

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Brome Bird Care Inc.,

Plaintiff,

vs.

Classic Brands LLC, Robert W. Donegan, and
DOES 1 through 10,

Defendants.

CASE NO.:

COMPLAINT FOR:

**(1) INFRINGEMENT OF U.S. PATENT
NO. 6,543,384 B2**

**(2) INFRINGEMENT OF U.S. PATENT
NO. 6,945,192 B2**

DEMAND FOR JURY TRIAL

As and for its Complaint, Plaintiff Brome Bird Care Inc. (“Brome Bird”) hereby alleges against Defendants Classic Brands LLC (“Classic Brands”), Robert W. Donegan (“Donegan”), and DOES 1 through 10 (collectively “Defendants”) as follows:

I. NATURE OF THE ACTION

1. This is a patent infringement action under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*

II. THE PARTIES

2. Brome Bird is a Canadian company with its principal place of business located at 331 Knowlton Road, Knowlton, QC, J0E 1V0, Canada.

3. Brome Bird is the leading designer and manufacturer of squirrel proof bird feeders in North America. The company’s signature product is the Squirrel Buster® brand of squirrel proof bird feeders. Supported by an impressive list of patents, Brome Bird’s Squirrel Buster® feeders have come to be recognized as the leaders in the squirrel proof category of bird feeders.

4. Classic Brands is a Colorado limited liability company with its principal place of business located at 3600 S. Yosemite, Suite 1000, Denver, Colorado. According to the Colorado Secretary of State, Classic Brands may be served via its registered agent for service of process, Richard W. Donegan, 3600 S. Yosemite, Suite 1000, Denver, Colorado.

5. Classic Brands is also registered with the Connecticut Secretary of State as a foreign limited liability company doing business in Connecticut. Classic Brands maintains a business address in Connecticut at 55 Lathrop Road Ext., Plainfield, Connecticut. According to the Connecticut Secretary of State, Classic Brands may be served via its registered agent for service of process, CT Corporation System, 67 Burnside Avenue, East Hartford, Connecticut.

6. Classic Brands specializes in the sale of bird feeders under various brand names, including More Birds®, Stokes Select®, Squirrel-X™, and Droll Yankees®. Classic Brands advertises and sells its bird feeders throughout the United States through authorized retailers, as well as online via the URLs <https://classicbrands.net/>, <http://morebirds.com>, and <http://drollyankees.com/>.

7. Brome Bird is informed and believes and based thereon alleges that defendant Donegan is a resident of the State of Colorado and maintains a business address at 3600 S. Yosemite, Suite 1000, Denver, Colorado.

8. Upon information and belief, Donegan was at all times relevant an agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of Classic Brands, and was the active, moving, and conscious force behind Classic Brands, and personally participated in each and all of the acts or conduct alleged herein, including but not limited to full knowledge of each and every violation of Brome Bird's rights and the damages to Brome Bird proximately caused thereby.

9. Brome Bird is unaware of the true names and capacities of the parties sued herein as DOES 1 through 10, inclusive, whether individual, corporate or otherwise, and therefore sues these defendants by such fictitious names. Brome Bird will seek leave to amend the complaint to assert their true names when they have been ascertained. Brome Bird is informed and believes and based thereon alleges that all defendants sued herein as DOES 1 through 10 are in some manner responsible for the acts and omissions alleged herein.

III. JURISDICTION AND VENUE

10. This Court has original and exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

11. This Court has personal jurisdiction over Defendants because they regularly conduct business and/or solicit business in Connecticut and within this District; because Defendants engage in other courses of conduct and derive revenue from products provided to residents of Connecticut and this District as well as substantial revenue from interstate commerce; because Defendants have purposefully established substantial, systematic and continuous contacts with Connecticut and this District and should reasonably expect to be haled into court in this District; and because Defendants have committed and continue to commit acts of patent infringement in Connecticut and this District in violation of 35 U.S.C. § 271, and are placing infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of Connecticut, including in this District.

12. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because Defendants have an established place of business in this District and maintain a physical presence within this District at 55 Lathrop Road Ext., Plainfield, Connecticut. In particular, Defendants' Droll Yankees® brand maintains a website at the URL <http://drollyankees.com/>, which bears a copyright notice for Classic Brands and notes an address at 55 Lathrop Road Ext., Plainfield, Connecticut 06374. In addition, venue is proper because Defendants have regularly transacted business in Connecticut and within this District and offer for sale in this District products that infringe Brome Bird's patents, because certain of the acts complained of herein occurred in Connecticut and within this District, and because Defendants derive and seek to derive revenue from sales of infringing products sold in Connecticut and within this District.

IV. GENERAL ALLEGATIONS

13. On April 8, 2003, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 6,543,384 B2, titled “Bird feeder having lower movable shroud” (“the ‘384 patent”). Brome Bird is the owner by assignment of the ‘384 patent, a copy of which is attached hereto as Exhibit A.

14. On September 20, 2005, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 6,945,192 B2, titled “Bird feeder having lower movable shroud” (“the ‘192 patent”). Brome Bird is the owner by assignment of the ‘192 patent, a copy of which is attached hereto as Exhibit B.

15. The ‘384 patent and the ‘192 patent (collectively “the Brome Bird Patents”) cover a squirrel proof bird feeder having a lower movable shroud.

16. Brome Bird’s Squirrel Buster® Plus product is covered by the Brome Bird Patents.

17. Brome Bird is informed and believes and based thereon alleges that Classic Brands makes, uses, offers for sale, imports into the United States, and/or sells after importation into the United States bird feeders that infringe one or more claims of the Brome Bird Patents, including without limitation the Squirrel-X6™ bird feeder, the Squirrel-X5™ bird feeder, and the Droll Yankees® Blocker bird feeder (“the Accused Products”, an exemplar of which is depicted at Exhibit C).

18. Classic Brands offers the Accused Products for sale through its websites <https://classicbrands.net/>, <http://morebirds.com>, and <http://drollyankees.com/>, as well as through authorized online and brick-and-mortar retailers, including Duncraft Wild Bird Superstore, Zulily, Amazon, Kmart, BFG Supply Co., Sportsman’ Hardware & Rental, Do It Best, and Mega Pet Supply.

19. Upon information and belief, Classic Brands began offering the Accused Products for sale as early as May 2017 by exhibiting the Accused Products at a trade show in Las Vegas.

20. Later that same year, in the summer of 2017, a distributor contacted a Brome Bird employee and advised Brome Bird that a Classic Brands representative specifically bragged at a

trade show that Classic Brands took Brome Bird's Squirrel Buster® Plus product to a product designer and instructed the product designer to "copy that [product] but make it better."

21. In addition, during a trade show in October 2017 where Classic Brands was displaying its Squirrel-X6™ product, a Classic Brands representative claimed to attendees that Classic Brands found a way to circumvent the Brome Bird Patents.

22. Upon information and belief, Classic Brands is trading on the reputation and design of Brome Bird's Squirrel Buster® Plus product by repeatedly advising third parties that it copied the Squirrel Buster® Plus product by circumventing the Brome Bird Patents.

23. Classic Brands has directly infringed one or more claims of the '384 patent including at least Claims 1, 2, 3, 6, 7, 8, 12, 16, and 18 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale, and/or selling the Accused Products.

24. Classic Brands has directly infringed one or more claims of the '192 patent including at least Claims 1, 6, 7, and 8 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale, and/or selling the Accused Products.

25. Upon information and belief, Defendant Donegan was and is the active, moving, and conscious force behind Classic Brands, and personally participated in each and all of the acts or conduct alleged set forth herein regarding Classic Brands efforts to make, use, offer for sale, import into the United States, and/or sell after importation the Accused Products.

26. Classic Brands and Donegan were on notice of the the Brome Bird Patents since at least February 26, 2019 when Brome Birds provided notice by way of letter from counsel.

27. In fact, upon information and belief, Classic Brands and Donegan have been on notice of the Brome Birds Patents since at least October 2017 when a Classic Brands' representative bragged that the company had successfully circumvented the patents.

28. As a result of this notice, Classic Brands and Donegan have known and intended that their continued actions would, and did in fact, infringe the Brome Bird Patents.

29. Brome Birds is informed and believes and based thereon alleges that Classic Brands and Donegan have willfully copied Brome Bird's products embodying the Brome Bird's Patents.

V. FIRST CLAIM FOR RELIEF

(INFRINGEMENT OF U.S. PATENT NO. 6,543,384 B2)

30. Brome Bird repeats, re-alleges and incorporates by reference the preceding allegations above as though set forth fully herein.

31. Defendants, by and through their agents, officers, directors, employees and servants, have been and are currently willfully and intentionally infringing one or more claims of the '384 patent by making, using, offering to sell, and/or selling in the United States and/or importing into the United States the Accused Products.

32. Defendants' acts constitute infringement of the '384 patent in violation of 35 U.S.C. §271.

33. Brome Bird is further informed and believes and thereon alleges that Defendants' infringement is willful at least in part because Defendants have been aware of the '384 patent since at least October 2017 and that Defendants willfully copied Brome Bird's products.

34. Brome Bird is informed and believes and based thereon alleges that Defendants' infringement of the '384 patent will continue unless enjoined by this Court.

35. Brome Bird is informed and believes and based thereon alleges that Defendants became aware of the subject matter of the '384 patent at least as of the filing date of this lawsuit and possibly sooner.

36. Defendants' infringement of the '384 patent provides Defendants with unique functionality for their products that was the result of Brome Bird's innovation, not Defendants'. Defendants have not obtained permission from Brome Bird to use its inventions in the '384 patent.

37. By reason of the aforesaid infringing acts, Brome Bird has been damaged and is entitled to monetary relief in an amount to be determined at trial but in excess of the jurisdictional requirement of this Court.

38. Because of the aforesaid infringing acts, Brome Bird has suffered and continues to suffer great and irreparable injury for which there is no adequate remedy at law.

VI. SECOND CLAIM FOR RELIEF

(INFRINGEMENT OF U.S. PATENT NO. 6,945,192 B2)

39. Brome Bird repeats, re-alleges and incorporates by reference the preceding allegations above as though set forth fully herein.

40. Defendants, by and through their agents, officers, directors, employees and servants, have been and are currently willfully and intentionally infringing one or more claims of the '192 patent by making, using, offering to sell, and/or selling in the United States and/or importing into the United States the Accused Products.

41. Defendants' acts constitute infringement of the '192 patent in violation of 35 U.S.C. §271.

42. Brome Bird is further informed and believes and thereon alleges that Defendants' infringement is willful at least in part because Defendants have been aware of the '192 patent since at least October 2017 and that Defendants willfully copied Brome Bird's products.

43. Brome Bird is informed and believes and based thereon alleges that Defendants' infringement of the '192 patent will continue unless enjoined by this Court.

44. Brome Bird is informed and believes and based thereon alleges that Defendants became aware of the subject matter of the '192 patent at least as of the filing date of this lawsuit and possibly sooner.

45. Defendants' infringement of the '192 patent provides Defendants with unique functionality for their products that was the result of Brome Bird's innovation, not Defendants'. Defendants have not obtained permission from Brome Bird to use its inventions in the '192 patent.

46. By reason of the aforesaid infringing acts, Brome Bird has been damaged and is entitled to monetary relief in an amount to be determined at trial but in excess of the jurisdictional requirement of this Court.

47. Because of the aforesaid infringing acts, Brome Bird has suffered and continues to suffer great and irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Brome Bird prays for judgment against Defendants as follows:

- (a) An Order adjudging Defendants to have infringed the '384 patent under 35 U.S.C. § 271;
- (b) An Order adjudging Defendants to have willfully infringed the '384 patent under 35 U.S.C. § 271;
- (c) A permanent injunction under 35 U.S.C. § 283 enjoining Defendants, their officers, directors, agents, servants, employees and attorneys, and those persons acting in concert or participation with Defendants, from directly and/or indirectly infringing the '384 patent in violation of 35 U.S.C. § 271;
- (d) An Order that Defendants account for all infringing inventory and surrender all infringing inventory to Plaintiff;
- (e) An Order that Defendants account for all damages by their infringement of the '384 patent in violation of 35 U.S.C. § 271, and that Defendants pay to Brome Bird all damages suffered by Brome Bird;
- (f) An Order adjudging Defendants to have infringed the '192 patent under 35 U.S.C. § 271;
- (g) An Order adjudging Defendants to have willfully infringed the '192 patent under 35 U.S.C. § 271;
- (h) A permanent injunction under 35 U.S.C. § 283 enjoining Defendants, their officers, directors, agents, servants, employees and attorneys, and those persons acting in concert or participation with Defendants, from directly and/or indirectly infringing the '192 patent in violation of 35 U.S.C. § 271;

- (i) An Order that Defendants account for all damages by their infringement of the '192 patent in violation of 35 U.S.C. § 271, and that Defendants pay to Brome Bird all damages suffered by Brome Bird;
- (j) An order for a trebling of damages and/or enhanced damages due to Defendants' willful misconduct under 35 U.S.C. § 284;
- (k) An Order adjudicating that this is an exceptional case;
- (l) An award to Brome Bird of the attorneys' fees and costs incurred by Brome Bird in connection with this action under 35 U.S.C. § 285;
- (m) Total damages in excess of \$500,000;
- (n) An award of pre-judgment and post-judgment interest and costs of this action against Defendants; and,
- (o) For such other and further relief as the Court deems just and proper.

Dated: September 5, 2019

**WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP**

By: 

Anthony B. Corleto, Esq. (CT13520)
1010 Washington Boulevard
Stamford CT 06901
(203) 388-9100
Juris No.: 412712
Our File No.: 15991.00310
Anthony.Corleto@wilsonelser.com

By: Jura C. Zibas, Esq.
Jura C. Zibas, Esq.
To be admitted pro hac vice
150 E 42nd Street
New York, NY 10017
Tel: 212.915.5756
Fax: 212.490.3038
jura.zibas@wilsonelser.com

By: Marty B. Ready, Esq.
Marty B. Ready, Esq.
To be admitted pro hac vice

401 West A Street, Suite 1900
San Diego, CA 92101
Tel: 619.321.6200
Fax: 619.321.6201
marty.ready@wilsonelser.com

Attorneys for Brome Bird Care Inc.