

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

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

Plaintiff,

v.

**Iconic Pet, LLC,**  
 611 South Ave.  
 Garwood, NJ 07027,

Defendant.

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Magistrate \_\_\_\_\_

**COMPLAINT FOR UNFAIR  
 COMPETITION AND PATENT  
 INFRINGEMENT**

*(Jury Demand Endorsed Hereon)*

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, Iconic Pet, LLC, upon information and belief, is a business entity located in New Jersey, which makes, uses, sells, offers for sale, and/or imports infringing product in the United States.

**JURISDICTION AND VENUE**

3. This Court 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. There are

1 state law claims arising under Ohio law for unfair competition that are brought under  
2 diversity jurisdiction.

3 4. In addition to diversity jurisdiction, this Court also has federal question jurisdiction as  
4 Plaintiff also states claims arising under the patent laws of the United States, specifically 35  
5 U.S.C. § 281. This Court has federal question subject matter jurisdiction in this matter  
6 pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281.  
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8 5. This Court has personal jurisdiction over the Defendant by virtue of their sale of products,  
9 transaction of business, and solicitation of business within the State of Ohio, within this  
10 judicial district and elsewhere.

11 6. Ohio's Long-Arm Statute, RC § 2307.382(A)(1), 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: (1) Transacting any business in this state." In this case, the  
14 Defendant transacts business in this state. The Defendant supplies infringing pet bowls that  
15 are widely sold throughout the state of Ohio.  
16

17 7. Ohio's Long-Arm Statute, RC § 2307.382(A)(2), provides that "A court may exercise  
18 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action  
19 arising from the person's: (2) Contracting to supply services or goods in this state." In this  
20 case, the Defendant contracts to supply goods in this state. The Defendant supplies  
21 infringing pet bowls that are widely sold throughout the state of Ohio.  
22

23 8. Notably, the Defendant sells infringing product over its website, [www.iconicpet.com/](http://www.iconicpet.com/), which  
24 website is an active rather than a passive website, meaning, it permits Ohio users to place  
25 orders, to store personal account information, to register a username and password, to access  
26

1 customer service, and to ship products to different states, including Ohio. Websites with  
2 similar features have been found to satisfy the ‘purposeful availment’ requirement of the  
3 “minimum contacts” analysis satisfying due process. *See, e.g., Solar X Eyewear, LLC v.*  
4 *Bowyer*, 2011 WL 3418306 (N.D. Ohio Aug. 4, 2011); *Wood v. I-800-Got-Junk?, LLC*, 2007  
5 WL 895008 (S.D. Ohio March 22, 2007); *V Secret Catalogue v. Zdrok*, 2003 WL 22136303  
6 (S.D. Ohio Aug. 29, 2003); *Bath and Body Works, Inc. v. Wal-Mart Stores, Inc.*, 2000 WL  
7 1810478 (S.D. Ohio Sept. 12, 2000).

- 8
- 9 9. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or  
10 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims  
11 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this  
12 district, and infringement occurred within this judicial district. Further, the Plaintiff, its  
13 witnesses and evidence, are located in this district. Venue is proper here.

14

15 **FACTUAL ALLEGATIONS**

- 16 10. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of  
17 innovative, high-quality accessory and consumable pet products in the United States and  
18 overseas.
- 19 11. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical  
20 link to nature.
- 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 13. The Plaintiff strives to develop truly unique and innovative products. In fact, almost all of  
24 the Plaintiff’s products are patented and are the only ones of their kind in the marketplace.  
25  
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1 14. The Plaintiff has become a leader in feeding systems to improve the health and comfort of  
2 pets. It has also developed interactive toys that provide fun, rewarding mental and physical  
3 challenges to pets. It has also developed healthy consumables for achieving and maintaining  
4 high mental, physical, and immune levels for pets.

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

8 16. The Plaintiff is a publicly-traded company.

9 17. Dr. Steven Tsengas, PhD is the founder and CEO of the Plaintiff corporation.

10 18. The Plaintiff has widely and continuously promoted and sold its patented products under the  
11 Durapet® brand, which products embody the '529 patent, and are marked patented and/or  
12 patent pending at times relevant. Further, Plaintiff's website publicly lists the subject patent:  
13 <http://www.ourpets.com/patents-feeding-storage>.

14 19. The Plaintiff has invested considerable time and resources in marketing and advertising their  
15 patented products.

16 20. The Defendant has had actual knowledge of the Plaintiff's intellectual property rights in the  
17 Plaintiff's Durapet® product line by virtue of the Plaintiff's marking of its products as  
18 patented and/or patent pending.

19 21. The parties are competitors in that they both manufacture, source, market, and/or sell pet  
20 bowls widely in the pet industry.

21 22. On March 10, 2015, United States Utility Patent No. 8,973,529, entitled "Covered Bowls  
22 Such as Pet Food and Water Bowls" (hereinafter referred to as the '529 patent) duly and  
23

1           legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and  
2           accurate copy of the ‘529 patent as issued is attached hereto as “Exhibit 1.”)

3           23. All rights to the ‘529 patent, including but not limited to, the right to recover for infringement  
4           thereunder, have been assigned to the Plaintiff, OurPet’s Company.

5           24. The ‘529 patent teaches a pet bowl with a rubber or plastic cover that is permanently or  
6           removeably secured to the bottom surface of the bowl, to make the bowl skid resistant,  
7           among other things.

8           25. The ‘529 patent teaches a bowl with a rubber or plastic cover that need not extend up the  
9           sidewall, i.e., rubber adhered to the bottom of the bowl only.

10          26. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
11          importing products that infringe the ‘529 utility patent.

12          27. The Defendant has sold its infringing product in this judicial district in Ohio and elsewhere.

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

17          29. The Defendant is not authorized in any way to sell their infringing products or to use the  
18          patents owned by the Plaintiff.

19          30. The Plaintiff is entitled to an award of damages against Defendant, and is entitled to  
20          injunctive relief.

**CLAIM NO. 1**

*(Unfair Competition under Ohio law)*

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

5 32. Claims under Ohio's Ohio RC § 1345 *et seq.* are to be brought in Ohio courts pursuant to  
6 Ohio RC § 1345.04. Here, since diversity exists, the case is filed in federal court in Ohio.

7 33. The Defendant's acts described herein constitute unfair competition under Ohio law, and the  
8 Plaintiff is entitled to an award of damages against Defendant for same.

9 34. The Defendant's conduct is unfair competition under Ohio common law, and it also violates  
10 Ohio statutory law found at Ohio RC § 1345 *et seq.*

11 35. Plaintiff is entitled to compensatory damages under Ohio RC § 1345.09(B), punitive  
12 damages under Ohio RC § 1345.09(B), and attorney's fees under Ohio RC § 1345.09(F).

**CLAIM NO. 2**

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

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14  
15  
16 36. The Plaintiff hereby incorporates by reference each statement, whether written above or  
17 below, as if each is fully re-written herein.

18 37. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
19 importing products that infringe the '529 utility patent. (See Ex. 2&3 – allegedly infringing  
20 products.)

21 38. The Defendant's anti ant stainless steel non skid pet bowls are all alleged to infringe the '529  
22 patent. (Exs. 1-3.)

23 39. The Defendant's products are an infringement of the '529 patent, and in violation of 35  
24 U.S.C. § 271 within this judicial district and elsewhere.  
25  
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1 40. The Defendant will continue to make, use, offer for sale, sell, and import their infringing  
2 products unless enjoined by this Court.

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

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

9 43. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
10 appropriate attorney's fees is justified.  
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12 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

13 WHEREFORE, the Plaintiff prays that this Court enter an Order against the Defendant as  
14 follows:  
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16 A) A preliminary injunction enjoining the Defendant from making, using, selling, or importing  
17 any product that infringes upon the '529 patent;

18 B) A permanent injunction enjoining the Defendant from making, using, selling, or importing  
19 any product that infringes upon the '529 patent;

20 C) An accounting for damages resulting from Defendant's patent infringement and the trebling  
21 of such damages because of the knowing, willful, and wanton nature of the Defendant's  
22 conduct;

23 D) An assessment of interest on the damages so computed;

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

2 **JURY DEMAND**

3 WHEREFORE, the Plaintiff requests a trial by jury on all issues so triable.

4  
5 Most Respectfully Submitted,

6  
7 /s/ David A. Welling

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