

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

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

Plaintiff,

v.

Caitec Corporation,
4601 Hollins Ferry Rd.
Halethorpe, MD 21227,

and,

Hero Dog Toys,
4601 Hollins Ferry Rd.
Halethorpe, MD 21227,

Defendant.

)
) Case No. _____

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) Judge _____

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) Magistrate _____

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) **COMPLAINT FOR**
) **PATENT INFRINGEMENT**

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) *(Jury Demand Endorsed Hereon)*

NOW COMES the Plaintiff, *OurPet's Company*, and for its Complaint against the Defendants 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 Defendants, Caitec Corporation and Hero Dog Toys, upon information and belief, are business entities located in Maryland, which makes, uses, sells, offers for sale, and/or imports infringing product in the United States in this judicial district and elsewhere.

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 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 personal jurisdiction over the Defendants 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.
6. 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 Defendants transact business in this state. The Defendants supply infringing products that are widely sold throughout the state of Ohio.
7. 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 case, the Defendants contract to supply goods in this state. The Defendants supply infringing products that are widely sold throughout the state of Ohio.

- 1 8. Notably, the Defendants sell infringing product over herodogtoys.com, and
2 <https://www.caitec.com/login.asp?>, which website is an active rather than a passive website,
3 meaning, it permits Ohio users to place orders, to store personal account information, to
4 register a username and password, to access customer service, and to ship products to
5 different states, including Ohio. Websites with similar features have been found to satisfy
6 the ‘purposeful availment’ requirement of the “minimum contacts” analysis satisfying due
7 process. *See, e.g., Solar X Eyewear, LLC v. Bowyer*, 2011 WL 3418306 (N.D. Ohio Aug. 4,
8 2011); *Wood v. I-800-Got-Junk?, LLC*, 2007 WL 895008 (S.D. Ohio March 22, 2007); *V*
9 *Secret Catalogue v. Zdrok*, 2003 WL 22136303 (S.D. Ohio Aug. 29, 2003); *Bath and Body*
10 *Works, Inc. v. Wal-Mart Stores, Inc.*, 2000 WL 1810478 (S.D. Ohio Sept. 12, 2000).
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12 9. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or
13 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims
14 occurred in this judicial district, the Defendants are subject to personal jurisdiction in this
15 district, and infringement occurred within this judicial district. Further, the Plaintiff, its
16 witnesses and evidence, are located in this district.
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18 **FACTUAL ALLEGATIONS**

- 19 10. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of
20 innovative, high-quality accessory and consumable pet products in the United States and
21 overseas.
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23 11. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical
24 link to nature.
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1 12. Along with proper nutrition, mental stimulation, physical exercise, and veterinary care, the
2 Plaintiff's products help to maintain the health and wellness of pets.

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

5 14. The Plaintiff has become a leader in feeding systems to improve the health and comfort of
6 pets. It has also developed interactive toys that provide fun, rewarding mental and physical
7 challenges to pets. It has also developed healthy consumables for achieving and maintaining
8 high mental, physical, and immune levels for pets.

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

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

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

14 18. On July 17, 2012, United States Utility Patent No. 8,220,418, entitled "Fetch and Retrieve
15 Tossing Toy" (hereinafter referred to as the '418 patent) duly and legally issued to Steven
16 Tsengas, as inventor, for the aforementioned invention. (A true and accurate copy of the
17 '418 patent as issued is attached hereto as "Exhibit 1.")

18 19. All rights to the '418 patent, including but not limited to, the right to recover for infringement
19 thereunder, have been assigned to the Plaintiff, OurPet's Company.

20 20. The Plaintiff has widely and continuously promoted and sold its patented products under the
21 Flappy® dog toys brand, which products embody the '418 patent, and are marked patented
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1 and/or patent pending at times relevant. Further, Plaintiff's website publicly lists the subject
2 patent – See: <http://www.ourpets.com/about-us/patent-trademark-information/>
3 (at pg. 2 of 7: Fetch and Retrieve Tossing Toy US 8,220,418 B1 Flappy)

4 21. The Plaintiff has invested considerable time and resources in marketing and advertising their
5 patented products.

6 22. The Defendants have had actual knowledge of the Plaintiff's intellectual property rights in
7 the Plaintiff's Flappy® product line by virtue of the Plaintiff's marking of its products as
8 patented and/or patent pending.

9 23. The parties are competitors in that they both manufacture, source, market, and/or sell pet
10 products widely in the pet industry.

11 24. The Defendants have been and is currently making, using, offering for sale, selling, and/or
12 importing product that infringes the '418 utility patent.

13 25. (See the Defendants' allegedly infringing product attached hereto as "Exhibits 2 and 3.")

14 26. The Defendant have sold infringing product in this judicial district in Ohio and elsewhere.

15 27. The aforementioned activities of the Defendants have also injured and threaten future injury
16 to the Plaintiff. More specifically, the Defendants' 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 Defendants.

19 28. The Defendants are not authorized in any way to sell their infringing products or to use the
20 patents owned by the Plaintiff.

21 29. The Plaintiff is entitled to an award of damages against Defendants, 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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4 30. The Plaintiff hereby incorporates by reference each statement, whether written above or
5 below, as if each is fully re-written herein.

6 31. The Defendants have been and are currently making, using, offering for sale, selling, and/or
7 importing products that infringe the ‘418 utility patent. (See Ex. 2 and 3.)

8 32. The Defendants’ products are an infringement of the ‘418 patent, and in violation of 35
9 U.S.C. § 271 within this judicial district and elsewhere.

10 33. The Defendants’ allegedly infringing product infringes at least Independent Claim 14 of the
11 ‘418 patent. The infringement is literal as to each element in Claim 14. Further, if
12 Defendants’ allegedly infringing product is injection molded rather than rotationally molded
13 – said difference is an equivalence under the doctrine of equivalents.

14 34. The Defendants will continue to make, use, offer for sale, sell, and import their infringing
15 products unless enjoined by this Court.

16 35. The Defendants have been, and is, actively inducing infringement of the ‘418 patent, by
17 offering for sale and selling their infringing products to dealers at wholesale prices who have,
18 and will continue to, offer them for sale and sell them to end users.

19 36. The Defendants’ infringement is, and at all times has been, deliberate, willful, with full
20 knowledge of the Plaintiff’s rights, and wanton, and as a result, the Plaintiff is entitled to
21 treble damages pursuant to 35 U.S.C. § 284.

22 37. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of
23 appropriate attorney’s fees is justified.
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CLAIM NO. 2

(Unfair Competition under Ohio law)

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

5 39. The acts described herein also constitute unfair competition by the Defendants under Ohio
6 law. Plaintiff is entitled to damages for unfair completion.

7 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

8 WHEREFORE, the Plaintiff prays that this Court enter an Order against the Defendants as
9 follows:
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11 A) A preliminary injunction enjoining the Defendants from making, using, selling, or importing
12 any product that infringes upon the '418 patent;

13 B) A permanent injunction enjoining the Defendants from making, using, selling, or importing
14 any product that infringes upon the '418 patent;

15 C) An accounting for damages resulting from Defendants' patent infringement and the trebling
16 of such damages because of the knowing, willful, and wanton nature of the Defendants'
17 conduct;

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

19 E) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;

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

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

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Most Respectfully Submitted,

/s/ David A. Welling

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