

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CARLSON PET PRODUCTS, INC.	)	
	)	
Plaintiff,	)	Civil Action No. 19-CV-449-MN
	)	
v.	)	JURY TRIAL DEMANDED
	)	
SHENZHEN DIWEN JEWELRY CO., LTD.,	)	
JOHN DOES 2-10	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Carlson Pet Products, Inc., (“Carlson” or “Plaintiff”), by and through its undersigned counsel, submits this First Amended Complaint against Defendants Shenzhen Diwen Jewelry Co. (“Shenzhen Diwen”) and other parties assisting in Shenzhen Diwen’s infringement (“John Doe Entities 2-10”) (collectively “Defendants”) as follows:

**NATURE OF THE ACTION**

1. This is an action to end the infringement of Carlson’s patents covering its novel residential gates that include a smaller gate within a big gate by a third-party seller and its agents who operate under the seller name “Cumbor” on Amazon.com.
2. Carlson’s original complaint (D.I. 1) asserted claims against John Doe Defendants 1-10. Based upon its investigation, Carlson has ascertained the identity of John Doe 1 as Shenzhen Diwen, and now amends its original complaint to assert claims against Defendant Shenzhen Diwen.

**JURISDICTION AND VENUE**

3. This is a claim for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code §§ 1 *et seq.*

4. This Court has subject matter jurisdiction based upon Title 28, U.S.C. §§ 1331 & 1338(a).

5. This Court has personal jurisdiction over Defendants at least because, upon information and belief, Defendants have had substantial, continuing, and on-going contacts with this State and judicial district, and Defendants have sold and continue to sell into this State and judicial district the products at issue in this case.

6. Venue is proper in this judicial district pursuant to Title 28, U.S.C. §§ 1391(b) & (c), as well as 28 U.S.C. § 1400(b) in that, upon information and belief, acts of patent infringement are occurring within this judicial district, and Defendants are subject to personal jurisdiction in this District.

7. As Shenzhen Diwen is a foreign entity, venue is established under Title 28, U.S.C. §1391(c)(3).

8. To the extent John Does 2-10 are foreign entities, venue is established under Title 28, U.S.C. §1391(c)(3).

### **THE PARTIES**

9. Plaintiff Carlson is a corporation duly organized under the laws of Minnesota with a principal place of business at 3200 Corporate Center Drive, Suite 105, Burnsville, MN 55306.

10. Upon information and belief, and based on public records, Shenzhen Diwen is a Chinese company that has a primary place of business at 1302A, No.91, Changchun North Rd Shangcun Community, Gongming St, Guangming New Dist, Shenzhen China 518000.

11. Carlson is in the business of developing, selling, and marketing pet products, including gates, crates, beds, and pet pens.

12. Upon information and belief, Shenzhen Diwen sells products on Amazon.com, including gates, under the brand name “Cumbor.”

13. Upon information and belief, John Doe Entities 2-10 are additional entities assisting or working in concert with Shenzhen Diwen in making, importing, using, selling, and offering for sale, the accused products.

14. At this time, the names and addresses of John Doe Entities 2-10 have not been determined. When the true names and addresses are determined, upon leave of this Court, they will be added into the Complaint by amendment.

### **The Asserted Patents**

15. On May 28, 2013, United States Patent No. 8,448,381 B2, entitled “Small Gate Within Big Gate Within Barrier” was duly and legally issued to Mark A. Flannery and is

assigned to Plaintiff Carlson (the “‘381 patent”). A copy of the ‘381 patent is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

16. On October 4, 2016, United States Patent No. 9,458,668, entitled “Small Gate Within Big Gate Within Barrier” was duly and legally issued to Mark A. Flannery and is assigned to Plaintiff Carlson (the “‘668 patent”). A copy of the ‘668 patent is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

17. On February 20, 2019, claims 1-4 of the ‘381 Patent were confirmed patentable by the U.S. Patent and Trademark Office in reexamination proceeding 90/014,068. A copy of the reexamination certificate for reexamination proceeding 90/014,068 is included in Exhibit A.

18. On March 4, 2019, claims 1-11 of the ‘668 Patent were confirmed patentable, and additional claim 12 was issued, by the U.S. Patent and Trademark Office in reexamination proceeding 90/014,069. A copy of the reexamination certificate for reexamination proceeding 90/014,069 is included in Exhibit B.

19. The ‘381 and ‘668 patents disclose and claim novel and significant improvements in residential gates that include a smaller gate within a big gate and related technologies.

20. Carlson has complied with the notice provisions of 35 U.S.C. § 287 by steps including marking the patent numbers upon its products such that at all relevant times, Defendants have had actual or constructive knowledge of the patents.

21. Since at least 2013, Carlson has sold products embodying the ‘381 patent, which have been marked with the ‘381 patent.

22. Since at least 2016, Carlson has sold products embodying the ‘668 patent, which have been marked with the ‘668 patent.

**Infringement by Shenzhen Diwen Operating as Cumbor**

23. Amazon.com offers a “Store” service that enables third-party sellers to sell products to customers through Amazon.com listings. These third-party sellers are identified only by a seller identifier. Unless disclosed by the seller, the actual corporate identities of these third-party sellers are hidden.

24. A seller operating under the name “Cumbor” maintains a store on Amazon.com from which it sells Cumbor-branded products to consumers.

25. The Cumbor Amazon.com store has sold one or more gates that infringe one or more claims of the ‘381 and ‘668 patents (the “Cumbor Pet Gates”). The Cumbor Pet Gates include, but are not limited to, the “Cumbor Auto Close Safety Baby Gate, Easy Open Extra Tall Thru Gate with Pet Door.” A copy of an Amazon.com order page for a Cumbor Pet Gate is attached as Exhibit C. Cumbor has continued to sell the Cumbor Pet Gates on Amazon.com.

26. On November 27, 2018, prior to Carlson’s determination of Shenzhen Diwen’s identity, Carlson utilized Amazon.com’s internal complaint mechanism to notify a Cumbor representative named “Green Li” that the Cumbor Pet Gates infringed the ‘381 patent. This correspondence is attached as Exhibit D.

27. On November 28, 2018, Mr. Li responded from the email address “ups@cumbor.cn” denying infringement and provided contact information for its lawyer “Robert Smith.” Exhibit D.

28. On December 7, 2018, counsel for Carlson sent a letter attached as Exhibit E notifying “Robert Smith” that the Cumbor Pet Gates infringed the ‘381 and ‘668 patents. To date, neither “Robert Smith,” nor any other person has responded to the December 7, 2018 letter.

29. On February 7, 2019 counsel for Carlson sent a second letter, attached as Exhibit F, to “Robert Smith” again notifying Mr. Smith of infringement by the Cumbor Pet Gates. To date, neither Mr. Smith, nor any other person, has responded to the February 7, 2019 letter.

30. On March 4, 2019, Carlson filed its original complaint, alleging infringement of the ‘381 and ‘668 Patents, and naming as defendants the Amazon seller operating under the name “Cumbor” (“John Doe Entity 1”), and those additional entities assisting or working in concert with Cumbor in making, importing, using, selling and offering for sale, the accused products (“John Doe Entities 2-10”). (D.I. 1.)

31. Based on Carlson’s investigation and on information and belief, Shenzhen Diwen and its agents and assigns is one of the entities operating as Cumbor.

32. For example, Shenzhen Diwen is the assignee of all “Cumbor” trademarks, including a trademark directed “safety gates” as shown in Exhibit G, an amalgamation of “Cumbor” related trademark filings, at 46.

33. Additionally, based on Carlson’s investigation and information and belief, Shenzhen Diwen owns the “Cumbor.cn” domain name utilized by “Green Li.”

34. Based on information and belief, John Doe Entities 2-10 include additional entities, acting in concert with or as agents of Shenzhen Diwen, that participate in making, using, importing, offering for sale, or selling the Cumbor Pet Gates.

**Carlson’s Diligent Attempts to Identify John Doe Entities 2-10**

35. Carlson has engaged in diligent efforts to obtain additional information about the identities of John Doe Entities 2-10, including through its investigation prior to the filing of its original complaint (D.I. 1), and through the limited early discovery provided in this case.

36. Cumbor’s sales page for the Cumbor Pet Gates indicates that the Cumbor Pet Gates are eligible for two-day shipping to addresses within the United States.

37. Based on this shipment time and on information and belief, these Cumbor Pet Gates are shipped from the United States to customers by additional entities in the United States who, acting in concert with or as agents of Cumbor, participate in making, using, importing, offering for sale, or selling the Cumbor Gates.

38. Carlson has repeatedly requested information from Amazon regarding the seller identifying itself as Cumbor, its related entities and any associated third-party entities.

39. On April 2, 2019, this Court granted Carlson early discovery on Amazon.com (“Amazon”) in order to ascertain additional information about the identities of the John Doe Entities. (D.I. 7.)

40. Through the limited discovery from Amazon, Carlson was able to identify Supra National Express, Inc. (“Supra”) as a party involved with the importation of the Cumbor Pet Gates. Thus, on July 22, 2019, Carlson filed a suit against Supra in the U.S. District Court for the Central District of California with caption *Carlson Pet Products, Inc. v. Supra National Express, Inc.*, Case No. 2:19-cv-06312-RGK-MRW (C.D. Cal.).

41. Carlson has been unable to identify the true identities of “Green Li” or “Robert Smith.”

42. Carlson has conducted Internet searches, using the email addresses of “Green Li” and “Robert Smith” as search terms, and has been unable to find any evidence regarding their identities.

43. Carlson ordered a Cumbor Pet Gate from Amazon.com. The package did not include a return address. Moreover, the materials within the Cumbor Pet Gate packaging did not include information identifying the origins of the Cumbor Pet Gates.

44. Upon information and belief, as well as the foregoing allegations in this Complaint concerning Carlson’s efforts to identify John Doe Entities 2-10, Cumbor and John Does 2-10 have taken deliberate steps to hide their identities.



**COUNT I**  
**PATENT INFRINGEMENT BY DEFENDANTS OF**  
**U.S. PATENT NO. 8,448,381**

45. Carlson incorporates by reference the allegations set forth in Paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Acts which constitute direct infringement of some or all of the claims of the '381 patent are taking place in the United States including, but not limited to, upon information and belief, within this judicial district.

47. Defendants are in the business of offering for sale, assembling, having assembled, marketing, distributing or selling residential gates that include a smaller gate within a big gate such as the Cumbor Pet Gates. Upon information and belief, Defendants conduct such activities throughout the United States including, but not limited to, sales within this judicial district. The Cumbor Pet Gates sold, marketed, distributed, or assembled by Defendants are covered by the claims of the '381 patent.

48. Upon information and belief, Defendants acting alone or with others, are, and have been, directly infringing the claims of the '381 patent, in violation of 35 U.S.C. § 271(a) through their continued assembly, importation, use, offers to sell, or sales of the Cumbor Pet Gates, within the United States without license from Plaintiff, as the Cumbor Pet Gates fall within the scope of the claims of the '381 patent. Attached hereto as Exhibit H is a claim chart which illustrates at least one set of structures in a Cumbor Pet Gate that include every element of exemplary independent claim 1 of the '381 patent.

49. As set forth above, since at least December 7, 2018, Defendants have had actual

knowledge of the '381 patent and Carlson's allegations concerning Defendants' products practicing the '381 patent. Upon information and belief, Defendants have known or been willfully blind to the fact that the Cumbor Pet Gates infringe the '381 patent.

50. Upon information and belief, Defendants acting alone, or with others, including, but not limited to, their agents and subsidiaries, induced infringement of the '381 patent under 35 U.S.C. § 271(b) by intentionally encouraging, contributing, or otherwise directing others—including but not limited to their customers and resellers—within the United States to make, sell, offer for sale, assemble, import or use at least the Cumbor Pet Gates, which fall within the scope of the claims of the '381 patent. As set forth above Defendants have had actual knowledge of the '381 patent and have had actual knowledge or were willfully blind to the fact that at least the Cumbor Pet Gates infringe the claims of the '381 patent. By continuing the actions described herein—namely, encouraging, contributing, or otherwise directing their customers and resellers to continue to make, use, sell, import, or assemble products including the Cumbor Pet Gates—Defendants have had specific intent to induce infringement of the claims of the '381 patent pursuant to 35 U.S.C. § 271(b).

51. Upon information and belief, Defendants acting alone or with others, including, but not limited to, their agents and subsidiaries, have committed contributory infringement of the claims of the '381 patent under 35 U.S.C. § 271(c) by knowingly selling products within the United States, including the Cumbor Pet Gates, that are

material parts of the invention of the '381 patent, especially adapted for use in infringement of the claims of the '381 patent and not a staple article or commodity of commerce suitable for substantial noninfringing use. Because the Cumbor Pet Gates infringe the claims of the '381 patent, these products have no substantial noninfringing use. Therefore, the Cumbor Pet Gates are not a staple article or commodity of commerce suitable for substantial noninfringing use. As set forth above, Defendants have had actual knowledge of the '381 patent and have had actual knowledge or were willfully blind to the fact that the Cumbor Pet Gates infringe the claims of the '381 patent. Accordingly, Defendants knew that the Cumbor Pet Gates were especially made or adapted for infringement. Thus, by knowingly continuing the actions described herein, Defendants have committed contributory infringement of the claims of the '381 patent, pursuant to 35 U.S.C. § 271(c).

52. Defendants' infringement of the claims of the '381 patent has been and continues to be willful, deliberate, and egregious, justifying a trebling of damages under 35 U.S.C. § 284. Upon information and belief, Defendants' actions continued despite an objectively high likelihood that they constitute infringement of the claims of '381 patent. Additionally, Defendants either knew or should have known about their risk of infringing the claims of the '381 patent. Defendants' conduct, despite this knowledge, is made with both objective and subjective reckless disregard for the infringing nature of their activities.

53. Defendants' infringement of the claims of the '381 patent has deprived Carlson

of revenues which it otherwise would have made or caused to be made, and has in other respects injured Carlson and will cause Carlson added injury and loss of revenues unless preliminarily or permanently enjoined by this Court.

54. Carlson has been irreparably harmed by virtue of Defendants' infringement of the claims of the '381 patent.

55. Defendants' infringement of the claims of the '381 patent will continue unless enjoined by this Court.

**COUNT II**  
**PATENT INFRINGEMENT BY DEFENDANTS OF**  
**U.S. PATENT NO. 9,458,668**

56. Carlson incorporates by reference the allegations set forth in Paragraphs 1 through 55 of this Complaint as if fully set forth herein.

57. Acts which constitute direct infringement of some or all of the claims of the '668 patent are taking place in the United States including, but not limited to, upon information and belief, within this judicial district.

58. Upon information and belief, Defendants conduct such activities throughout the United States including, but not limited to, sales within this judicial district. The Cumbor Pet Gates, sold, marketed, distributed, or assembled by Defendants, are covered by the claims of the '668 patent.

59. Upon information and belief, Defendants acting alone or with others, have, and have been, directly infringing the claims of the '668 patent, in violation of 35 U.S.C. §

271(a) through their continued assembly, importation, use, offers to sell, or sales of the Cumbor Pet Gates, within the United States without license from Plaintiff as the Cumbor Pet Gates, fall within the scope of the claims of the '668 patent. Attached hereto as Exhibit I is a claim chart which illustrates at least one set of structures in a Cumbor Pet Gate that include every element of exemplary independent claim 1 of the '668 patent.

60. As set forth above, since at least December 7, 2018, Defendants have had actual knowledge of the '668 patent and Carlson's allegations concerning Defendants' products practicing the '668 patent. Upon information and belief, Defendants have known or been willfully blind to the fact that the Cumbor Pet Gates infringe the claims of the '668 patent.

61. Upon information and belief, Defendants acting alone, or with others, including, but not limited to, their agents and subsidiaries, induced infringement of the claims of the '668 patent under 35 U.S.C. § 271(b) by intentionally encouraging, contributing, or otherwise directing others—including but not limited to their customers and resellers—within the United States to make, sell, offer for sale, assemble, import or use at least the Cumbor Pet Gates, which fall within the scope of the claims of the '668 patent. As set forth above, Defendants have had actual knowledge of the '668 patent and have had actual knowledge or were willfully blind to the fact that at least the Cumbor Pet Gates, infringe the claims of the '668 patent. By continuing the actions described herein—namely, encouraging, contributing, or otherwise directing their customers and resellers to continue to make, use, sell, import, or assemble the Cumbor Pet Gates —Defendants

have had specific intent to induce infringement of the claims of the '668 patent pursuant to 35 U.S.C. § 271(b).

62. Upon information and belief, Defendants acting alone or with others, including, but not limited to, their agents and subsidiaries, have committed contributory infringement of the claims of the '668 patent under 35 U.S.C. § 271(c) by knowingly selling products within the United States, including the Cumbor Pet Gates, that are material parts of the invention of the '668 patent, especially adapted for use in infringement of the claims of the '668 patent and not a staple article or commodity of commerce suitable for substantial noninfringing use. Because the Cumbor Pet Gates infringe the claims of the '668 patent, these products have no substantial noninfringing use. Therefore, the Cumbor Pet Gates are not a staple article or commodity of commerce suitable for substantial noninfringing use. As set forth above, Defendants have had actual knowledge of the '668 patent and have had actual knowledge or were willfully blind to the fact that the Cumbor Pet Gates, infringe the claims of the '668 patent. Accordingly, Defendants knew that the Cumbor Pet Gates were especially made or adapted for infringement. Thus, by knowingly continuing the actions described in this paragraph, Defendants have committed contributory infringement of the claims of the '668 patent, pursuant to 35 U.S.C. § 271(c).

63. Defendants' infringement of the claims of the '668 patent has been and continues to be willful, deliberate, and egregious, justifying a trebling of damages under

35 U.S.C. § 284. Upon information and belief, Defendants' actions continued despite an objectively high likelihood that they constitute infringement of the claims of the '668 patent. Additionally, Defendants either knew or should have known about their risk of infringing the claims of the '668 patent. Defendants conduct despite this knowledge is made with both objective and subjective reckless disregard for the infringing nature of their activities.

64. Defendants' infringement of the claims of the '668 patent has deprived Carlson of revenues which it otherwise would have made or caused to be made, and has in other respects injured Carlson and will cause Carlson added injury and loss of revenues unless preliminarily or permanently enjoined by this Court.

65. Carlson has been irreparably harmed by virtue of Defendants' infringement of the claims of the '668 patent.

66. Defendants' infringement of the claims of the '668 patent will continue unless enjoined by this Court.

**WHEREFORE**, Carlson, prays for judgement in its favor as against Defendants, and any subsidiaries thereof acting in concert with Defendants or on their behalf or as their agents, and requests that this Court:

A. Enter a finding and a judgment in favor of Carlson and against Defendants for patent infringement and award to Carlson damages in an amount to be ascertained and in an amount adequate to compensate Carlson for Defendants' infringement including, but not limited to, lost profits, but in no event less than a

reasonable royalty, for the use made of the invention by Defendants, such amount being increased three times, together with prejudgment and post-judgment interest and costs as fixed by the Court, as provided by 35 U.S.C. § 284;

B. Enter a preliminary and permanent injunction against further and continued infringement of the claims of the '381 and '668 Patents by the Defendants as provided by 35 U.S.C. § 283;

C. Declare that this case is exceptional and award Carlson its reasonable attorneys' fees as the prevailing party, as provided by 35 U.S.C. § 285; and

D. Grant Carlson such other and further relief as the Court may deem just and appropriate.



**DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Respectfully submitted,

Dated: October 31, 2019

**Of Counsel**

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