

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

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

Plaintiff,

v.

**Coastal Pet Products, Inc.,**  
**dba / fna, Bergen Pet, or, Bergen, LLC,**  
911 Leadway Avenue  
Alliance, Ohio 44601,

Defendant.

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

Judge \_\_\_\_\_

Magistrate \_\_\_\_\_

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

*(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, Coastal Pet Products, Inc., upon information and belief, is a business entity located in Alliance, Ohio, which makes, uses, sells, offers for sale, and/or imports infringing product in the United States. Coastal Pet Products, Inc. acquired Bergen Pets in 2015. The Plaintiff previously sued Bergen Pets in 2012 for patent infringement before this Court and entered into a settlement agreement with Bergen. In the settlement, Bergen agreed to discontinue the sale of pet bowls with rubber bonded bottoms. (The agreement is not

1 attached hereto, but is in possession of all parties and can be submitted to the Court on  
2 request. The settlement agreement also vests venue and jurisdiction with this Court.)

3 **JURISDICTION AND VENUE**

- 4
- 5 3. This is an action for patent infringement. The patent claims arise under the patent laws of the  
6 United States, specifically 35 U.S.C. § 281. This Court has federal question subject matter  
7 jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 because  
8 this action arises under the patent laws of the United States.
- 9 4. In addition or in the alternative to this Court's federal question jurisdiction, this Court also  
10 has subject matter jurisdiction pursuant to a provision in the parties' written contract.
- 11 5. This Court has supplemental jurisdiction over the Plaintiff's state law claims because  
12 this United States federal court may hear claims substantially related to the original claim  
13 even though the court would lack the subject-matter jurisdiction to hear the additional claims  
14 independently. 28 U.S.C. § 1367. See also, *Owen Equipment & Erection Co. v. Kroger*, 437  
15 U.S. 365 (1978).
- 16 6. This Court has personal jurisdiction over the Defendant by virtue of their sale of products,  
17 transaction of business, and solicitation of business within the State of Ohio, within this  
18 judicial district and elsewhere.
- 19 7. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or  
20 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims  
21 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this  
22 district, and infringement occurred within this judicial district. Further, the Plaintiff, its  
23 witnesses and evidence, are located in this district. Venue is proper here.
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- 1 8. Jurisdiction and venue is furthermore appropriate before this Court as the Plaintiff and  
2 Defendant previously litigated a case before the ND Ohio, upon which a settlement  
3 agreement was reached, and upon which agreement Plaintiff asserts Defendant has breached.  
4

5 **FACTUAL ALLEGATIONS**

- 6 9. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of  
7 innovative, high-quality accessory and consumable pet products in the United States and  
8 overseas.  
9 10. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical  
10 link to nature.  
11 11. Along with proper nutrition, mental stimulation, physical exercise, and veterinary care, the  
12 Plaintiff's products help to maintain the health and wellness of pets.  
13 12. The Plaintiff strives to develop truly unique and innovative products. In fact, almost all of  
14 the Plaintiff's products are patented and are the only ones of their kind in the marketplace.  
15 13. The Plaintiff has become a leader in feeding systems to improve the health and comfort of  
16 pets. It has also developed interactive toys that provide fun, rewarding mental and physical  
17 challenges to pets. It has also developed healthy consumables for achieving and maintaining  
18 high mental, physical, and immune levels for pets.  
19 14. The Plaintiff sells products under various brand names, such as Smart Scoop®, Pet Zone®,  
20 Durapet® stainless steel bowls, Flappy® dog toys, Cosmic Catnip™, ecoPure® naturals, and  
21 Play-n-Squeak®, among others.  
22 15. The Plaintiff is a publicly-traded company.  
23 16. Dr. Steven Tsengas, PhD is the founder and CEO of the Plaintiff corporation.  
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1 17. On October 16, 2012, United States Utility Patent No. 8,286,589, entitled “Covered Bowls  
2 Such as Pet Food and Water Bowls” (hereinafter referred to as the ‘589 patent) duly and  
3 legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and  
4 accurate copy of the ‘589 patent as issued is attached hereto as “Exhibit 1.”)

5  
6 18. All rights to the ‘589 patent, including but not limited to, the right to recover for infringement  
7 thereunder, have been assigned to the Plaintiff, OurPet’s Company.

8 19. The ‘589 patent teaches a pet bowl with a rubber or plastic cover that is permanently or  
9 removeably secured to the outer surface of the bowl, to make the bowl skid resistant, among  
10 other things.

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

13 21. The Plaintiff has widely and continuously promoted and sold its patented products under the  
14 Durapet® brand, which products embody the ‘589 patent, and are marked patented and/or  
15 patent pending at times relevant. Further, Plaintiff’s website publicly lists the subject patent:  
16 <http://www.ourpets.com/patents-feeding-storage>.

17  
18 22. The Plaintiff has invested considerable time and resources in marketing and advertising their  
19 patented products.

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

23  
24 24. The parties are competitors in that they both manufacture, source, market, and/or sell pet  
25 bowls widely in the pet industry.

1 25. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
2 importing product that infringes the ‘589 utility patent.

3 26. On March 10, 2015, United States Utility Patent No. 8,973,529, entitled “Covered Bowls  
4 Such as Pet Food and Water Bowls” (hereinafter referred to as the ‘529 patent) duly and  
5 legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and  
6 accurate copy of the ‘529 patent as issued is attached hereto as “Exhibit 2.”)  
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8 27. All rights to the ‘529 patent, including but not limited to, the right to recover for infringement  
9 thereunder, have been assigned to the Plaintiff, OurPet’s Company.

10 28. The ‘529 patent teaches a pet bowl with a rubber or plastic cover that is permanently or  
11 removeably secured to the outer surface of the bowl, to make the bowl skid resistant, among  
12 other things.

13 29. The ‘529 patent teaches a bowl with a rubber or plastic cover that need not extend up the  
14 sidewall, i.e., rubber on the bottom of the bowl only.

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

17 31. The Plaintiff previously sued the Defendant’s predecessor, Bergan, LLC, in the ND Ohio,  
18 Case No. 1:12-cv-2586. In that lawsuit, the Plaintiff alleged that certain of Bergan’s bowls  
19 infringed the ‘589 patent. That case was settled. That agreement does include language that  
20 the agreed injunction would continue and survive to the parties’ successors, assigns, et cetera.  
21

22 32. Plaintiff alleges that Defendant and/or its predecessor is in breach of the settlement  
23 agreement because the Defendant is selling bowls that violate the settlement agreement (See  
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1 a true and accurate picture of some of Defendants' infringing bowls attached as "Exhibit 3  
2 and 4.")

3 33. Furthermore, and at any rate, whether it's a breach of contract or not, Defendant is infringing  
4 the '589 and '529 patents. ("Exhibits 3 and 4.")

5 34. The Defendant has sold its infringing product in this judicial district in Ohio and elsewhere.

6 35. The aforementioned activities of the Defendant have also injured and threaten future injury to  
7 the Plaintiff. More specifically, the Defendant's activities have diminished the Plaintiff's  
8 goodwill and caused the Plaintiff to lose sales that it otherwise would have made but for the  
9 sales of the Defendant.  
10

11 36. The Defendant is not authorized in any way to sell their infringing products or to use the  
12 patents owned by the Plaintiff.

13 37. The Plaintiff is entitled to an award of damages against Defendant, and is entitled to  
14 injunctive relief.  
15

16 **CLAIM NO. 1**

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

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

20 39. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
21 importing products that infringe the '589 utility patent. (See Ex. 3 and 4.)

22 40. The Defendant's conduct is an infringement of the '589 patent, and in violation of 35 U.S.C.  
23 § 271 within this judicial district and elsewhere.

24 41. The Defendant will continue to make, use, offer for sale, sell, and import their infringing  
25 products unless enjoined by this Court.  
26

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

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

7  
8 44. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
9 appropriate attorney's fees is justified.

10 **CLAIM NO. 2**  
11 *(Breach of Contract)*

12 45. The Plaintiff hereby incorporates by reference each statement, whether written above or  
13 below, as if each is fully re-written herein.

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

19  
20 47. Upon demonstration of a breach of contract, damages should place the injured party in as  
21 good a position as it would have been absent the breach. *F. Enterprises, Inc. v. Kentucky*  
22 *Fried Chicken Corp.* (1976), 47 Ohio St. 2d 154, 160.

23 48. The Plaintiff and the Defendant had a settlement agreement settling their prior lawsuit.

24 49. The Plaintiff has performed its contractual obligations under the agreement.  
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1 50. However, the Defendant has failed to perform their obligations and have done so without  
2 legal excuse.

3 51. The Plaintiff has suffered damages as a result of the Defendant's breach.

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

6 53. A copy of the settlement agreement can be provided upon request; however same was not  
7 attached hereto because of confidential, proprietary, trade secrets within the contract, and  
8 because Defendant has a copy of same.  
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10 **CLAIM NO. 3**

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

12 54. The Plaintiff hereby incorporates by reference each statement, whether written above or  
13 below, as if each is fully re-written herein.

14 55. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
15 importing products that infringe the '529 utility patent. (See Ex. 3 and 4.)

16 56. The Defendant's conduct is an infringement of the '529 patent, and in violation of 35 U.S.C.  
17 § 271 within this judicial district and elsewhere.

18 57. The Defendant will continue to make, use, offer for sale, sell, and import their infringing  
19 products unless enjoined by this Court.

20 58. The Defendant has been, and is, actively inducing infringement of the '529 patent, by  
21 offering for sale and selling their infringing products to dealers at wholesale prices who have,  
22 and will continue to, offer them for sale and sell them to end users.  
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1 59. The Defendant's infringement is, and at all times has been, deliberate, willful, with full  
2 knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to  
3 treble damages pursuant to 35 U.S.C. § 284.

4 60. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
5 appropriate attorney's fees is justified.  
6

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

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

- 10 A) A preliminary injunction enjoining the Defendant from making, using, selling, or importing  
11 any product that infringes upon the '589 and '529 patents;  
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13 B) A permanent injunction enjoining the Defendant from making, using, selling, or importing  
14 any product that infringes upon the '589 and '529 patents;  
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16 C) An accounting for damages resulting from Defendant's patent infringement and the trebling  
17 of such damages because of the knowing, willful, and wanton nature of the Defendant's  
18 conduct;  
19  
20 D) An assessment of interest on the damages so computed;  
21  
22 E) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;  
23  
24 F) Judgment against Defendant indemnifying the Plaintiff from any claims brought against the  
25 Plaintiff for negligence, debts, product liability, or other breaches of any duty owed by the  
26 Defendant to any person who was confused as to some association between the Plaintiff and  
Defendant as alleged in this Complaint;

- 1 G) Judgment against Defendant for an accounting and monetary award in an amount to be  
2 determined at trial;
- 3 H) Requiring Defendant to account to the Plaintiff for all sales and purchases that have occurred  
4 to date, and requiring the Defendant to disgorge any and all profits derived by Defendant for  
5 selling infringing product;
- 6 I) Requiring Defendant to provide full disclosure of any and all information relating to its  
7 supplier or suppliers of infringing product;
- 8 J) Requiring Defendant 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 Defendant 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 Defendant 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 Defendant 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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