

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

CARLIS G. STEPHENS)	
)	
Plaintiff,)	Case No. 15-CV-954-HEA
)	
vs.)	
)	
NEIL P. ZIEGMANN, N.P.Z., INC.,)	
ORSCHELN FARM AND HOME, LLC AND)	
RURAL KING HOLDINGS, LLP d/b/a)	
RURAL KING, STORE #45)	
<u>Serve at:</u>)	
15190 Veterans Memorial Parkway)	
Wentzville, MO 63385)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Carlis G. Stephens, for his First Amended Complaint against Defendants, Neil P. Ziegmann, N.P.Z., Inc., Orscheln Farm and Home, LLC, and Rural King Holdings, LLP d/b/a Rural King, Store #45, and states:

PARTIES

1. By filing the First Amended Complaint in this district, Plaintiff does not abandon or waive the claims asserted in the original Complaint that have been transferred to other U.S. District Courts pursuant to the Court's Order Opinion and Memorandum (ECF No. 145) filed on May 14, 2018.

2. Carlis G. Stephens ("Carlis") is a citizen of Missouri who resides in Warrenton, Missouri.

3. Neil P. Ziegmann ("Ziegmann") is a citizen of Iowa who resides in Lake View, Iowa. He is the owner of N.P.Z., Inc. ("NPZ").

4. NPZ is a corporation organized and existing under the laws of Iowa. Its principal place of business is in Lake View, Iowa.

5. Orscheln Farm and Home, LLC (“Orscheln Farm”) is a Limited Liability Company organized under the laws of the State of Missouri. It maintains its principal office and place of business in Moberly, Missouri.

6. Rural King Holdings, LLP d/b/a Rural King, Store #45, of Wentzville, Missouri (“Rural King”), is a limited liability partnership organized and existing under and by virtues of the laws of the State of Missouri. It maintains and operates a bricks and mortar retail store, Rural King, Store #45, in Wentzville, Missouri.

JURISDICTION AND VENUE

7. Carlis is the inventor U.S. Patent No. 8,881,447B2 (“the ‘447 Patent”), which provides for a shaped trigger that encompasses a substantial cross-section portion of the hollow body permitting capture of the animals while also preventing theft of bait.

8. Defendants are infringing Carlis’ ‘447 Patent by importing and selling modified Z-Traps with CrossFire triggers, by importing and selling E-Z Traps which have been modified to accept the CrossFire trigger, and by selling CrossFire trigger components for use in modifying the E-Z Traps. Ziegmann and NPZ also violated the Lanham Act, 15 U.S.C. § 1051, et seq., and the Patent Act, 35 U.S.C. § 1, et seq., by false advertising and false marking.

9. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because it arises under the Patent Act and the Lanham Act of the United States Code.

10. Personal jurisdiction exists over the Defendants, and each of them, because they have engaged in systematic business contacts with the State of Missouri in connection with the sale and promotion of animal traps which infringe the '447 Patent by selling, advertising and offering to sell Z-Traps with CrossFire triggers, and E-Z Traps modified to accept CrossFire triggers and CrossFire triggers within the State of Missouri, and by attending Trade Conventions in Missouri; and by advertisements published to, and directed to, the citizens of the State of Missouri.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) with respect to the Lanham Act claims against Neil Ziegmann and N.P.Z., Inc. because a substantial part of the events or omissions giving rise to these claims occurred in this District in the State of Missouri, and those Defendants are otherwise subject to this Court's personal jurisdiction with respect to those claims.

12. Venue is proper in this District with respect to the Patent infringement claims against Orscheln Farm and Rural King in that both Defendants operate brick and mortar retail stores in Wentzville, Missouri (Rural King) and Warrenton, Missouri (Orscheln) and have sold, and are selling, infringing Z-Traps with cross-fire triggers from those retail locations.

Venue as to those claims is therefore proper under 28 U.S.C. § 1400(b) and TC Heartland, LLC vs. Kraft Foods Group Brands, LLC, 137 S.Ct. 1514 (2017).

GENERAL ALLEGATIONS

13. On or about 2006, Carlis began work on improving existing “dog-proof” animal traps having a single-action trigger. Such traps generally used an elongated housing with a diameter large enough for an animal, such as a raccoon, to reach into an open end of the housing and grab bait positioned below a trigger near the bottom and closed end of the housing. When the bait is pulled upwards toward the housing’s opening, it pulls the trigger and releases a spring and associated restraint that restrains the animal’s arm in the housing. Such traps thus had a “pull-only trigger” because pushing down on the trigger did not release the spring and associated restraint.

14. In or about late 2006 and early 2007, Carlis began modifying dog-proof traps having pull-only triggers in order to increase the effectiveness of the traps and prevent “bait theft” by animals. These modifications included creating an extended latch having a notch on the outside of the housing and a “hook” on a portion of the trigger to engage the latch in order to create a “push-pull” trigger. Specifically, through this improvement, the spring and associated restraint were activated when an animal pulled or pushed on the trigger.

15. Carlis subsequently developed an animal trap that provides for a push-pull, shaped, trigger that encompasses a substantial cross-section portion of the hollow body permitting capture of the animals while also preventing theft of the bait.

16. On November 11, 2014 the United States Patent and Trademark Office duly and lawfully issued the '447 Patent entitled "Animal Trap", claiming the Animal Trap disclosed therein. The '447 Patent is based on an application filed on September 14, 2010 and subsequently continued. A copy of the '447 Patent is attached hereto as Exhibit B, in nineteen pages, and incorporated herein by reference.

17. The '447 Patent claims a push-pull, shaped, trigger that encompasses a substantial cross-section portion of the hollow body, including trigger members having a circular shape, a cross shape or a square shape. See claims 9, 12, 13, 14 and 15 on p. 19 of Exhibit B.

18. Defendants Ziegmann and NPZ modified their Z Traps to include a push-pull, cross-shaped trigger, described as a CrossFire trigger, which encompasses a substantial cross-sectional portion of the hollow body, in violation of the '447 Patent. A copy of Ziegmann and NPZ's advertisement of their modified Z trap is attached as Exhibit C, in two pages, and incorporated herein by reference.

19. On February 1, 2013, Ziegmann and NPZ announced that they would begin using CrossFire triggers in all their traps in March 2013. See Exhibit D attached.

20. Carlis submitted the advertisement of Ziegmann and NPZ (Exhibit C) to the Patent Office as evidence that others were infringing his invention. The Patent Office agreed and issued the '447 Patent.

21. Carlis is the sole inventor and owner of all rights, title and interest in the '447 Patent.

22. The '447 Patent permits the humane capture of raccoons and other animals while preventing the animals from stealing the bait by using a shaped, push-pull, trigger which encompasses a substantial cross-section portion of the hollow body permitting capture of the animal while also preventing theft of the bait.

23. During November and December 2014 and January 2015 Carlis notified the Defendants orally and by email to cease and desist infringing the '447 Patent.

24. Plaintiff, Carlis, demands trial by a jury on all claims and all Counts.

COUNT I

(CLAIM FOR INFRINGEMENT OF THE '447 PATENT AGAINST ORSCHELN FARM AND HOME, LLC

25. Plaintiff realleges and incorporates herein by reference ¶¶ 1-24, as fully set forth above.

26. Orscheln Farm directly and through their agents, employees and servants, have, and continue to, knowingly, intentionally and willfully directly infringe, engage in acts of discriminatory infringement, and/or induce the infringement of the '447 Patent by directly and/or indirectly making, using, selling, offering for sell and/or importing products and selling products under the name Z Traps with CrossFire triggers that fall within the scope of Claims 12 and 14 of the '447 Patent. Specifically, Orscheln Farm infringes Claims 12

and 14 of the '447 Patent as set forth on p. 19 of Exhibit B attached hereto, and which provide:

“12. An animal trap for humanely trapping animals and for preventing theft by an animal of bait placed in the trap to lure the animal to the trap, comprising:

a hollow body having an entrance opening;

a spring supported adjacent said body and a restraint member connected to said spring, and restraint member adapted to engage an extremity of the animal when the extremity is inserted into said body through said entrance opening to restrain the animal in the trap;

a trigger assembly restraining said restraint member in an armed position, said trigger assembly including a trigger member located intermediate said entrance opening and a location within the trap where bait is placed for the animal's extremity to contact said trigger member when attempting to reach the bait thereby releasing said restraint member from said armed position when either a first directional force or a second and substantially opposite directional force is applied to the trigger member of said trigger assembly; and,

wherein said trigger member has a shaped and encompassing a substantial cross-section portion of said hollow body whereby insertion of the animal's extremity into the hollow body to reach

the bait causes contract of the extremity with the shaped end of the trigger member and results in capture of the animal while also preventing theft of the bait.”

And Claim No. 14, which provides:

“14. The animal trap of claim 12 wherein said trigger member end has a generally cross shape.”

27. Orscheln Farm, directly and through their agents, employees and servants, have, and continue to, knowingly, intentionally and willfully directly infringe, and to engage in acts of discriminatory infringement, and/or induce the infringement of Claims 12 and 14 of the ‘447 Patent by importing and selling E-Z Traps modified to receive CrossFire triggers, and CrossFire trigger packages, thereby inducing their customers, and the ultimate purchasers of their animal traps to infringe the ‘447 Patent by adding the CrossFire triggers to the previously modified E-Z Traps. The CrossFire triggers employ a cross shape, push-pull, trigger to encompass a substantial cross-section portion of the hollow body of the Z Traps and E-Z Traps.

28. The accused products, the Z-Traps with cross-fire triggers and the E-Z Traps with conversion kits to convert the triggers to cross-fire triggers infringe each element of Claim No. 12 in the ‘447 Patent in that each accused infringing device consists of a hollow body with an entrance, a spring supported restraint adjacent to the body adapted to engage the extremity of the animal when it is inserted into the said body and a trigger assembly which activates the restraint on either a push or pull force from the animal, which

has a shaped trigger encompassing a substantial cross-section of the hollow body.

29. The accused products, the Z-Traps with cross-fire triggers and the E-Z Traps with conversion kits to convert the triggers to cross-fire triggers infringe each element of Claim No. 14 in the '447 Patent in that each accused infringing device consists of a hollow body with an entrance, a spring supported restraint adjacent to the body adapted to engage the extremity of the animal when it is inserted into the said body and a trigger assembly which activates the restraint on either a push or pull force from the animal, which has a shaped trigger encompassing a substantial cross-section of the hollow body.

30. With respect to the claims of induced infringement, Defendant Orscheln Farm, specifically intended to induce its retail customers to infringe Claim Nos. 12 and 14 of the '447 Patent by selling Z-Traps with cross-fired triggers, which infringe, and by selling said customers E-Z Traps which can easily be adapted to include cross-fire triggers and/or by selling E-Z Traps with cross-fire trigger packages that are intended to be used to modify the E-Z Traps to include cross-fire triggers.

31. The acts of infringement of Defendant, Orscheln Farm, were taken without permission or license from Carlis. Orscheln Farm had actual knowledge of the '447 Patent and has defiantly refused to cease selling and marketing the Z Trap with the cross-fire trigger. Orscheln Farm has continued

to use, market and sell the infringing animal traps with cross-fire triggers, thereby willfully and intentionally infringing the “447 Patent.

32. Orscheln Farm has derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an amount that is not presently known to Plaintiff. By reason of the above-described infringing acts, Plaintiff has been damaged and will continue to be damaged in the future unless Orscheln Farm is permanently enjoined from infringing, either directly or indirectly, the ‘447 Patent. Plaintiff is entitled to monetary relief, in a sum to be determined at trial.

33. As a result of the infringing acts of Orscheln Farm, described above, Plaintiff has suffered and will continue to suffer great and irreparable injury, for which Plaintiff has no adequate remedy at law.

COUNT II

(CLAIM FOR INFRINGEMENT AGAINST RURAL KING OF WENTZVILLE, MISSOURI)

34. Plaintiff realleges and incorporates herein by reference ¶¶ 1-24 and 29-30, as fully set forth above.

35. Rural King directly and through its agents, employees and servants, have, and continue to, knowingly, intentionally and willfully directly infringe, and to engage in acts of discriminatory infringement, and/or induce the infringement of the ‘447 Patent by directly and/or indirectly making, using, selling, offering for sell and/or importing products and selling products under the name Z Traps with CrossFire triggers that fall within the scope of Claims

12 and 14 of the '447 Patent. Specifically, Rural King infringes Claims 12 and 14 of the '447 Patent as set forth on p. 19 of Exhibit B attached hereto, and which provide:

“12. An animal trap for humanely trapping animals and for preventing theft by an animal of bait placed in the trap to lure the animal to the trap, comprising:

a hollow body having an entrance opening;

a spring supported adjacent said body and a restraint member connected to said spring, and restraint member adapted to engage an extremity of the animal when the extremity is inserted into said body through said entrance opening to restrain the animal in the trap;

a trigger assembly restraining said restraint member in an armed position, said trigger assembly including a trigger member located intermediate said entrance opening and a location within the trap where bait is placed for the animal's extremity to contact said trigger member when attempting to reach the bait thereby releasing said restraint member from said armed position when either a first directional force or a second and substantially opposite directional force is applied to the trigger member of said trigger assembly; and,

wherein said trigger member has a shaped and encompassing a substantial cross-section portion of said hollow body whereby

insertion of the animal's extremity into the hollow body to reach the bait causes contract of the extremity with the shaped end of the trigger member and results in capture of the animal while also preventing theft of the bait."

And Claim No. 14, which provides:

"14. The animal trap of claim 12 wherein said trigger member end has a generally cross shape."

36. Rural King directly and through their agents, employees and servants, have, and continue to, knowingly, intentionally and willfully directly infringe, and to engage in acts of discriminatory infringement, and/or induce the infringement of Claims 12 and 14 of the '447 Patent by importing and selling E-Z Traps modified to receive CrossFire triggers, and CrossFire trigger packages, thereby inducing their customers, and the ultimate purchasers of their animal traps to infringe the '447 Patent by adding the CrossFire triggers to the previously modified E-Z Traps. The CrossFire triggers employ a cross shape, push-pull, trigger to encompass a substantial cross-section portion of the hollow body of the Z Traps and E-Z Traps.

37. The acts of infringement of Defendant, Rural King, were taken without permission or license from Plaintiff. Rural King had actual knowledge of the '447 Patent and has defiantly refused to cease selling and marketing the Z Trap with the cross-fire trigger. Rural King has continued to use, market and sell the infringing animal traps with cross-fire triggers, thereby willfully and intentionally infringing the "447 Patent.

38. The acts of infringement of Defendant, Rural King, were taken without permission or license from Carlis. Rural King had actual knowledge of the '447 Patent and has defiantly refused to cease selling and marketing the Z Trap with the cross-fire trigger. Rural King has continued to use, market and sell the infringing animal traps with cross-fire triggers, thereby willfully and intentionally infringing the "447 Patent.

39. Rural King has derived and received, and will continue to derive and receive, gains, profits, and advantages from the above-described acts of infringement in an amount that is not presently known to Plaintiff. By reason of the above-described infringing acts, Plaintiff has been damaged and will continue to be damaged in the future unless Rural King is permanently enjoined from infringing, either directly or indirectly, the '447 Patent. Plaintiff is entitled to monetary relief, in a sum to be determined at trial.

40. As a result of the infringing acts of Rural King, described above, Plaintiff has suffered and will continue to suffer great and irreparable injury, for which Plaintiff has no adequate remedy at law.

COUNT III

(CLAIM FOR UNFAIR COMPETITION AGAINST ZIEGMANN AND NPZ)

41. Plaintiff realleges and incorporates herein by reference ¶¶ 1-24 and 28-29, as fully set forth above.

42. Count III is for unfair competition against Ziegmann and NPZ under 15 U.S.C. § 1125(a)(1)(B).

43. Ziegmann is the inventor on the '642 Patent issued to Ziegmann on July 31, 2012. The '642 Patent is based on a provisional application filed on or about May 4, 2009. On information and belief, Ziegmann has issued a license to NPZ for the '642 Patent. The '642 Patent is titled "Raccoon Trap".

44. The claimed subject matter of the '642 Patent pertains to a push-pull trigger mechanism for a raccoon trap featuring a notch on an extended latch and a "hook" on the portion of the trigger that engages the latch.

45. The '642 Patent does not include a CrossFire trigger or a shaped trigger, push-pull, that encompasses a substantial cross-section portion of the hollow body, including trigger members that have a circular shape, a cross shape or a square shape, as claimed by the '447 Patent.

46. The principal claims in the '642 Patent were found to be invalid in Sudden Valley Supply, LLC vs. Neil Ziegmann and N.P.Z., Inc., Case No. 2013-

47. Ziegmann and NPZ also claim ownership of Patent #8,371,062 ("the '062 Patent"). The '062 Patent covers staking of traps. It does not apply to the CrossFire trigger.

48. Ziegmann and NPZ have falsely advertised, and continue to falsely advertise, that Patents '642 and '062 protect and apply to the CrossFire trigger. Those advertisements are intentionally false. See Exhibit A attached, which includes the statement: "Ztraps Protected by Two (2) U.S. Patents #8,230,642 & #8,371,062". The advertisement states that the Ztraps include the new CrossFire triggers.

49. NPZ and Ziegmann have stamped the '642 Patent number on their modified Ztraps with CrossFire triggers, falsely representing that the CrossFire triggers are protected by the '642 Patent. The '642 Patent does not specify, or claim, a shaped trigger with either a round, square or cross-shape that occupies a substantial cross-section of the hollow body. Instead the '642 Patent claims and specifies only a push-pull trigger. The trigger used in Ziegmann's application for the '642 Patent was a straight-line trigger, not a shaped trigger, and did not occupy a substantial cross-section of the hollow body.

50. Ziegmann and NPZ manufactured and/or imported and sold Ztraps with straight push-pull triggers while the application for the '642 Patent was pending, and thereafter. During 2013 Ziegmann and NPZ modified their Ztraps to include cross-shaped, push-pull, triggers which occupy a substantial cross-section of the hollow body. Ziegmann and NPZ then stamped the '642 Patent number on the modified Ztraps with CrossFire triggers, falsely representing that the CrossFire triggers were protected by the '642 Patent. See Exhibit F attached, in five pages, which was printed from Ziegmann's website on June 17, 2015.

51. The conduct of Defendants, Neil Ziegmann and N.P.Z., Inc., in falsely stating, and falsely advertising, that the Z Trap with cross-fire trigger is protected by the '642 Patent and the '062 Patent was intentional, and in bad faith, for the purpose of misleading customers for dog-proof animal traps that the Z Traps with cross-fire triggers were protected by Patents, with knowledge

that the Z Trap with cross-fire trigger was not protected by Patent and with knowledge that the Z Trap with cross-fire trigger infringed Plaintiff's '447 Patent.

52. The false advertisement that the CrossFire trigger is protected by the '642 and '062 Patents and the false marking of the modified Ztraps with CrossFire triggers by stamping the '642 Patent number thereon, creates confusion among consumers, including the customers of Carlis and Ziegmann and NPZ, causing consumers and customers to believe that the CrossFire trigger is protected by the '642 and '062 Patents, which were issued to Ziegmann and licensed to NPZ when, instead, the CrossFire trigger infringes the '447 Patent issued to Carlis.

53. Plaintiff and Ziegmann and NPZ are competitors in the fields of manufacturing, marketing and selling of animal traps, including raccoon traps.

54. Plaintiff has been damaged by the acts of unfair competition committed by Defendants Ziegmann and NPZ, in a substantial amount.

COUNT IV

(CLAIM FOR FALSE ADVERTISING AGAINST ZIEGMANN AND NPZ)

55. Plaintiff realleges and incorporates herein by reference ¶¶ 1-24 and 28-29 and 42-53, as fully set forth above.

56. Count V is based upon the conduct of Ziegmann and NPZ which constitutes false advertising under 15 U.S.C. § 1125(a)(1)(B).

57. As a result of the false advertising by Defendants, Ziegmann and NPZ, Plaintiff has sustained substantial damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Carlis G. Stephens, respectfully prays that the Court enter Judgment in his favor and against Defendants, Neil P. Ziegmann, N.P.Z., Inc., Orscheln Farm and Home, LLC and Rural King Holdings, LLP d/b/a Rural King, Store #45, jointly and severally, as follows:

1. For an Order adjudging that Defendants, Orscheln Farm a and Rural King, have willfully infringed the '447 Patent, under 35 U.S.C. § 271;
2. For a preliminary and permanent injunction enjoining Defendants, Orscheln Farm and Rural King, from directly or indirectly infringing the "447 Patent, in violation of 35 U.S.C. § 271;
3. For an Order that Defendants, Orscheln Farm and Rural King, be directed to account for all gains, profits, and advantages derived by their infringement, in violation of 35 U.S.C. § 271, and that all Defendants be directed to pay Carlis G. Stephens all damages suffered by Carlis G. Stephens, pursuant to 35 U.S.C. § 284;
4. For an Order trebling the damages and/or for exemplary damages in favor of Carlis G. Stephens because of willful conduct by Defendants, Orscheln Farm and Rural King, pursuant to 35 U.S.C. § 284;
5. For an Order adjudging that this is an exceptional case;
6. For an award in favor of Carlis G. Stephens and against Defendants, Ziegmann, NPZ, Orscheln Farm and Rural King, for attorney's fees and costs pursuant to 35 U.S.C. § 285, et seq. with respect to Orscheln Farm

and Rural King and pursuant to 15 U.S.C. § 1117 with respect to Ziegmann and NPZ;

7. For an Order that Defendants, Neil P. Ziegmann, N.P. Z., Inc., Orscheln Farm and Rural King, be directed to file with this Court and serve on Carlis G. Stephens, within thirty (30) days after the service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which said Defendants have complied with the injunction;

8. For an Order that Defendants, Orscheln Farm and Rural King, be ordered to account for and pay over to Carlis G. Stephens all earnings, profits, receipts, and advantages derived by them, or any of them, through the marketing and sale of the Z Trap with CrossFire trigger, and/or the E-Z Trap modified for acceptance of the CrossFire trigger, and the CrossFire triggers, and any other animal traps in violation of the '447 Patent, and to account for all damages sustained by Carlis G. Stephens as a result of those infringing activities;

9. For an award of damages against Defendants, Neil P. Ziegmann and N.P.Z., Inc., for damages that resulted from their violations of the Lanham Act;

10. For an award of Pre-Judgment and Post-Judgment interest and costs in favor of Plaintiff, Carlis G. Stephens, and against Defendants, Neil P. Ziegmann, N.P. Z., Inc., Orscheln Farm and Rural King,

11. For such other and further relief as this Court may deem just and proper.

/s/ David M. Duree

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CERTIFICATE OF SERVICE

The foregoing pleading was filed electronically with the Court using the CM/ECF system on the 23rd day of May 2018. A copy of this pleading will be served electronically by the Court on the following interested parties:

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