

FILED

JAN - 5 2006

U. S. DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
ST. LOUIS

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FURMINATOR, INC.

Plaintiff,

v.

ONTEL PRODUCTS CORP.,
LINENS 'N THINGS, INC.,
BAMBOO, A DIVISION OF MUNCHKIN,
INC., AND MUNCHKIN, INC.

Defendants.

CASE NO.

JURY TRIAL DEMANDED

4 06CV00023CAS

COMPLAINT

This is FURminator, Inc.'s ("FURminator") complaint against Defendants Ontel Products Corporation ("Ontel"), Linens 'n Things ("Linens"), Bamboo, a division of Munchkin, Inc. ("Bamboo"), and Munchkin, Inc. ("Munchkin").

JURISDICTION AND VENUE

1. This is an action for patent infringement, trademark infringement and unfair competition. FURminator seeks preliminary and permanent injunctive relief and damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (patents, copyrights, trademarks and unfair competition related thereto). This Court has supplemental jurisdiction, under 28 U.S.C. § 1338, over FURminator's common law counts because they involve a common nucleus of operative fact which are joined with substantial and related claims under the Lanham Act.

THE PARTIES

3. FURminator is a Missouri corporation with its principal place of business in St. Louis, Missouri.

4. On information and belief, Ontel is a New Jersey corporation with its principal place of business at 21 Law Drive, Fairfield, New Jersey 07004.

5. Ontel's products at issue in this case are offered for sale and sold in the Eastern District of Missouri.

6. On information and belief, Linens is a Delaware corporation.

7. Linens operates at least one store in the Eastern District of Missouri that sells the Ontel products at issue in this case.

8. On information and belief, Munchkin is a Delaware corporation with its principal place of business at 16689 Schoenborn Street, North Hills, California 91343.

9. On information and belief, Munchkin's products at issue in this case are offered for sale and sold in the Eastern District of Missouri.

10. On information and belief, Bamboo is a division of Munchkin, with its principal place of business at 16689 Schoenborn Street, North Hills, California 91343.

11. Bamboo's website (www.bamboopet.com) is interactive. A user can enter a zip code or a city/state to locate stores that sells a particular Bamboo product. If a user inputs zip codes or cities in this judicial district into the Bamboo interactive website,¹ the website lists stores within this judicial district that it identifies as selling the Bamboo products at issue in this case. For example, the interactive website² identifies Three Dog Bakery, 8861 Ladue Road, Ladue, Missouri and Four Muddy Paws, 2000 Geyer Avenue, St. Louis, Missouri as selling the Bamboo products at issue in this case.

12. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400 because Ontel, Linens, Munchkin, and Bamboo reside in this judicial district because they are subject to personal jurisdiction here. On information and belief, a substantial part of the events giving rise to FURminator's claims occurred in this judicial district.

¹ http://www.bamboopet.com/find_a_store/index.php?pID=580914457

² http://www.bamboopet.com/find_a_store/results.php?tID=fas_9aef330d5e5ea49c0096b1ecfbb08286&searchType=zipCode&state=MO

FURminator's Patent

13. FURminator owns U.S. Patent No. 6,782,846 (the "Porter Patent") by assignment. Ex. A. The Porter Patent claims methods for removing loose hair from a pet using a grooming tool.

14. The Porter Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

FURminator's Grooming Tool

15. FURminator sells a grooming tool for use in its patented method.



FURminator's DESHEDDING mark

16. FURminator has used the trademark DESHEDDING (the "DESHEDDING mark") in connection with several FURminator products, including the sale of its grooming tool, since at least as early as 2003.

17. FURminator has applied for registration of the DESHEDDING mark with the United States Patent and Trademark Office as application Serial No. 78/680,704.

18. As a result of sales, advertising and promotion, FURminator has established significant goodwill in the DESHEDDING mark.

19. The DESHEDDING mark has acquired secondary meaning and is a source indicator.

Ontel's Infringing Activities

20. On information and belief, Ontel makes, uses, offers to sell, sells or imports into the United States the ShedEnder grooming tool:



21. FURminator informed Ontel of the Porter Patent by letter dated September 26, 2005.

22. On information and belief, after Ontel learned of FURminator's established rights in the DESHEDDING mark, Ontel, without FURminator's consent, began using and intends to continue to use de-shedding in connection with Ontel's ShedEnder grooming tool.

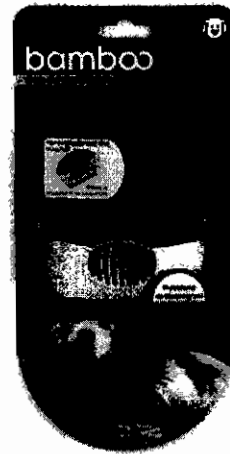
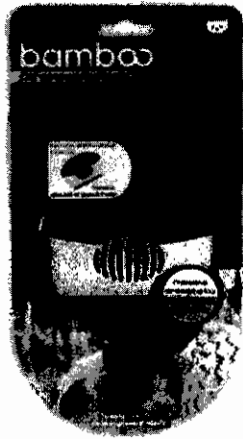
Linens' Infringing Activities

23. Linens offers to sell or sells Ontel's ShedEnder grooming tool, including de-shedding.

24. FURminator informed Linens of the Porter Patent by letter dated December 12, 2005.

Bamboo's and Munchkin's Infringing Activities

25. On information and belief, Munchkin, through Bamboo, makes, uses, offers to sell, sells or imports into the United States the Bamboo grooming tools:



26. On information and belief, after Munchkin and/or Bamboo learned of FURminator's established rights in the DESHEDDING mark, Munchkin, through Bamboo, without FURminator's consent, began using and intends to continue to use de-shedding in connection with Bamboo's grooming tool.

Count I
Ontel's Infringement of the Porter Patent under 35 U.S.C. § 271(a)

27. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

28. Ontel has been and is infringing the Porter Patent under 35 U.S.C. § 271(a).

29. Ontel directly infringes the Porter Patent by making or using the method claimed in the Porter Patent.

30. Ontel's conduct has damaged and will continue to damage FURminator.

31. On information and belief, Ontel's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count II

Ontel's Infringement of the Porter Patent under 35 U.S.C. § 271(b)

32. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

33. Ontel has been and is infringing the Porter Patent under 35 U.S.C. § 271(b).

34. Ontel, and others, directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

35. Ontel knows of the Porter Patent.

36. On information and belief, Ontel knows its ShedEnder grooming tool has no substantial use that does not infringe the Porter Patent.

37. On information and belief, Ontel intends for others to infringe the Porter Patent.

38. Ontel's conduct has damaged and will continue to damage FURminator.

39. On information and belief, Ontel's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count III

Ontel's Infringement of the Porter Patent under 35 U.S.C. § 271(c)

40. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

41. Ontel has been and is infringing the Porter Patent under 35 U.S.C. § 271(c).

42. Ontel, and others, directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

43. Ontel makes, offers to sell, sells and/or imports into the United States Ontel's ShedEnder grooming tool.

44. Ontel's ShedEnder grooming tool is an apparatus for use in practicing FURminator's patented method as claimed in the Porter Patent.

45. Ontel's ShedEnder grooming tool constitutes a material part of FURminator's method as claimed in the Porter Patent.

46. On information and belief, Ontel knows Ontel's ShedEnder grooming tool to be especially made or especially adapted for use in infringement of the Porter Patent.

47. Ontel's ShedEnder grooming tool is not a staple article or commodity of commerce suitable for substantial non-infringing use.

48. Ontel knows of the Porter Patent.

49. On information and belief, Ontel knowingly aided and abetted direct infringement of the Porter Patent by making, using, offering to sell, selling or importing Ontel's ShedEnder grooming tool.

50. Ontel's conduct has damaged and will continue to damage FURminator.

51. On information and belief, Ontel's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count IV

Ontel's Lanham Act Trademark Infringement and Unfair Competition (15 U.S.C. § 1125)

52. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

53. Ontel has been and is infringing FURminator's trademarks and engaging in unfair competition.

54. FURminator owns valid trademark rights in the DESHEDDING mark.

55. Ontel's use of de-shedding on a pet grooming tool is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Ontel with FURminator, or as to the origin, sponsorship or approval of Ontel's goods or commercial activities by FURminator.

56. Ontel's conduct has damaged and will continue to damage FURminator.

Count V

Ontel's Common Law Trademark Infringement and Unfair Competition

57. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

58. Ontel has been and is infringing FURminator's trademarks and engaging in unfair competition.

59. This Count is for unfair competition under the common law, including the law of Missouri and/or any of the other states where the parties do business.

60. FURminator owns valid trademark rights in the DESHEDDING mark.

61. Ontel's use of de-shedding on a pet grooming tool is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Ontel with FURminator, or as to the origin, sponsorship or approval of Ontel's goods or commercial activities by FURminator.

62. Ontel's conduct has damaged and will continue to damage FURminator.

63. Ontel's use of de-shedding on a pet grooming tool and its intent to harm FURminator was due to Ontel's evil motive or reckless indifference to FURminator's rights sufficient to award damages in an amount to punish Ontel and to deter Ontel and others from like conduct.

Count VI

Linens' Infringement of the Porter Patent under 35 U.S.C. § 271(b)

64. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

65. Linens has been and is infringing the Porter Patent under 35 U.S.C. § 271(b).

66. Others directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

67. Linens knows of the Porter Patent.

68. On information and belief, Linens knows Ontel's ShedEnder grooming tool has no substantial use that does not infringe the Porter Patent.

69. On information and belief, Linens intends to induce others to infringe the Porter Patent.

70. Linens' conduct has damaged and will continue to damage FURminator.

71. On information and belief, Linens' infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count VII

Linens' Infringement of the Porter Patent under 35 U.S.C. § 271(c)

72. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

73. Linens has been and is infringing the Porter Patent under 35 U.S.C. § 271(c).

74. Others directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

75. Linens offers to sell, sells and/or imports into the United States Ontel's ShedEnder grooming tool.

76. Ontel's ShedEnder grooming tool is an apparatus for use in practicing FURminator's patented method as claimed in the Porter Patent.

77. Ontel's ShedEnder grooming tool constitutes a material part of FURminator's method as claimed in the Porter Patent.

78. On information and belief, Linens knows Ontel's ShedEnder grooming tool to be especially made or especially adapted for use in infringement of the Porter Patent.

79. Ontel's ShedEnder grooming tool is not a staple article or commodity of commerce suitable for substantial non-infringing use.

80. Linens knows of the Porter Patent.

81. On information and belief, Linens knowingly aided and abetted direct infringement of the Porter Patent by making, using, offering to sell, selling or importing Ontel's ShedEnder grooming tool.

82. Linens' conduct has damaged and will continue to damage FURminator.

83. On information and belief, Linens' infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count VIII

Linens' Lanham Act Trademark Infringement and Unfair Competition (15 U.S.C. § 1125)

84. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

85. Linens has been and is infringing FURminator's trademarks and engaging in unfair competition.

86. FURminator owns valid trademark rights in the DESHEDDING mark.

87. Linens' sale of Ontel's pet grooming tool that uses the word de-shedding is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Linens with FURminator, or as to the origin, sponsorship or approval of Ontel's goods sold by Linens or commercial activities of Linens by FURminator.

88. Linens' conduct has damaged and will continue to damage FURminator.

Count IX

Linens' Common Law Trademark Infringement and Unfair Competition

89. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

90. Linens has been and is infringing FURminator's trademarks and engaging in unfair competition.

91. This Count is for unfair competition under the common law, including the law of Missouri and/or any of the other states where the parties do business.

92. FURminator owns valid trademark rights in the DESHEDDING mark.

93. Linens' sale of Ontel's pet grooming tool that uses de-shedding is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Linens with FURminator, or as to the origin, sponsorship or approval of Ontel's goods sold by Linens or commercial activities of Linens by FURminator.

94. Linens' conduct has damaged and will continue to damage FURminator.

95. Linens' sale of Ontel's pet grooming tool that uses de-shedding and Linens' intent to harm FURminator was due to Linens' evil motive or reckless indifference to FURminator's rights sufficient to award damages in an amount to punish Linens and to deter Linens and others from like conduct.

Count X
Bamboo's Infringement of the Porter Patent under 35 U.S.C. § 271(b)

96. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

97. Bamboo has been and is infringing the Porter Patent under 35 U.S.C. § 271(b).

98. Others directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

99. On information and belief, Bamboo knows of the Porter Patent.

100. On information and belief, Bamboo knows its grooming tool has no substantial use that does not infringe the Porter Patent.

101. On information and belief, Bamboo intends to induce others to infringe the Porter Patent.

102. Bamboo's conduct has damaged and will continue to damage FURminator.

103. On information and belief, Bamboo's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count XI

Bamboo's Infringement of the Porter Patent under 35 U.S.C. § 271(c)

104. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

105. Bamboo has been and is infringing the Porter Patent under 35 U.S.C. § 271(c).

106. Others directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

107. Bamboo makes, offers to sell, sells and/or imports into the United States Bamboo's grooming tool.

108. Bamboo's grooming tool is an apparatus for use in practicing FURminator's patented method as claimed in the Porter Patent.

109. Bamboo's grooming tool constitutes a material part of FURminator's method as claimed in the Porter Patent.

110. On information and belief, Bamboo knows its grooming tool to be especially made or especially adapted for use in infringement of the Porter Patent.

111. Bamboo's grooming tool is not a staple article or commodity of commerce suitable for substantial non-infringing use.

112. On information and belief, Bamboo knows of the Porter Patent.

113. On information and belief, Bamboo knowingly aided and abetted direct infringement of the Porter Patent by making, using, offering to sell, selling or importing Bamboo's grooming tool.

114. Bamboo's conduct has damaged and will continue to damage FURminator.

115. On information and belief, Bamboo's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count XII

Bamboo's Lanham Act Trademark Infringement and Unfair Competition (15 U.S.C. § 1125)

116. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

117. Bamboo has been and is infringing FURminator's trademarks and engaging in unfair competition.

118. FURminator owns valid trademark rights in the DESHEDDING mark.

119. Bamboo's use of de-shedding on a pet grooming tool is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Bamboo with FURminator, or as to the origin, sponsorship or approval of Bamboo's goods or commercial activities by FURminator.

120. Bamboo's conduct has damaged and will continue to damage FURminator.

Count XIII

Bamboo's Common Law Trademark Infringement and Unfair Competition

121. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

122. Bamboo has been and is infringing FURminator's trademarks and engaging in unfair competition.

123. This Count is for unfair competition under the common law, including the law of Missouri and/or any of the other states where the parties do business.

124. FURminator owns valid trademark rights in the DESHEDDING mark.

125. Bamboo's use of de-shedding on a pet grooming tool is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Bamboo with FURminator, or as to the origin, sponsorship or approval of Bamboo's goods or commercial activities by FURminator.

126. Bamboo's conduct has damaged and will continue to damage FURminator.

127. Bamboo's use of de-shedding on a pet grooming tool and its intent to harm FURminator was due to Bamboo's evil motive or reckless indifference to FURminator's rights sufficient to award damages in an amount to punish Bamboo and to deter Bamboo and others from like conduct.

Count XIV

Munchkin's Infringement of the Porter Patent under 35 U.S.C. § 271(b)

128. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

129. Munchkin has been and is infringing the Porter Patent under 35 U.S.C. § 271(b).

130. Others directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

131. On information and belief, Munchkin knows of the Porter Patent.

132. On information and belief, Munchkin knows Bamboo's grooming tool has no substantial use that does not infringe the Porter Patent.

133. On information and belief, Munchkin intends to make, use sell, offer for sale, or import Bamboo's grooming tool and intends to induce others to infringe the Porter Patent.

134. Munchkin's conduct has damaged and will continue to damage FURminator.

135. On information and belief, Munchkin's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count XV

Munchkin's Infringement of the Porter Patent under 35 U.S.C. § 271(c)

136. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

137. Munchkin has been and is infringing the Porter Patent under 35 U.S.C. § 271(c).

138. Others directly infringe the Porter Patent by making or using the method claimed in the Porter Patent.

139. Munchkin offers to sell, sells and/or imports into the United States Bamboo's grooming tool.

140. Bamboo's grooming tool is an apparatus for use in practicing FURminator's patented method claimed in the Porter Patent.

141. Bamboo's grooming tool constitutes a material part of FURminator's method claimed in the Porter Patent.

142. On information and belief, Munchkin knows Bamboo's grooming tool to be especially made or especially adapted for use in infringement of the Porter Patent.

143. Bamboo's grooming tool is not a staple article or commodity of commerce suitable for substantial non-infringing use.

144. On information and belief, Munchkin knows of the Porter Patent.

145. On information and belief, Munchkin knowingly aided and abetted direct infringement of the Porter Patent by making, using, offering to sell, selling or importing Bamboo's grooming tool.

146. Munchkin's conduct has damaged and will continue to damage FURminator.

147. On information and belief, Munchkin's infringement of the Porter Patent is and has been willful, making this case exceptional under 35 U.S.C. § 285.

Count XVI

Munchkin's Lanham Act Trademark Infringement and Unfair Competition (15 U.S.C. § 1125)

148. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

149. Munchkin has been and is infringing FURminator's trademarks and engaging in unfair competition.

150. FURminator owns valid trademark rights in the DESHEDDING mark.

151. Munchkin, through Bamboo's use of de-shedding on a pet grooming tool, is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Munchkin with FURminator, or as to the origin, sponsorship or approval of Munchkin, through Bamboo's goods or commercial activities, by FURminator.

152. Munchkin's conduct has damaged and will continue to damage FURminator.

Count XVII

Bamboo's Common Law Trademark Infringement and Unfair Competition

153. FURminator incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

154. This Count is for unfair competition under the common law, including the law of Missouri and/or any of the other states where the parties do business.

155. Munchkin has been and is infringing FURminator's trademarks and engaging in unfair competition.

156. FURminator owns valid trademark rights in the DESHEDDING mark.

157. Munchkin, through Bamboo's use of de-shedding on a pet grooming tool, is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Bamboo with FURminator, or as to the origin, sponsorship or approval of Munchkin, through Bamboo's goods or commercial activities, by FURminator.

158. Munchkin's conduct has damaged and will continue to damage FURminator.

159. Munchkin, through Bamboo's use of the word de-shedding on a pet grooming tool, and Munchkin's intent to harm FURminator was due to Munchkin's evil motive or

reckless indifference to FURminator's rights sufficient to award damages in an amount to punish Munchkin and to deter Munchkin and others from like conduct.

PRAYER FOR RELIEF

WHEREFORE, FURminator prays for judgment against Defendants as follows:

- A. Preliminarily and permanently enjoin Defendants and any person acting in concert with them from further infringement of United States Patent No. 6,782,846;
- B. Award FURminator damages resulting from Defendants' infringements;
- C. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
- D. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;
- E. Award FURminator reasonable attorney fees under 35 U.S.C. § 285;
- F. Order the impounding and destruction of all Defendants' products that infringe the Porter Patent;
- G. Award FURminator interests and costs;
- H. Permanently enjoin Defendants, their subsidiaries, affiliates, franchisees, licensees, officers, agents, sales representatives, servants, employees, associates, successors and assigns, and all persons acting under their control, by, through, under, or in active concert or in participation with them, pursuant to 15 U.S.C. § 1116, from:
 - 1. Using de-shedding or any other mark that is likely to cause confusion, mistake or deception with the FURminator's DESHEDDING mark;
 - 2. Using any mark or doing any act or thing likely to confuse the public that Defendants' goods or services are in any way connected with FURminator, including, but not limited to, using the DESHEDDING mark or de-shedding.

3. Printing, publishing, promoting, lending, or distributing any advertisement, whether written, audio or visually portrayed which use or refer to the DESHEDDING mark or any mark confusingly similar thereto; and

B. Defendants must deliver up for the destruction all goods, advertising, literature, and other forms of promotional material bearing or showing de-shedding or a confusingly similar mark pursuant to 15 U.S.C. §1118;

C. Defendants must pay FURminator such damages as FURminator has sustained as a result of Defendants' infringement of the DESHEDDING mark;

D. Defendants must account for all gains, profits, and advantages derived from their acts of infringement pursuant to 15 U.S.C. § 1117;

E. Finding this is an exceptional case under 15 U.S.C. §1117, and awarding FURminator a sum above the amount found as actual damages not exceeding three times such amount, and its reasonable attorneys' fees;

F. Defendants must pay FURminator its costs and disbursements in bringing this action and prejudgment and post-judgment interest as appropriate pursuant to 15 U.S.C. § 1117;

G. Defendants must pay FURminator punitive damages due to their willful infringement;

H. Defendants must report to this Court of their compliance of the foregoing within thirty (30) days of judgment; and

I. For such other and further relief that the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a jury on all issues so triable.

Respectfully submitted,

Thompson Coburn LLP

By: 

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