

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION**

|                                  |   |                               |
|----------------------------------|---|-------------------------------|
| LUV N’ CARE, LTD.,               | ) |                               |
|                                  | ) | Civil Action No.: 3:19-cv-694 |
| <i>Plaintiff,</i>                | ) |                               |
|                                  | ) |                               |
| v.                               | ) |                               |
|                                  | ) |                               |
| RED POINTS INC., RED POINTS      | ) | <b>JURY TRIAL DEMANDED</b>    |
| SOLUTION, S.L., FU HONG KIDSME   | ) |                               |
| LIMITED d/b/a KIDSME; FU HONG    | ) |                               |
| INDUSTRIES LIMITED a/k/a FU HONG | ) |                               |
| INDUSTRIAL COMPANY; and          | ) |                               |
| DONGGUAN KIDSME INDUSTRIAL       | ) |                               |
| LIMITED,                         | ) |                               |
|                                  | ) |                               |
| <i>Defendants.</i>               | ) |                               |
|                                  | ) |                               |

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,  
UNFAIR COMPETITION AND DEFAMATION**

This is an action seeking (i) a declaration that Plaintiff Luv n’ care, Ltd. (LNC) does not infringe any valid claim of U.S. Patent No. 8,597,235 (‘235 Patent), (ii) damages and an injunction for the Defendants’ acts of unfair competition associated with the distribution and sale of LNC’s THE NIBBLER feeder product and (iii) damages for Defendants’ defamatory communications to third party Amazon.com.

Feeders are used to introduce new foods into the diet of toddlers without the risk of choking. LNC introduced its feeder in 2006 using the mark THE NIBBLER. LNC owns the U.S. registration for THE NIBBLER mark. Defendants are three Hong Kong entities and a New York brand enforcement entity operating on behalf of the Hong Kong entities. The Hong Kong Defendants, who upon information and belief operate as a single business enterprise, operate the KidsMe Amazon.com online store and claim to be the owner of the ‘235 Patent. The KidsMe

online store sells baby products to customers and consumers throughout the United States including the State of Louisiana in direct competition with LNC.

Defendants have falsely accused LNC's THE NIBBLER feeder product of infringing a patent they know or should know does not cover that product. LNC's primary contention is that THE NIBBLER branded product does not infringe the '235 Patent. All claims of the '235 Patent require a flange, a flange with a notch and a first coupling member with a protrusion correspondingly shaped to the notch. LNC's THE NIBBLER branded feeder product does not include, and never has included, a flange, a flange with a notch or a first coupling member with a protrusion.

Alternatively, the '235 Patent is invalid as THE NIBBLER branded feeder product accused of infringing the '235 Patent has been sold and offered for sale in the United States by LNC since December 18, 2006, more than two years prior to March 10, 2009, the earliest priority date of the '235 Patent. Defendants know or should know that a product falling within the claims of a patent invalidates that patent if sold in the United States more than one year prior to a patent's earliest priority date.

When this dispute arose, Defendants had the opportunity to inspect LNC's THE NIBBLER branded feeder product and knew or should have known that the LNC product does not infringe the '235 Patent. Defendants were also informed that LNC's THE NIBBLER branded feeder product was in use and on-sale in the United States more than one year prior to the earliest priority date for the '235 Patent. Despite having such knowledge, Defendants communicated to Amazon.com false accusation that LNC's THE NIBBLER branded feeder product infringed the '235 Patent. Defendants false and defamatory accusations to Amazon.com have resulted in LNC's THE NIBBLER branded feeder product being removed from an Amazon.com online store

operated by an LNC product reseller, Hobby Hunters. Defendants' false and defamatory statements have resulted in actual damages to LNC and its reseller including lost sales and reputational injury. Based on Defendants' accusations that LNC's THE NIBBLER branded feeder product infringes the '235 Patent and based on Defendants' conduct with regard to Hobby Hunters and Amazon.com, LNC has a reasonable apprehension that Defendants will sue LNC or Hobby Hunters for patent infringement. These acts by Defendants have caused and will continue to cause grave injury and damage to LNC unless enjoined by this Court.

### **THE PARTIES**

1. Plaintiff Luv n' care, Ltd. (LNC), is a Louisiana corporation having its principal place of business in Monroe, Louisiana.
2. Defendant Red Points Inc. (Red Points US) is upon information and belief a Delaware corporation having its principal place of business at 12 East 49<sup>th</sup> Street, New York, New York.
3. Defendant Red Points Solution, S.L. (Red Points SP) is upon information and belief a Spanish limited company located at Calle Berlin, 38-48, 1, 08029, Barcelona, Spain.
4. Red Points US and Red Points SP are collectively referred to as Red Points.
5. Defendant Fu Hong Kidsme Limited (FHK) is upon information and belief a Hong Kong company with its principal place of business located at Flat B, 9/F, Gee Luen Chang Industrial Building, No. 11, Yuk Yat Street, Tokwawan, Kowloon, Hong Kong.
6. Defendant Fu Hong Industries Limited (FHI) a/k/a Fu Hong Industrial Company is upon information and belief a Hong Kong company with its principal place of business located at Flat B, 9/F, Gee Luen Chang Industrial Building, No. 11, Yuk Yat Street, Tokwawan, Kowloon, Hong Kong.

7. Defendant Dongguan Kidsme Industrial Limited (DKI) a/k/a Dongguan Kidsme Trading Company Limited is upon information and belief a Hong Kong company with its principal place of business located at Flat B, 9/F, Gee Luen Chang Industrial Building, No. 11, Yuk Yat Street, Tokwawan, Kowloon, Hong Kong.
8. Defendants FHK, FHI and DKI are collectively referred to as KidsMe. Upon information and belief, the KidsMe Defendants operate as a single business enterprise.

**NATURE OF THE ACTION, JURISDICTION AND VENUE**

9. This is a civil action seeking (i) a Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202 that Plaintiff does not infringe any valid right of the '235 Patent, (ii) damages and injunctive relief for unfair competition under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, (iii) damages under the Louisiana Unfair Trade Practices and Consumer Protection Law, La. R.S. 51:1401, *et seq.*, and (iv) damages for defamation.
10. This Court has jurisdiction over the claims in this action pursuant to (i) 28 U.S.C. § 1331 because the action arises under the patent and trademark laws of the United States, (ii) 28 U.S.C. § 1332(a)(1) because the matter exceeds the sum or value of \$75,000, exclusive of interests and costs, and is a controversy between citizens of different states, the plaintiff being a citizen of the State of Louisiana, and the defendants being citizens of a foreign country and New York, a foreign state, (iii) the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, in that this action is based in part on an actual case and controversy between the parties regarding the alleged non-infringement, invalidity and unenforceability of Defendant's '235 Patent, and (iv) 28 U.S.C. § 1338 (a) and (b) because this is an action arising under the Lanham Act, an Act of Congress relating to trademarks, and the Patent Statutes, 35 U.S.C. §§ 101, *et seq.*, and the assertion of the Louisiana unfair competition

and defamation claims are joined with a substantial and related claim under the Trademark Laws of the United States.

11. The Court has personal jurisdiction over the Defendants because (i) Plaintiff LNC's claims arise in whole or in part out of Defendants' purposeful, intentional, regular, systematic and continuous conduct through the KidsMe online store, including the marketing and selling of products that are the subject of this action through the KidsMe online store and directed threatening statements to LNC, in Louisiana and within this judicial district, (ii) manufacturing and placing Defendants' feeder product, that competes directly with LNC's THE NIBBLER feeder product, into the stream of commerce through the KidsMe online store with the foreseeability, realization, expectation, and anticipation that Defendants' feeder will eventually be marketed, found, purchased and shipped to customers residing in Louisiana, (iii) having purposefully directed their threatening email communications to LNC, a corporation incorporated and having its principal place of business in Louisiana, and, thereby, causing injury and damage to LNC in Louisiana, (iv) the Red Points Defendant have extensively solicited business within this state and judicial district for over two years, and (v) Defendants have sufficient minimum contacts within this jurisdiction such that exercising personal jurisdiction over them would not offend traditional notions of fair play and substantial justice. Defendant may be served under the Louisiana Long Arm Statute. La. R.S. § 13:3201.
12. Venue in the Western District of Louisiana is proper under 28 U.S.C. § 1391(b)(2) and (c)(3) because a substantial part of the events or omissions giving rise to the claims occurred within the territory of the Western District of Louisiana and there are defendants who are not residents of the United States.

**FACTS**

13. LNC is a designer and seller of innovative, high quality, and attractive products for babies and small children. Based on its innovative, high quality and attractive designs, LNC is now known as one of the leading baby product companies. LNC's headquarters are in Monroe, Louisiana, where it conducts most of its business, maintains its corporate books and records, where most of its employees are located and where its officers and directors are located.
14. LNC sells its THE NIBBLER branded feeder product in the United States, including the territory of the Western District of Louisiana. LNC's THE NIBBLER feeder product is resold by others, including Hobby Hunters, through online stores such as those operated on Amazon.com.
15. LNC enjoys a good reputation with US consumers for innovative, high quality and attractive product designs.
16. LNC's products are among the most popular and well-known products in the baby products industry and those products are famous throughout the United States.
17. LNC's products are purchased and sold by independent retailers in interstate commerce under various registered and common law trademarks including THE NIBBLER mark applied to feeders.
18. On April 3, 2012, United States Trademark Registration No. 4,120,416 for the mark THE NIBBLER was duly and lawfully issued by the United States Patent and Trademark Office ("USPTO"). THE NIBBLER trademark registration is valid, subsisting and incontestable.
19. LNC is the owner of THE NIBBLER mark and registration.

20. THE NIBBLER mark is a distinctive symbol which serves as an important trademark for LNC's feeder products promoted and sold in the United States.
21. LNC's long term, continuous and extensive use of THE NIBBLER mark on innovative, high quality and attractive feeder products has generated substantial good will for LNC associated with THE NIBBLER mark.
22. As a result of LNC's innovative and attractive designs, together with an uncompromising commitment to high quality and consumer safety, extensive promotional activities by independent retailers together with its widespread and substantial sales, LNC's products, packaging and THE NIBBLER mark have all become widely known throughout the United States and have become directly associated with LNC as a source of innovative, attractive, safe, and high quality products.
23. The KidsMe Defendants, upon information and belief, operate as a single business enterprise and together operate an online store on Amazon.com in direct competition with LNC.
24. One of the products sold by the KidsMe Defendants in their online store is a feeder.
25. According to the public records of the United States Patent and Trademark Office, Defendant DKI purportedly owns the '235 Patent by way of assignment.
26. Upon information and belief, the KidsMe Defendants have entered into an agreement with the Red Points Defendants whereby Red Points monitors the online marketplace and undertakes enforcement actions against those sellers Red Points contends violate an intellectual property right of the KidsMe Defendants.
27. On multiple occasions beginning in 2017 and continuing through 2019, Red Points contacted LNC in Monroe, Louisiana, under the pretense of offering online marketplace

monitoring services. Upon information and belief, Red Points was in fact seeking information regarding LNC and its distribution network to use against LNC and on behalf of its client KidsMe.

28. THE NIBBLER branded feeder product is offered for sale on Amazon.com through the Hobby Hunters online retail store. All of THE NIBBLER branded feeder products sold by Hobby Hunters on Amazon.com originated from LNC and were made in accordance with LNC's design first placed on sale in the United States in 2006.
29. At some time on or about January 23, 2019, upon information and belief, Red Points communicated with Amazon.com alleging that LNC's reseller, Hobby Hunters', sale of THE NIBBLER branded feeder product on Amazon.com was a violation of the KidsMe Defendants' '235 Patent and demanded that Amazon.com "take down" LNC's THE NIBBLER branded feeder product.
30. Based upon the allegations that Hobby Hunters was infringing the '235 Patent, on January 23, 2019 Amazon.com removed THE NIBBLER branded feeder product from the Hobby Hunters' online storefront on Amazon.com. Continuously since that date, Amazon.com has prohibited Hobby Hunters from selling THE NIBBLER branded feeder product on Amazon.com.
31. On January 23, 2019 and immediately upon receiving the take down notice, LNC on behalf of itself and Hobby Hunters contacted the party seeking the take down identified by Amazon.com, then unknown to LNC, to dispute the take down as required by the Amazon.com terms of use. LNC informed the party seeking the take down that THE NIBBLER branded feeder product did not include specific features required by the claims



of the '235 Patent and that the accused product had been in use and on sale in the United States for more than one year prior to the earliest priority date of the '235 Patent.

32. On January 25, 2019, a Red Points' representative, Carolina Rosich, responded by email to LNC identifying Red Points as the KidsMe representative and requesting additional information from LNC.
33. That same day, January 25, 2019, LNC provided Red Points and the KidsMe representative with the requested information. That information included a detailed explanation of how THE NIBBLER branded feeder product did not infringe the '235 Patent and that THE NIBBLER branded feeder product accused of infringing the '235 Patent had been in use and on sale in the United States for more than one year before the '235 Patent's earliest priority date.
34. On January 28, 2019, Red Points responded to LNC declining to withdraw the take down request to Amazon.com and continuing its false accusations that THE NIBBLER branded feeder product infringed the '235 Patent. Subsequently, upon information and belief, Defendants made additional false representations to Amazon.com regarding other LNC resellers that resulted in additional take downs of LNC's THE NIBBLER branded feeder product. Upon information and belief, Amazon.com removed LNC's THE NIBBLER branded feeder product from various other online retail stores in response to Defendants' false representations.
35. Amazon.com continues to prohibit Hobby Hunters and other LNC resellers from selling THE NIBBLER branded feeder product on Amazon.com online storefronts.
36. Hobby Hunters' and other LNC resellers' inability to sell THE NIBBLER branded feeder product on Amazon.com has caused LNC to lose sales.

37. Red Points' and KidsMe's false statements published to Amazon.com concerning the alleged infringement of the '235 Patent have defamed LNC and caused LNC to lose sales of its THE NIBBLER branded feeder product and also reputational damage to LNC.

38. Red Points' and KidsMe's false statements published to Amazon.com concerning the alleged infringement of the '235 Patent were made willfully, intentionally and in bad faith with the full knowledge that those statements were false and for the purpose of harming LNC. Red Points and KidsMe had no legitimate basis or privilege for making false and defamatory statements about LNC.

**FIRST CLAIM FOR RELIEF – PATENT INVALIDITY AND NO PATENT  
INFRINGEMENT  
(Declaratory Judgment Action)**

39. LNC repeats and realleges each and every allegation contained in the foregoing and subsequent paragraphs as if fully set forth herein.

40. LNC does not infringe any valid claim of the '235 Patent.

41. LNC does not directly or indirectly infringe the '235 Patent either literally or under the doctrine of equivalents. LNC does not induce others or contribute to the infringement of the '235 Patent. LNC's THE NIBBLER branded feeder product does not include a flange, a flange with a notch and a first coupling member with a protrusion correspondingly shaped to the notch as required by the claims of the '235 Patent.

42. In the event LNC's THE NIBBLER branded feeder product is found to infringe the '235 Patent, the '235 Patent is invalid as anticipated based on LNC's prior use and sale of THE NIBBLER branded feeder more than one year prior to the '235 Patent's earliest priority date. Based on LNC's NIBBLER branded feeder the claims of the '235 Patent would have

been obvious to a person of ordinary skill in the art at the time the alleged invention of the '235 Patent was made. The '235 Patent is invalid as obvious.

43. Defendants' assertions of infringement that they knew or should have known were false constitutes patent misuse rendering the '235 Patent unenforceable.

44. Defendants have threatened LNC and resellers of LNC products with infringement of the '235 Patent. Based on Defendants' threats, LNC has a reasonable apprehension of it or its resellers being sued over the '235 Patent. An actual, immediate, substantial and justiciable controversy exists regarding the alleged infringement, validity and unenforceability of the '235 Patent.

45. A judicial declaration is necessary and appropriate at this time in order that LNC may ascertain its rights and duties with respect to the '235 Patent.

**SECOND CLAIM FOR RELIEF – UNFAIR COMPETITION**  
**(Lanham Act Violation, 15 U.S.C. § 1125(a))**

46. LNC repeats and realleges each and every allegation contained in the foregoing and subsequent paragraphs as if fully set forth herein.

47. Defendants made representations that LNC'S THE NIBBLER branded feeder infringes the '235 Patent to a third party, Amazon.com. Those representations were false and related directly to a material fact concerning LNC's THE NIBBLER branded feeder.

48. At the time Defendants made these material representations to Amazon.com, they knew or should have known, that the representations were false. These false representations were made to influence and induce Amazon.com and did influence and induce Amazon.com to remove LNC's THE NIBBLER branded feeder from various online storefronts.

49. As a direct result of Defendants' false representations, Amazon.com has blocked the sale of LNC's THE NIBBLER branded feeder causing LNC to lose sales of its THE NIBBLER

branded feeder. LNC has also suffered injury to its reputation as now Amazon.com considers LNC a patent infringer. Other LNC products are available from Amazon.com online storefronts and Defendants' false representations threaten those sales as well based upon the false impression that LNC's THE NIBBLER branded feeder infringes a valid and enforceable patent.

50. Upon information and belief, Defendants' conduct is willful, deliberate, intentional and in bad faith as Defendants were informed of the reasons why LNC'S THE NIBBLER branded feeder did not infringe the '235 Patent and that if LNC'S THE NIBBLER branded feeder did infringe the '235 Patent, the '235 Patent was invalid as LNC'S THE NIBBLER branded feeder has been in public use and on sale in the United States for more than a year prior to the '235 Patent's earliest priority date.

51. Upon information and belief, at least some consumers who would have purchased LNC's THE NIBBLER branded feeder instead purchased Defendants' feeder. But for Defendants' unlawful conduct, at least a portion of Defendants' sales have been diverted from LNC.

52. By reason of the foregoing acts, Defendants have caused, and unless enjoined will continue to cause, irreparable harm to Plaintiff LNC.

53. LNC has no adequate remedy at law to address these injuries.

**THIRD CLAIM FOR RELIEF – UNFAIR COMPETITION**  
**(Violation of Louisiana Unfair Trade Practices and Consumer Protection Law , La. R.S. 51:1401, et seq. )**

54. LNC repeats and realleges each and every allegation contained in the foregoing and subsequent paragraphs as if fully set forth herein.
55. Defendants’ false representations as detailed herein constitute unfair and deceptive trade practices prohibited by the Louisiana Unfair Trade Practices and Consumer Protection Laws.
56. Defendants made statements to Amazon.com falsely accusing LNC’s THE NIBBLER branded feeder of infringing the ‘235 Patent. At the time Defendants made those statements to Amazon.com, they knew or should have known those statements to be false and misleading. Nevertheless, Defendants made those false statements to Amazon.com in bad faith as part of a deliberate effort to injure LNC by unlawfully and impermissibly diverting sales of feeders from LNC to the KidsMe Defendants.
57. Defendants’ false and misleading statements were made in the course of their business and with the knowledge that LNC was a resident of the State of Louisiana.
58. Defendants’ false and misleading statements related to a material fact affecting a buyer’s decision to purchase feeders. By removing LNC’s THE NIBBLER branded feeder from the Hobby Hunters’ and others’ Amazon.com online retail store, LNC lost valuable retail outlets for its product. The effects of those false and misleading statements were communicated over the internet with the effects in the State of Louisiana and those false and misleading statements are unfair and deceptive practices prohibited by the Louisiana Unfair Trade Practices and Consumer Protection Laws.

59. Upon information and belief, Defendants' conduct is willful, deliberate, intentional, malicious and in bad faith.
60. LNC has been and continues to be damaged by Defendants' unfair and deceptive practices in an amount to be determined at trial.
61. By reason of the foregoing acts, Defendants have caused, and unless enjoined will continue to cause, irreparable harm to Plaintiff LNC.
62. LNC has no adequate remedy at law to address these injuries.

**FOURTH CLAIM FOR RELIEF – DEFAMATION**

63. LNC repeats and realleges each and every allegation contained in the foregoing and subsequent paragraphs as if fully set forth herein.
64. Defendants made false statements to Amazon.com that LNC's THE NIBBLER branded feeder product infringed the '235 Patent. Defendants knew that the accused LNC product did not include at least three essential claim limitations and on that basis could not infringe as a matter of law. Defendants further knew that the accused product had been in use and on sale in the United States for more than one year prior to the earliest priority date of the '235 Patent and that if the accused product infringed the '235 Patent, then the '235 Patent was invalid as anticipated. LNC cannot infringe an invalid patent.
65. Defendants made false statements to Amazon.com in writings transmitted by email or other electronic means. Defendants' false statements asserted that LNC's THE NIBBLER branded feeder product infringed the '235 Patent. At the time Defendants made the false statements to Amazon.com they knew or should have known the statements were false. Defendants' false statements made to Amazon.com were not privileged. As a direct result of Defendants' false statements, Amazon.com has blocked the sale of LNC's THE

NIBBLER branded feeder product from multiple online retail stores operated on Amazon.com's online marketplace. As a result, LNC has lost sales of its THE NIBBLER branded feeder product.

66. Defendants intentionally and willfully made their false statements with malice and in bad faith regarding LNC and LNC's THE NIBBLER branded feeder product with the knowledge that the statements were false.

67. Defendants made their intentional and willful false statements regarding LNC and LNC's THE NIBBLER branded feeder product with the specific intent of having that product removed from Hobby Hunters' and others' Amazon.com storefront preventing LNC from selling its THE NIBBLER branded feeder product and causing LNC to lose sales and suffer damages. Defendants false statements made to Amazon.com also injured LNC's reputation causing LNC damages.

### **REQUEST FOR RELIEF**

Wherefore, Plaintiff LNC respectfully requests that the Court enter judgment as follows:

- A. That LNC infringes no valid claim of the '235 Patent, that the '235 Patent is invalid and unenforceable, that LNC's THE NIBBLER branded feeder product does not infringe any claim of the '235 Patent, that Defendants unfairly competed with LNC in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), that Defendants unfairly competed with LNC in violation of the Louisiana Unfair Trade Practice and Consumer Protection Law and that Defendants defamed LNC;
- B. That an Order be entered declaring the KidsMe Defendants constitute a single business enterprise under Louisiana Law;

- C. That an Order be entered preliminarily and permanently enjoining Defendants from further acts of unfair competition and, from further publication of defamatory statements regarding LNC or LNC's THE NIBBLER branded feeder product;
- D. That an Order be entered preliminarily and permanently enjoining Defendants from disseminating or causing the dissemination of false and misleading statements regarding LNC or LNC's THE NIBBLER branded feeder product;
- E. That an Order be entered directing an accounting of Defendants' ill-gotten gains, profits, savings, and advantages realized by reason of their unfair competition and false representations, awarding LNC damages to the fullest extent allowed by law, and trebling LNC's recovery pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117 and the Louisiana Unfair Trade Practice and Consumer Protection Law;
- F. That an Order be entered awarding actual and punitive damages to LNC as proven at the trial of this action in accordance with the Louisiana Unfair Trade Practice and Consumer Protection Law;
- G. A declaration that the case is exceptional within the meaning of the 35 U.S.C. § 285;
- H. That an Order be entered awarding LNC its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- I. That an Order be entered granting LNC its costs and disbursements in this action, including its reasonable attorneys' fees; and
- J. All such other and further relief as the Court may deem just and proper.



**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38, Federal Rules of Civil Procedure, Plaintiff LNC demands trial by jury in this action of all issues so triable.

Respectfully submitted this 17<sup>th</sup> day of July 2019.

*/s/ Robert M. Chiaviello, Jr.*

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