

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

THE GARMON CORPORATION,

Plaintiff,

v.

VETNIQUE LABS, LLC,

Defendant.

Civil Action No. 1:19-cv-1046

COMPLAINT

Plaintiff, The Garmon Corporation (“Plaintiff” or “Garmon”), by and through its undersigned counsel, hereby alleges against defendant Vetnique Labs, LLC (“Defendant” or “Vetnique”) as follows:

THE PARTIES

1. Garmon is a corporation organized and existing under the laws of the State of California, with its principal place of business in Temecula, California. Garmon manufactures and sells pet vitamins, nutritional supplements, training aids, and grooming products, to private label customers and under its own brand lines, including NaturVet and VetClassics. Garmon advertises and sells its products to customers within the jurisdiction of this Court, and in interstate commerce throughout the United States.

2. Vetnique is a limited liability company organized and existing under the laws of the State of Illinois, with its principal place of business in Naperville, Illinois. Vetnique sells pet nutritional supplements and grooming products under the brand names Glandex, Profivex, and Furlbliss. On information and belief, Vetnique advertises and sells its products to customers within the jurisdiction of this Court, and in interstate commerce throughout the United States.

3. On information and belief, Vetnique is the owner of all rights, title, and interest in United States Patent No. 10,245,293 (the “‘293 Patent”). A copy of the ‘293 Patent is attached to this Complaint as Exhibit A.

JURISDICTION AND VENUE

4. Garmon incorporates by reference Paragraphs 1 through 3 of this Complaint as though fully set forth herein.

5. This declaratory judgment action arises under 28 U.S.C. §§ 2201-2202, as well as 35 U.S.C. §§ 101 *et seq.*, and 35 U.S.C. §§ 281 *et seq.*, as this action concerns a controversy arising under the patent laws of the United States.

6. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 2201 *et seq.* (declaratory judgment), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1338(a) (patents).

7. This Court has personal jurisdiction over Vetnique because, on information and belief, Vetnique conducts business in the State of Virginia and within this district, including the advertising and sale of products within the State of Virginia and through the Internet to Virginia residents.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2).

9. An actual case or controversy exists between the parties. Vetnique asserts and alleges that Garmon has infringed and is continuing to infringe the ‘293 Patent by selling “No Scoot” supplements under the NaturVet and VetClassics brands. Vetnique has demanded that Garmon immediately cease making and offering for sale No Scoot products, which Vetnique claims constitutes infringement of the ‘293 Patent. A copy of a June 3, 2019 cease and desist letter from Vetnique’s counsel to Garmon’s counsel is attached to this Complaint as Exhibit B.

COUNT ONE
(Declaration of Patent Invalidity)

10. Garmon incorporates by reference Paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. The '293 Patent is void and/or invalid for failure to satisfy the conditions for patentability specified under Title 35 of the United States Code.

12. The '293 Patent is invalid pursuant to 35 United States Code § 102(a) because the claimed invention was on sale before the effective filing date of each claim of the '293 Patent.

13. The '293 Patent is also invalid pursuant to 35 United States Code § 102(a) because the claimed invention was described in one or more printed publications before the effective filing date of each claim of the '293 Patent.

14. In addition, the solutions described in the '293 Patent are well known in the industry, and thus, would be obvious in light of the prior art which results in the claims for the '293 Patent being anticipated and thus not patentable under 35 U.S.C §103.

15. There is a continuing judiciable controversy between Garmon and Vetnique as to Vetnique's right to threaten or maintain suit for infringement of the '293 Patent, and as to the validity and enforceability thereof.

16. Accordingly, Garmon is entitled to a declaration that the claims of the '293 patent are invalid.

WHEREFORE, Plaintiff respectfully requests: (a) that the Court declare that the '293 Patent, and each claim thereof, is invalid; (b) a preliminary injunction and permanent injunction preventing Vetnique's further assertion of allegations that Garmon is infringing the '293 Patent; (c) a determination that this is an exceptional case and that attorneys' fees be awarded in favor of Garmon against Vetnique; (d) an award in favor of Garmon against Vetnique of costs of suit herein;

and (e) such other and further relief as the Court deems just and proper.

COUNT TWO
(Declaration of Non-Infringement)

17. Garmon incorporates by reference Paragraphs 1 through 16 of this Complaint as though fully set forth herein.

18. Garmon has not infringed or induced infringement, and Garmon is not presently infringing or inducing infringement, of any valid claim of the '293 Patent, if any such claim is valid.

WHEREFORE, Plaintiff respectfully requests: (a) that the Court declare that Garmon has not infringed or induced infringement, and Garmon is not presently infringing or inducing infringement, of any valid claim of the '293 Patent; (b) a preliminary injunction and permanent injunction preventing Vetnique's further assertion of allegations that Garmon is infringing the '293 Patent; (c) a determination that this is an exceptional case and that attorneys' fees be awarded in favor of Garmon against Vetnique; (d) an award in favor of Garmon against Vetnique of costs of suit herein; and (e) such other and further relief as the Court deems just and proper.

COUNT THREE
(Antitrust Violation by Enforcement of Patent Known to be Invalid)

19. Garmon incorporates by reference Paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. In addition to demanding that Garmon immediately cease making and offering for sale No Scoot and Stop Scooting products, Vetnique has taken steps to prevent the sale of those Garmon products via Amazon. Vetnique submitted a complaint to Amazon that resulted in Amazon removing several of Garmon's products from its listings of products for sale.

21. On July 23, 2019, in an Amazon patent evaluation proceeding that Vetnique had initiated, Garmon and another seller, FoodScience Corporation, submitted evidence that the claimed invention was on sale before the effective filing date of each claim of the '293 Patent. Despite receiving that evidence of invalidity of the '293 Patent, Vetnique did not withdraw its complaint to Amazon and has continued to assert the '293 Patent is valid and that Garmon is infringing the '293 Patent. As a direct result, since the beginning of August 2019, listing and sales of several of Garmon's products through Amazon has been prevented, causing damage to Garmon in the form of lost profits and lost goodwill.

22. Vetnique's enforcement of the '293 Patent to stifle competition, while knowing the '293 Patent to be invalid, violates § 2 of the Sherman Act.

23. Vetnique's actions have unreasonably restricted competition and are continuing to unreasonably restrict competition.

24. Vetnique's actions are predatory and anticompetitive.

25. Vetnique has acted with malice toward Garmon or acted with a willful and wanton disregard of Garmon's rights.

26. Vetnique should be punished to serve as an example to prevent others from acting in a similar way.

WHEREFORE, Garmon respectfully requests: (a) an award of treble damages in an amount to be proved at trial; (b) a preliminary injunction and permanent injunction preventing Vetnique's further assertion of allegations that Garmon is infringing the '293 Patent; (c) an award of attorneys' fees in favor of Garmon against Vetnique; (d) an award in favor of Garmon against Vetnique of costs of suit herein; and (e) such other and further relief as the Court deems just and proper.

COUNT FOUR
(Federal Statutory Unfair Competition)

27. Garmon incorporates by reference Paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Vetnique's continued assertion to Amazon that several Garmon products infringe the '293 Patent, after Garmon and FoodScience Corporation submitted evidence that the claimed invention was on sale before the effective filing date of each claim of the '293 Patent, constitutes Federal Unfair Competition under 15 U.S.C. § 1125(a), commonly known as § 43(a) of the Lanham Act.

29. At the time of Vetnique's continued assertion to Amazon that several Garmon products infringe the '293 Patent, Vetnique knew the products did not infringe the '293 Patent because the '293 Patent is invalid.

30. Vetnique continued to assert to Amazon that several Garmon products infringe the '293 Patent in bad faith and with the specific intent to chill competition and increase revenues for Vetnique.

31. Vetnique objectively should have known, and on information and belief Vetnique subjectively knew, that the '293 Patent was invalid and no Garmon product had infringed any claim of the '293 Patent, and as a result Vetnique's actions in continuing to assert to Amazon that several Garmon products infringe the '293 Patent was malicious, oppressive, and despicable, willful, and without a reasonable basis.

WHEREFORE, Garmon respectfully requests: (a) an award of treble damages in an amount to be proved at trial; (b) a preliminary injunction and permanent injunction preventing Vetnique's further assertion of allegations that Garmon is infringing the '293 Patent; (c) an award of attorneys' fees in favor of Garmon against Vetnique; (d) an award in favor of Garmon against Vetnique of

costs of suit herein; and (e) such other and further relief as the Court deems just and proper.

Dated: August 9, 2019

Respectfully Submitted,

THE GARMON CORPORATION
By Counsel

WATT, TIEDER, HOFFAR & FITZGERALD, LLP

By: /s/ Matthew D. Baker
Matthew D. Baker, VSB No. 83619
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
1765 Greensboro Station Place, Suite 1000
McLean, VA 22102
Telephone: 703-749-1000
Facsimile: 703-893-8029
mbaker@watttieder.com
Counsel for The Garmon Corporation

Colin C. Holley
(Application for Admission Pro Hac Vice to be Filed)
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
4 Park Plaza, Suite 1000
Irvine, CA 92614
Telephone: 949-852-6700
Facsimile: 949-261-0771
cholley@watttieder.com
Counsel for The Garmon Corporation