

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS,
MARSHALL DIVISION

APPLICA CONSUMER PRODUCTS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:07-cv-454
	§	
OURPET'S COMPANY	§	JURY TRIAL REQUESTED
	§	
Defendant.	§	

COMPLAINT

Plaintiff, Applica Consumer Products, Inc. ("Applica"), complains of Defendant, OurPet's Company ("OurPet's") as follows:

PARTIES

1. Applica is a Florida corporation having a principal place of business at 3633 Flamingo Road, Miramar, Florida 33027. Applica markets and distributes household products, including products under the licensed brand name BLACK & DECKER® and company-owned brand names, like LITTERMAID®.

2. Applica markets and distributes patented automatic self-cleaning cat litter box products and accessories under the LITTERMAID® mark. Applica has made and continues to make substantial investments in its LITTERMAID® product business to make its products the products of choice among America's cat owners. Applica's LITTERMAID® litter box products promote a healthy and safe environment for cats, and provide a convenient, easy to use litter box solution for America's cat owners.

3. OurPet's is a Colorado corporation having its principal place of business located at 1300 East Street, Fairport Harbor, Ohio 44077.

4. OurPet's manufactures, sells, offers for sale, and imports various pet products under the brand names "OurPet's," "OurCat's Choice Cat Litter," and "SmartScoop." As noted at www.ourpets.com, many OurPet's products are distributed nation-wide through retailers including PetsMart and PetCo.

5. OurPet's has sold its SmartScoop self-cleaning litter box nationally, including to customers in the Eastern District of Texas.

6. OurPet's has offered for sale its SmartScoop self-cleaning litter box nationally through internet sites www.smartscoop.com, www.drsfostersmith.com, www.cattoys.com, www.thepamperedpetmart.com, and www.amazon.com, including to customers located in the Eastern District of Texas.

7. On information and belief, OurPet's marketed and promoted its SmartScoop self-cleaning litter box at the Global Pet Expo 2007 (an industry trade show) in Orlando, Florida on or about March 6, 2007.

8. On information and belief, OurPet's marketed and promoted its SmartScoop self-cleaning litter box at the 2007 Petco Managers' Meeting and Trade Show in Anaheim, California on August 14-15, 2007.

9. On information and belief, OurPet's will use, sell, or offer for sale its SmartScoop self-cleaning litter box at the 2007 HH Backer Pet Industry Christmas Trade Show in Rosemont, Illinois on October 12-14, 2007.

10. On information and belief, OurPet's has offered for sale its SmartScoop self-cleaning litter box to one or more of: PetSmart, Inc. (Phoenix, AZ); PetCo Animal Supplies Stores, Inc. (San Diego, CA); Wal-Mart Stores, Inc. (Bentonville, AR); and Target Corp.

(Minneapolis, MN). All four of these retailers offer products for sale throughout the United States, including the Eastern District of Texas.

PATENTS

11. Applica owns United States Patent No. 6,082,302 (“the ‘302 Patent”) entitled “Self-Cleaning Litter Box,” which issued on July 4, 2000 (Exhibit A).

12. Waters Research Company (“WRC”), an Illinois corporation having a principal place of business at 213 West Main Street, West Dundee, Illinois 60118, owns United States Patent Re. 36,847 (“the ‘847 Patent”) entitled “Automated Self-Cleaning Litter Box for Cats,” which issued on September 5, 2000 (Exhibit B).

13. Applica is the exclusive licensee of the ‘847 Patent.

14. Applica has properly marked its cat litter box products with these patent numbers.

STANDING

15. Applica has standing in this lawsuit as owner of the ‘302 Patent and exclusive licensee of the ‘847 Patent.

JURISDICTION

16. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of the claim made under 28 U.S.C. § 1338(a).

VENUE

17. Venue is proper in this district under 28 U.S.C. § 1400(b). OurPet’s Company is a corporation that resides in this district under 28 U.S.C. § 1391(c), as OurPet’s is subject to personal jurisdiction in this district. In particular, OurPet’s transacts business in this district,

including selling or offering for sale cat litter box products and accessories through the Internet to customers residing in this district.

COUNT I - INFRINGEMENT OF THE '302 PATENT

18. Applica realleges the allegations in paragraphs 1-17 as though fully set forth herein.

19. OurPet's has infringed at least one claim of the '302 Patent by, among other activities, the promotion, use, importation, sale and offer for sale of cat litter box products, including but not limited to, for example, the SmartScoop cat litter box products.

20. The infringement by OurPet's has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

21. On information and belief, OurPet's has been made aware of the '302 Patent and has, nonetheless, copied and/or infringed claims of that patent with knowledge of the patent's scope and application to the activities carried out by OurPet's. Applica's LitterMaid litter boxes are marked with '302 Patent. On information and belief, OurPet's has attempted to market its SmartScoop litter boxes side-by-side with Applica's Littermaid litter boxes on store shelves at one or more nation-side retailers, including: PetSmart, Inc. (Phoenix, AZ); PetCo Animal Supplies Stores, Inc. (San Diego, CA); Wal-Mart Stores, Inc. (Bentonville, AR); and Target Corp. (Minneapolis, MN). OurPet's knew or should have known of the relevance of the '302 Patent to its SmartScoop cat litter boxes. As a consequence, the infringement by OurPet's has been reckless, willful, and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically,

enjoining further promotion, use, importation, sale and offer for sale of products and performing of methods within the scope of the '302 Patent.

COUNT II - INFRINGEMENT OF THE '847 PATENT

22. Applica realleges the allegations in paragraphs 1-21 as though fully set forth herein.

23. OurPet's has infringed at least one claim of the '847 Patent by, among other activities, the promotion, use, importation, sale and offer for sale of cat litter box products, including but not limited to, for example, the SmartScoop cat litter box products.

24. The infringement by OurPet's has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

25. On information and belief, OurPet's has been made aware of the '847 Patent and has, nonetheless, copied and/or infringed claims of that patent with knowledge of the patent's scope and application to the activities carried out by OurPet's. Applica's LitterMaid litter boxes are marked with the '847 Patent. On information and belief, OurPet's has attempted to market its SmartScoop litter boxes side-by-side with Applica's Littermaid litter boxes on store shelves at one or more nation-side retailers, including: PetSmart, Inc. (Phoenix, AZ); PetCo Animal Supplies Stores, Inc. (San Diego, CA); Wal-Mart Stores, Inc. (Bentonville, AR); and Target Corp. (Minneapolis, MN). OurPet's knew or should have known of the relevance of the '847 Patent to its SmartScoop cat litter boxes. As a consequence, the infringement by OurPet's has been reckless, willful, and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically,

enjoining further promotion, use, importation, sale and offer for sale of products within the scope of the '847 Patent.

WHEREFORE, Applica, asks this Court to enter judgment against Defendant, OurPet's Company, and against Defendant's subsidiaries, affiliates, agents, servants, employees, and all persons in active concert or participation with Defendant, granting the following relief:

A. An award of damages adequate to compensate Applica for the infringement that has occurred, together with prejudgment interest from the date infringement of the '302 and '847 Patents began;

B. Increased damages as permitted under 35 U.S.C. § 284;

C. A finding that this case is exceptional and an award to Applica its attorneys' fees and costs as provided by 35 U.S.C. § 285;

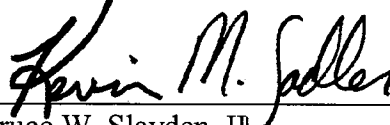
D. A permanent injunction prohibiting further infringement of the '302 and '847 Patents; and

E. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

Applica demands a trial by jury on all issues presented in this Complaint.

Respectfully submitted,

A handwritten signature in black ink, reading "Kevin M. Sadler". The signature is written in a cursive style with a horizontal line underneath it.

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