

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FYF-JB, LLC,

Plaintiff,

v.

PET FACTORY, INC.,

Defendant.

Civil Case No. 19-2608

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, FYF-JB, LLC, for its complaint against Defendant, Pet Factory, Inc., hereby demands a jury trial and states as follows:

**I. THE PARTIES**

1. Plaintiff FYF-JB, LLC (“FYF-JB”), a limited liability company organized under the laws of the State of Delaware, has a principal place of business located at 143 Mill Rock Road East, Old Saybrook, CT 06475.

2. FYF-JB is registered to conduct business in Ohio under the trade name “Horsemen’s Pride” and has a place of business located at 10008 State Route 43, Streetsboro, Ohio 44241. FYF-JB, LLC acquired the assets of Horsemen’s Pride, Inc. in 2018, and continues to do business under the name “Horsemen’s Pride.” Horsemen’s Pride, Inc. was incorporated in Ohio in 1976 and changed its name to “HP Enterprise Inc.” in 2018.

3. Upon information and belief, Defendant Pet Factory, Inc. (“Pet Factory”) is a corporation organized under the laws of the State of Illinois with its principal place of business located at 845 E. High Street, Mundelein, IL 60060.

## **II. JURISDICTION AND VENUE**

4. This is an action for patent infringement under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Pet Factory because Pet Factory has its principal place of business in this district, and because it transacts business in, targets this district, and has committed and/or induced acts of patent infringement in this district.

6. Venue is proper in this judicial district under 28 U.S.C. § 1400(b) because Pet Factory is incorporated in Illinois and resides in the Northern District of Illinois. In addition, Pet Factory has a regular and established place of business in this district and has committed and/or induced acts of patent infringement in this district.

## **III. FACTUAL BACKGROUND**

7. Horsemen's Pride, Inc. was incorporated in Ohio in 1976. For more than forty years, Horsemen's Pride, and now its successor, FYF-JB, has been in the business of manufacturing products for the equine industry, such as feeders and tubs, buckets, mounting steps, tack trunks, display and stall supplies, horse jump products, the Sport Tote® bag, the Jolly Ball® horse toys, dollies, carts, and other equestrian toys.

8. Jolly Pets, an unincorporated division of Horsemen's Pride Inc., was founded in 1994 to manufacture and sell products for the canine industry, with an emphasis on dog toys for every kind of breed and activity. Jolly Pets was acquired by FYF-JB in 2018.

9. FYF-JB is the owner by assignment of U.S. Patent No. 9,681,643 ("the '643 patent"), issued on June 20, 2017, to Robert J. Miavitz, entitled "Tug Toy." A true and correct copy of the '643 patent is attached as Exhibit 1.

10. FYF-JB, through its Jolly Pets division, manufactures and sells a dog toy under the name JOLLY TUG, which is protected by the ‘643 patent.

#### IV. PET FACTORY’S UNLAWFUL ACTIVITIES

11. Defendant Pet Factory operates a business selling dog toy products through its website, through third party retail stores, and through trade shows and third party online retailers.

12. Among the products that Pet Factory is selling are its brand of “Logical Pet Pull & Squeak” dog toys, which, as set forth below, infringe upon the ‘643 patent.

13. Website screen shots from Pet Factory’s website, and true and accurate color photographs of one of the accused Logical Pet Pull & Squeak dog toys, as offered on Pet Factory’s website, are shown below:



### LOGICAL PET PREMIUM TOYS FOR DOGS & CATS

#### Ready – Set – Play





Logical Pet toys are made for all dogs that love to fetch, tug and play. These are safe colorful, durable toys that will entertain for hours.


#### PLUSH TOYS

These interactive plush toys have exciting squeaker technology that makes playtime fun. Plush toys come in top selling traditional patterns and shapes made with premium tough materials that are built to last. Logical pet toys promote interactive playtime activity, perfect for building a bond between you and your best friend. Look for our new line of Pull & Squeak and Shake & Squeak line of toys. These toys have a large squeaker dogs will love.



https://petfactory.com/product/logical-pet-plush-pull-squeak-mallard/

The Original Natural    


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### LOGICAL PET PLUSH PULL & SQUEAK MALLARD

Home / Pet Toys / Plush Toys / Pull and Squeak / LOGICAL PET PLUSH PULL & SQUEAK MALLARD



\$9.99

LOGICAL PET PLUSH PULL & SQUEAK MALLARD 19.5"

Categories: Pull and Squeak, Pet Toys, Plush Toys • SKU: 8815911006

**DESCRIPTION**

LOGICAL PET PLUSH PULL & SQUEAK MALLARD 19.5"

- Mallard Bird
- 19.5" long
- Accordion style long squeaker
- Top selling traditional pattern and shape
- Long lasting premium quality plush material
- Ideal for interactive games like tug and fetch
- Recommended for aggressive chewers

Distributed by: Pet Factory, Inc.

Product Packaging:



True and Accurate Photo of Pull & Squeak Toy:



True and Accurate Photo of Pull & Squeak Toy:



True and Accurate Photo of Pull & Squeak Toy with plush cover cut open and displaying central portion with “accordion style” long noisemaker at rest with no force applied to either end:



True and Accurate Photo of Pull & Squeak Toy with plush cover cut open and displaying “accordion style” long noisemaker with opposing lateral forces applied to both ends and transmitted to central portion used to activate noisemaker:



True and accurate photo of noise maker (squeaker) disposed within central portion.



14. Each of the toys referred to in Paragraphs 12-13 of this Complaint are referred to as the “Pull & Squeak Toys” hereafter.

15. Horsemen’s Pride first notified Pet Factory of its rights pursuant to 35 U.S.C. §154(d) in the ‘643 patent in a letter dated March 7, 2017, which included a copy of its published patent application, US 2016/0205896 A1, published July 21, 2016, and advised Pet Factory that once the application issued as a patent, Horsemen’s Pride would pursue its legal remedies if Pet Factory continued to sell products that infringed the claims of the ‘643 patent as issued.

16. After the issuance of the '643 patent, Horsemen's Pride again requested that Pet Factory cease its acts of patent infringement on July 5, 2017 and August 10, 2017, and gave Pet Factory actual notice of the '643 patent.

17. Plaintiff FYF-JB contacted Pet Factory on February 21, 2019 to request that Pet Factory cease its acts of infringement and pay to Plaintiff the damages for its continued infringement, but Pet Factory continues to sell its infringing Pull & Squeak Toys.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 9,681,643**

18. Plaintiff incorporates the allegations and averments of paragraphs 1 through 17 above the same as though fully set forth in this paragraph.

19. Plaintiff is informed and believes, and on that basis alleges, that Pet Factory has been and is now directly infringing at least claims 1-3, 6, 8-10, 12, 13 and 15 of the '643 patent in the State of Illinois, in this judicial district, and elsewhere in the United States, by making, using, importing, selling, and/or offering to sell its Pull & Squeak Toys.

20. For example, Pet Factory's Pull & Squeak Toys meet all of the limitations of independent claim 1 of the '643 patent, which recites a tug toy comprising: at least one gripping member and a central portion, wherein said at least one gripping member is attached to said central portion, and wherein said central portion further includes a noise maker, wherein said at least one gripping member is adapted to transmit force to said central portion and wherein said force comprises a first lateral force directed away from the central portion in the direction of a first gripping member.

21. Defendant Pet Factory is directly infringing, literally infringing, and/or infringing the '643 patent under the doctrine of equivalents. Defendant is thus liable for infringement of the '643 patent pursuant to 35 U.S.C. § 271.

22. As a result of Defendant Pet Factory's infringement of the '643 patent, Plaintiff has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention, together with interest and costs as fixed by the Court, and Plaintiff will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

23. On information and belief, Defendant Pet Factory has had actual notice of the '643 patent and its claims, making Pet Factory's infringement of the '643 patent willful and deliberate.

24. Unless a permanent injunction is issued enjoining Defendant Pet Factory and its agents, servants, employees, affiliates, and all others acting in active concert therewith from infringing the '643 patent, Plaintiff will be irreparably harmed.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff FYF-JB prays for entry of judgment in its favor and against Pet Factory as follows:

A judgment in favor of Plaintiff that Defendant has infringed the '643 patent;

A preliminary and permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others in active concert therewith from infringement of the '643 patent, or such other equitable relief that the Court determines is warranted;

A judgment and order requiring Defendant to pay to Plaintiff its damages from March 7, 2017 forward, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '643 patents as provided under 35 U.S.C. § 284, and an accounting of ongoing post-judgment infringement;



Treble damages as provided for under 35 U.S.C. § 284 in view of the knowing, willful, and intentional nature of Pet Factory's infringement.

An award to Plaintiff of its costs and expenses of this litigation, including its reasonable attorneys' fees and disbursements, pursuant to 35 U.S.C. § 285; and

An award to Plaintiff of such other and further relief as this Court deems just.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff FYF-JB hereby demands a trial by jury on all issues triable to a jury.

Dated: April 17, 2019

Respectfully submitted,

By: /s/ Adam Wolek

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