff is Attachment G hereto.
 - 28. The Cheese Knockoff is manufactured in and imported from China.
 - 29. Defendants' Cheese-slice Knockoff infringes Plaintiff's Cheese Design Patent.
- 30. The Cheese-slice Design appearing on both lateral sides of the Cheese-slice Knockoff is confusingly similar to Plaintiff's Cheese-slice Design, and constitutes an attempt to pass off Defendants' Cheese-slice Knockoff for Plaintiff's Cheese-slice Product.

COUNT 1: PATENT INFRINGEMENT (35 U.S.C. § 271(a))

- 31. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 30 of this Complaint, as though set forth verbatim herein.
 - 32. Plaintiff's Fish Design Patent is valid and enforceable.
- 33. Without Plaintiff's authorization, each Defendant makes, uses, sells, offers for sale, and/or imports the Fish-bones Knockoff, that infringes the Fish Design Patent.
 - 34. Plaintiff's Cheese Design Patent is valid and enforceable.
- 35. Without Plaintiff's authorization, each Defendant makes, uses, sells, offers for sale, and/or imports the Cheese-slice Knockoff, that infringes the Cheese Design Patent.

- 36. Each Defendant's misconduct alleged herein interferes with Plaintiff's sales of its products.
- 37. The amount of money damages which Plaintiff has suffered due to Defendants' misconduct alleged herein cannot be determined without an accounting, but Plaintiff is entitled to at least a reasonable royalty for all Knockoff Products made, used, sold, offered for sale, and/or imported by Defendants.
- 38. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has been damaged in amounts to be proven at trial, entitling Plaintiff to recover its actual damages, all gains and profits realized by or through both Defendants as a result of the misconduct alleged herein, all costs and expenses incurred by Plaintiff in this action (including reasonable attorneys' fees), and an accounting of all gains and profits realized by or through each Defendant as a result of the misconduct alleged herein.

COUNT 2: INDUCEMENT OF PATENT INFRINGEMENT (35 U.S.C. § 271(b))

- 39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 30 of this Complaint, as though set forth verbatim herein.
- 40. Upon information and belief, the acts actually carried out by one Defendant directly infringe the Patents.
- 41. Upon information and belief, the second Defendant took action during the time the Fish Design Patent was in force, intending to cause the infringing acts by the first Defendant.
- 42. Upon information and belief, the first Defendant was aware of the Fish Design Patent and knew that the acts, if taken, would constitute infringement of the Fish Design Patent, or the first Defendant believed there was a high probability that the acts, if taken, would constitute infringement of the Fish Design Patent but deliberately avoided confirming that belief.

- 43. Upon information and belief, the second Defendant took action during the time the Cheese Design Patent was in force, intending to cause the infringing acts by the first Defendant.
- 44. Upon information and belief, the first Defendant was aware of the Cheese Design Patent and knew that the acts, if taken, would constitute infringement of the Cheese Design Patent, or the first Defendant believed there was a high probability that the acts, if taken, would constitute infringement of the Cheese Design Patent but deliberately avoided confirming that belief.
- 45. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has been damaged in amounts to be proven at trial, entitling Plaintiff to recover its actual damages, all gains and profits realized by or through Defendants as a result of the misconduct alleged herein, all costs and expenses incurred by Plaintiff in this action (including reasonable attorneys' fees), and an accounting of all gains and profits realized by or through each Defendant as a result of the misconduct alleged herein.

COUNT 3: TRADEMARK INFRINGEMENT

- 46. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 30 of this Complaint, as though set forth verbatim herein.
 - 47. Plaintiff owns a protectable interest in its registered Trademark.
- 48. Plaintiff has demanded that Defendants cease use of Plaintiff's Registered Trademark.
- 49. Defendants continue to use Plaintiff's registered Trademark in connection with the Fish-bones Knockoff.
- 50. Defendants' misconduct alleged herein constitutes use in commerce of Plaintiff's registered Trademark without Plaintiff's consent, in connection with the sale, distribution, offering

for sale, or advertising of goods or services that is likely to cause consumer confusion or mistake or deception as to the source or origin of such goods or services.

- 51. Defendants' misconduct alleged herein constitutes use in commerce of Plaintiff's registered Trademark without Plaintiff's consent, in connection with the sale, distribution, offering for sale, or advertising of goods or services that is likely to cause consumer confusion or mistake or deception as to sponsorship or approval of such goods or services by Plaintiff.
- 52. Defendants' unauthorized use of Plaintiff's registered Trademark will likely cause consumer confusion, mistake or deception in violation of Plaintiff's rights under 15 U.S.C. §1114 and 1125, and under Arkansas common law.
- 53. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has suffered and will continue to suffer irreparable harm for which it cannot be adequately compensated by money damages, entitling Plaintiff to preliminary and permanent injunctive relief enjoining Defendants from continuing the misconduct alleged herein.
- 54. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff is entitled to recover Defendants' profits, any damages sustained by Plaintiff, and the costs of the action.
- 55. Some of the infringing misconduct of Defendants alleged herein has been committed intentionally, with knowledge of Plaintiff's rights, willfully and in reckless disregard for the harm it would inflict upon Plaintiff, making this an exceptional case under 15 U.S.C. §1117(a) and entitling Plaintiff to an award of attorneys' fees incurred herein.

COUNT 4: UNFAIR COMPETITION

56. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 30 of this Complaint, as though fully set forth herein.

- 57. Defendants jointly and severally have unfairly competed with Plaintiff by copying well-known patented features of Plaintiff's and by otherwise causing customer confusion.
- 58. Defendants' misconduct alleged herein constitutes use in commerce of Plaintiff's Trademark without Plaintiff's consent, in connection with the sale, distribution, offering for sale, or advertising of goods or services that is likely to cause consumer confusion or mistake or deception as to the source or origin of such goods or services.
- 59. Defendants' misconduct alleged herein constitutes use in commerce of Plaintiff's Trademark without Plaintiff's consent, in connection with the sale, distribution, offering for sale, or advertising of goods or services that is likely to cause consumer confusion or mistake or deception as to sponsor or approval of such goods or services by Plaintiff.
- 60. Defendants' misconduct alleged herein constitutes unfair competition in violation of Arkansas common law and 15 U.S.C. § 1125(a), because said misconduct is likely to confuse or deceive consumers into purchasing Defendants' products under the mistaken belief that they were provided, sponsored or endorsed by Plaintiff, or otherwise affiliated, connected or associated with Plaintiff.
- 61. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has suffered and will continue to suffer irreparable harm for which it cannot be adequately compensated by money damages, entitling Plaintiff to a restraining order and preliminary and permanent injunctive relief restraining and enjoining Defendants from continuing the misconduct alleged herein.
- 62. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff is entitled to recover Defendants' profits, any damages sustained by Plaintiff, and the costs of the action.

63. Some of the infringing misconduct of Defendants alleged herein was been committed intentionally, with knowledge of Plaintiff's rights, willfully and in reckless disregard for the harm it would inflict upon Plaintiff, making this an exceptional case under 15 U.S.C. §1117(a) and entitling Plaintiff to an award of attorneys' fees incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a jury trial and prays for judgment jointly and severally against each Defendant, and respectfully prays for the following relief:

- (a) a temporary restraining order, preliminary injunction and permanent injunction restraining and enjoining Defendants and each Defendant's employees, agents, officers, directors, attorneys, representatives, successors, affiliates, subsidiaries and assigns, and all those in concert or participation with any of them from:
 - (1) making, importing, offering for sale or selling any product or product design infringing Plaintiff's patented designs;
 - (2) imitating, copying, using, reproducing, registering, attempting to register and/or displaying any mark so resembling Plaintiff's Trademark as to be likely to cause confusion, mistake or deception therewith; and
 - (3) using any false description or representation or any other thing calculated or likely to cause consumer confusion, deception or mistake in the marketplace with regard to Plaintiff's Trademark; and
- (b) an order directing that Defendants remove all signage (including digital/electronic indicia) and deliver up for destruction all materials in his/her/its possession or custody or under their respective control that infringe Plaintiff's Trademark, including, without limitation, all inventory, advertising and promotional materials;

(c) an order requiring Defendants to publish corrective advertising in a form, manner and

frequency that is acceptable to the Court, publicizing the fact that Cat Claws is Plaintiff's

Trademark, that Defendants' prior use was not authorized, and that Defendants will no longer use

Cat Claws as a trademark or otherwise;

(d) an order directing that Defendants file with the Court, and serve upon counsel for

Plaintiff within thirty (30) days after the entry of such order or judgment, a report in writing and

under oath setting forth in detail the manner and form in which Defendants have complied with

this Court's orders;

(e) an award of damages, including enhanced, exemplary and punitive damages;

(f) an award of prejudgment and post judgment interest;

(g) an award of Plaintiff's costs and expenses incurred herein, including (without

limitation) Plaintiff's attorneys' fees; and

(h) all other relief, in law or in equity, to which Plaintiff may be entitled, or which the

Court deems just and proper.

Respectfully submitted by,

CALHOUN LAW FIRM

P.O. Box 251504

Little Rock, AR 72225

Telephone: 501-374-1700

Telefax: 501-801-1193

loe D. Calhoun [Ark. Bar No. 85021]

Joe.Calhoun@CalhounLawFirm.com

Attorney for Plaintiff

VERIFICATION

I, Jill Seliskar, having personally reviewed the allegations contained in the above stated Verified Complaint, do hereby verify under oath that the allegations contained therein are, to the best of my knowledge, information and belief, true and correct.

the best of my knowledge, information and belief, true and correct.
Cat Claws, Inc.
a gin L
C. Jill Şeliskar, President
State of Arkansas)
County of Pulaski)
On this theday of December, 2016, before me,
the undersigned notary, personally appeared JILL SELISKAR, and being authorized so to do executed the foregoing instrument for the purposes therein contained, by signing his name.
In witness whereof I hereunto set my hand and official seal.
Notary Public
My Commission Expires:

United States of America United States Patent and Trademark Office



Reg. No. 4,571,394

CAT CLAWS, INC. (ARKANSAS CORPORATION)

Registered July 22, 2014 MORRILTON, AR 72110

Int. Cl.: 20

FOR: CAT SCRATCHING PAD, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

TRADEMARK

FIRST USE 9-1-2007; IN COMMERCE 9-1-2007.

PRINCIPAL REGISTER

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CAT" , APART FROM THE

MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "CAT CLAWS" WITH A KITTEN INSERTED

BETWEEN THE TWO WORDS.

SER. NO. 86-121,270, FILED 11-18-2013.

KATHLEEN LORENZO, EXAMINING ATTORNEY



Michelle K. Zen

Deputy Director of the United States Patent and Trademark Office



(12) United States Design Patent Seliskar

(10) Patent No.: (45) Date of Patent: **US D627,112 S**

Nov. 9, 2010

(EA)	CAT	CODA	TAITED
(54)	CAL	SU.KA	TCHER

(75)	Inventor:	Carolyn Jill Seliskar, 114 Mount Zion
		Loop, Morrilton, AR (US) 72110

(73) Assignee: Carolyn Jill Seliskar, Morrilton, AR (US)

(**) Term: 14 Years

(21) Appl. No.: 29/332,783

(22) Filed: Feb. 25, 2009

(51)	LOC (9) Cl	30-99
(52)	U.S. Cl	D30/160 ; D6/349

(58) Field of Classification Search 119/702, 119/706-711, 28.5; D30/118-119, 160; D21/405-407, 465, 467, 474-476; D24/194; 446/227; D6/349, 382, 388, 597-598, 601 See application file for complete search history.

(56)**References Cited**

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D372,805 S	*	8/1996	Bonaddio et al D6/375
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5,682,633	Α	*	11/1997	Davis 5/636
D448,228	S	*	9/2001	Davis et al D6/601
D466,749	S	*	12/2002	O'Quinn D6/601
D501,064	S	*	1/2005	Williams D30/160
D555,299	S	*	11/2007	Tsengas D30/160
D557,464	S	*	12/2007	Novak D30/160
D589,657	S	*	3/2009	Lamstein D30/118
D610,316	S	*	2/2010	Handal D30/160

^{*} cited by examiner

Primary Examiner—Cathy Anne MacCormac

The ornamental design for a cat scratcher, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view a cat scratcher showing my new

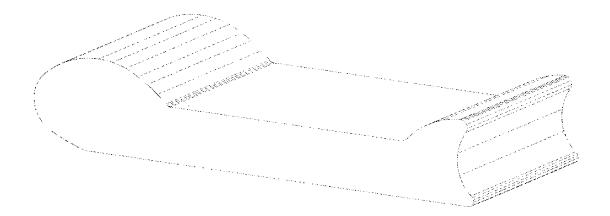
FIG. 2 is a right side elevational view thereof, the let side being a mirror image of the right side shown;

FIG. 3 is a top view thereof;

FIG. 4 is a front view thereof; and,

FIG. 5 is a rear view thereof.

1 Claim, 5 Drawing Sheets





Sheet 1 of 5

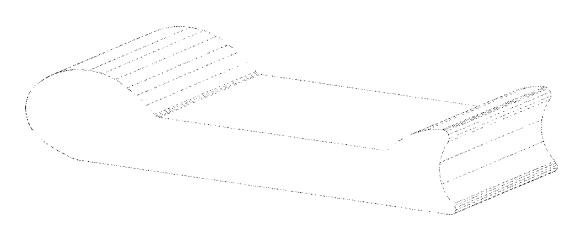


FIG. 1

Sheet 2 of 5

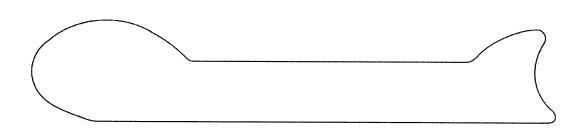


FIG. 2

Sheet 3 of 5



FIG. 3

U.S. Patent Nov. 9, 2010 Sheet 4 of 5

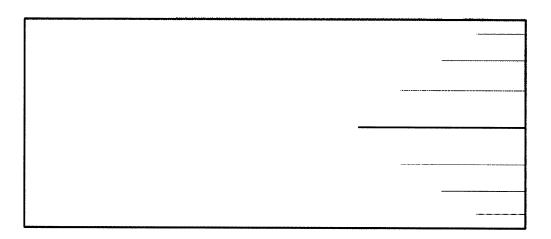


FIG. 4

Sheet 5 of 5

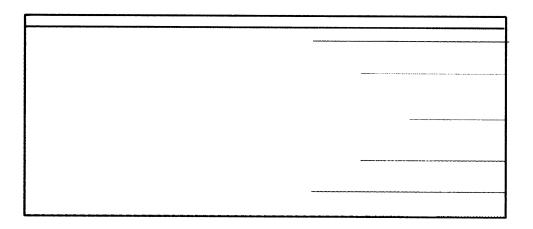
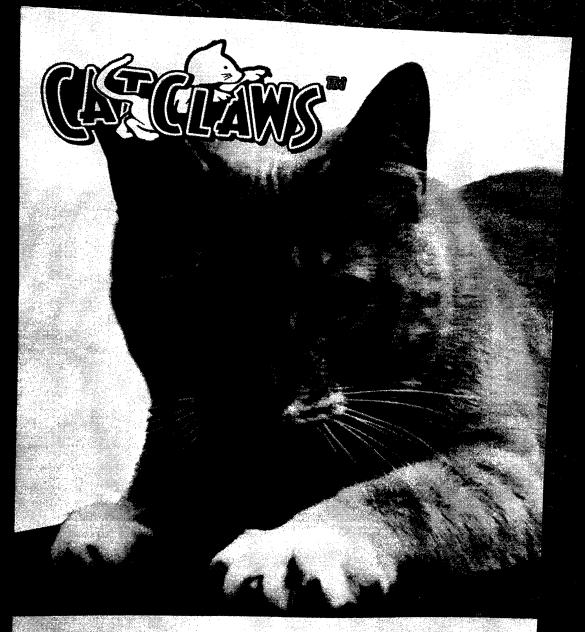


FIG. 5





Directions

- 1. DO NOT remove bottom sheet. Sheet will prevent catrilp from falling through.
- 2. Spread catrip on top of the center of the scratcher.
- 3. Let the cat explore the scretcher.

Helpful Hints:

- Give your cat time to explore the scratcher. Most cats will be attracted to the cathip and will investigate the scratcher themselves.
- Encourage scratching on the pad by playing with toys on or near the pad, scenting the pad with cathip, or using
 presse and food rewards when the cat scratches
- The scretcher will provide months of scratching with normal use. When scratcher becomes worn, replace with a new one.
- Don't be surprised if your cat sleeps on the scratcher. It's a great place to nap.

Product not intended for human use! DO NOT sit or stand on product! When product wears replace! www.catclaws.com

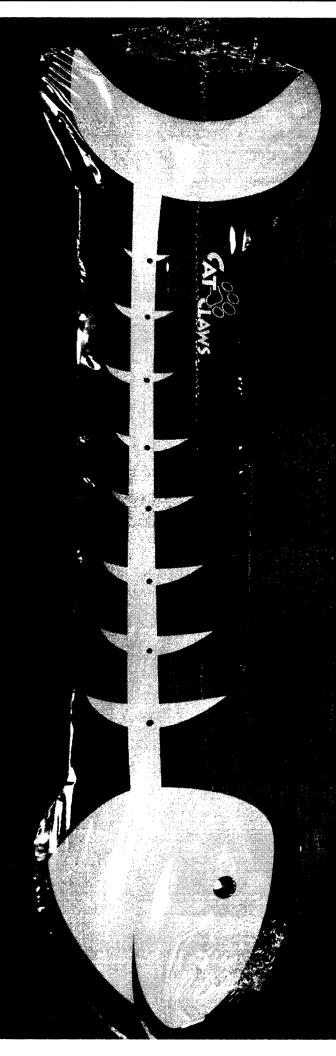


EXHIBIT D

- Cardboard scratcher helps to groom claws
- Sprinkle with select cathip (included) to promote scratching
 Cool curves keep cats interested

A WARNING:
For pet only. Not for children.
Remove plastic wrap. Place scratcher in desired location. Sprinkle the scratcher with cathip.



Distributed By: Big Lots Stores, Inc.
P.O. Box 28523; Columbus, OH 43228-0523
V#1009992 MADE IN CHINA ITEM#HWKT19002

EXHIBIT E



(12) United States Design Patent (10) Patent No.:

Seliskar

US D627,113 S

(45) **Date of Patent:** Nov. 9, 2010

(54) CAT SCRATCHER (75) Inventor: Carolyn Jill Seliskar, 114 Mount Zion Loop, Morrilton, AR (US) 72110 Assignee: Carolyn Jill Seliskar, Morrilton, AR (US) (**) Term: 14 Years (21) Appl. No.: 29/332,787 (22) Filed: Feb. 25, 2009 (51) LOC (9) Cl. 30-99 **U.S. Cl.** **D30/160**; D6/349 (52)Field of Classification Search 119/702, (58)119/706-711, 28.5; D30/118-119, 160; D21/405-407, 465, 467, 474-476; D24/194; 446/227; D6/349, 601

(56)**References Cited**

U.S. PATENT DOCUMENTS

See application file for complete search history.

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				Paterek 119/706
				Van Zandt 119/706
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D269,821	\mathbf{S}	*	7/1983	Hurley D30/160
4,780,921	A	*	11/1988	Lahn et al D6/601

D334,637	S	*	4/1993	Mitchell D30/160
D353,029	\mathbf{S}	×	11/1994	Northrop et al D30/108
5,592,901	Α	*	1/1997	Birmingham 119/706
D440,717	S	×	4/2001	Fazio D30/119
D501,064	\mathbf{S}	*	1/2005	Williams D30/160
D555,299	S	*	11/2007	Tsengas D30/160
D557,464	\mathbf{S}	*	12/2007	Novak D30/160
D604,018	S	*	11/2009	Simpson et al D30/160
D616,160	\mathbf{S}	*	5/2010	Kellogg et al D30/160
2007/0074675	Al	*	4/2007	Tu 119/706
2007/00/40/3	A1		4/200/	1u 119//00

^{*} cited by examiner

Primary Examiner—Cathy Anne MacCormac

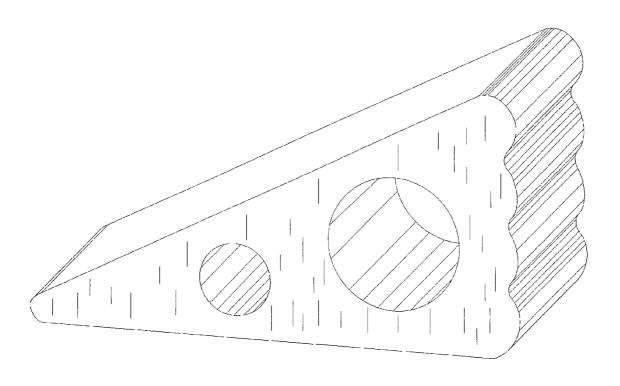
CLAIM

The ornamental design for a cat scratcher, as shown and described.

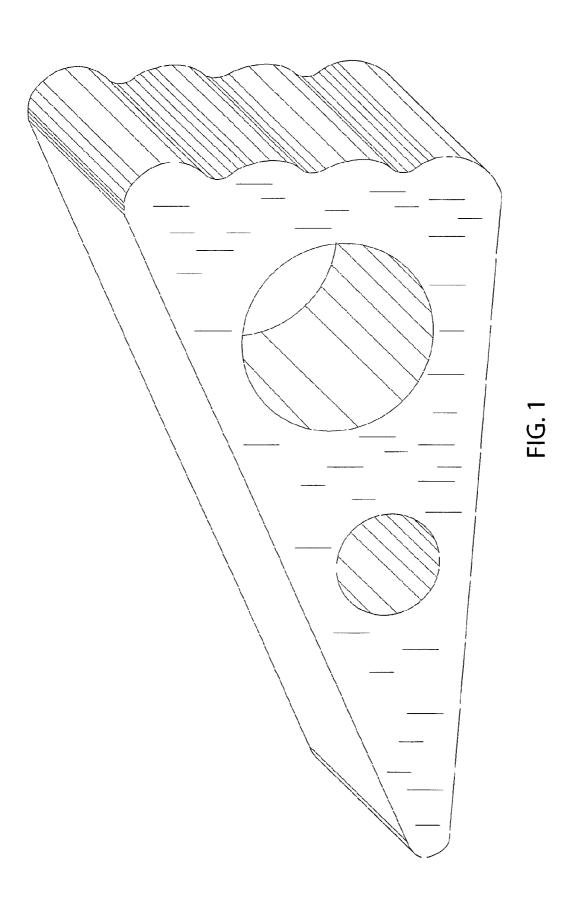
DESCRIPTION

- FIG. 1 is a perspective view a cat scratcher showing my new
- FIG. 2 is a right side elevational view thereof, the left side being a mirror image of the right side shown;
- FIG. 3 is a top view thereof;
- FIG. 4 is a front view thereof; and,
- FIG. 5 is a rear view thereof.

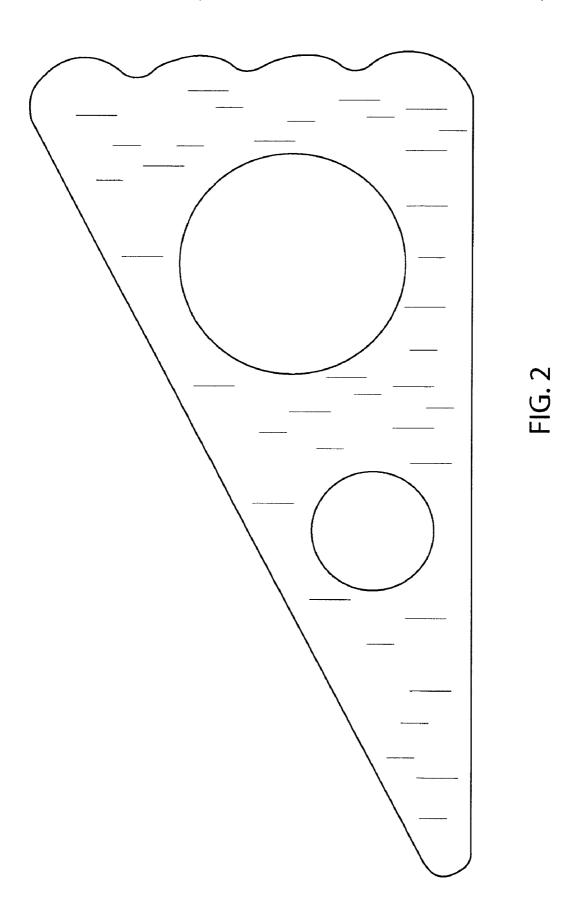
1 Claim, 5 Drawing Sheets



U.S. Patent Nov. 9, 2010 Sheet 1 of 5 US D627,113 S



U.S. Patent Nov. 9, 2010 Sheet 2 of 5 US D627,113 S



U.S. Patent Nov. 9, 2010 Sheet 3 of 5 US D627,113 S

FIG. 3

U.S. Patent Nov. 9, 2010 Sheet 4 of 5 US D627,113 S

FIG. 4

U.S. Patent Nov. 9, 2010 Sheet 5 of 5 US D627,113 S

FIG. 5

