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APR 16 2004

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

TFH PUBLICATIONS, INC.,

Plaintiff,

v.

OUR PET'S COMPANY and BONYBONE,  
S.A. de C.V.,

Defendants.

Civil Action No.:

04-1752(SRC)

**COMPLAINT**

Plaintiff TFH Publications, Inc. ("TFH"), by and through its attorneys, Greenberg Dauber Epstein & Tucker, A Professional Corporation, brings this complaint against defendants Our Pet's Company ("Our Pet's") and Bonybone S.A. de C.V. ("Bonybone") (collectively "defendants") and states as follows:

**Preliminary Statement**

1. TFH brings this action for patent infringement pursuant to 35 U.S.C. 271, *et seq.* because defendant Bonybone imports into the United States, and defendant Our Pet's sells in the United States in interstate commerce, products which infringe upon a Letters Patent owned by TFH. Both defendants have received notice of the infringement and have failed to cease the infringement, thereby compelling this action.

**Parties**

2. TFH is a Delaware corporation which maintains its principal place of business at One TFH Plaza, Neptune City, New Jersey.

3. Our Pet's is a Colorado corporation which maintains its principal place of business at 1300 East Street, Fairport Harbor, Ohio 44077.

4. Bonybone is a Mexico company which maintains its principal place of business at Sur 25 Num, 661, Orizaba, Veracruz, C.P. 94300, Mexico.

**Jurisdiction and Venue**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over defendants because defendants have engaged in continuous and systematic activities in New Jersey consistent with the due process clause of the Fifth Amendment to the United States Constitution and the New Jersey long arm statute. Those activities include distributing and selling infringing products in New Jersey.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and (d). Venue is also proper in this District pursuant to 28 U.S.C. 1400(b) in that defendants have committed acts of infringement in this District and, either directly or through an agent, have a regular place of business in this District.

**Factual Background**

7. TFH manufactures and sells a broad array of pet products, including plastic chews, interactive toys, pet homes and, of significance to this matter, edible chews, all under the famous "Nylabone®" trademark in interstate commerce. TFH has been a trusted name in the pet products industry for over fifty years.

8. TFH is the owner of U.S. Patent No. 5,476,069 entitled "Molded Rawhide Chew Toy". Claim 1 of this patent recites: "A method of forming a dog chew, comprising the steps of: comminuting rawhide; melting said dried comminuted rawhide; injection molding said molten dried comminuted rawhide and allowing said molding to harden." A copy of TFH Patent No. 5,476,069 is attached hereto as Exhibit A.

9. Defendant Bonybone manufactures a line of products marketed under the Gourmet Rawhide Bone™ label.

10. That Gourmet Rawhide Bone™ is made from a mixture of rawhide particles, starch, coloring and additional flavors. The mixture is placed into a funnel that connects to a piston and barrel. The piston pushes the mixture into a mold through a nozzle.

11. The aforementioned nozzle has a heating sleeve around it which serves to soften the mixture before it is introduced into the mold. The heating sleeve can be set to a number of temperatures, and is preferably set to a temperature of around 70 °C.

12. In April 2003, TFH noticed that defendant Bonybone exhibited the Gourmet Rawhide Bone™ at a national trade show.

13. By letter dated July 14, 2003, TFH put Bonybone on notice that TFH believed that the Gourmet Rawhide Bone™ infringed on one or more Patents owned by TFH including Patent No. 5,476,069.

14. By letter dated August 25, 2003, counsel for Bonybone stated that Bonybone did not import into and sell its products in the United States and did not otherwise infringe upon TFH's Patents.

15. TFH relied upon the aforesaid representations of Bonybone and took no further action at that time.

16. In November 2003, TFH discovered that the Gourmet Rawhide Bone™ was being distributed in the United States through defendant Our Pet's. According to defendant's web site, one such distributor location is in New Jersey.

17. An analysis and inspection of the Gourmet Rawhide Bone™ indicates that the bones are heated and the ingredients melted and fused. Prominently visible on the bone is a parting line together with gate marks and knock out pin impressions, all indicating that an injection molding process is used to manufacture said products.

18. By letter dated November 24, 2003, TFH put Our Pet's on notice that TFH believed that the Gourmet Rawhide Bone™ infringed on one or more TFH Patents including Patent No. 5,476,069.

19. By letter dated November 27, 2003, TFH put Bonybone on notice that it had misrepresented its product and sales activities and that it was wilfully infringing upon one or more TFH Patents including U.S. Patent No. 5,476,069.

20. Counsel for Our Pet's has denied that the Gourmet Rawhide Bone™ is manufactured by an injection molding process but provided no elaboration of the alternative process used to create said products.

21. Counsel for Bonybone ultimately admitted that the process used to manufacture Gourmet Rawhide Bone™ is injection molding but argued that it fell outside the scope of TFH's Patent No. 5,476,069, because, although it utilized injection molding, and although it utilized rawhide particles, and although it heated the particles to at least 70 °C (i.e. approximately 160 °F) to soften and injection mold, heating at such temperatures somehow fell outside the scope of claim 1 of Patent No. 5,476,069.

22. Claim 1 of U.S. Patent No. 5,476,069 is not limited to a specific temperature for melting the rawhide for injection molding.

23. Despite claiming in a letter dated January 22, 2004 that he would provide an explicit explanation as to why the Gourmet Rawhide Bone™ did not infringe U.S. Patent No. 5,476,069, counsel for Our Pct's has failed to do so.

24. In the course of the exchange of letters between TFH and defendants's counsel, TFH has also placed the defendants on notice that they may be infringing upon one or more of the following U.S. Letters Patents owned by TFH:

i) U.S. Patent No. 5,827,565 entitled "Process For Making An Edible Dog Chew." Claim 1 of this Patent recites "A method of producing a hardness adjustable edible dog chew, comprising the steps of extruding a mixture of potato starch, water and calcium carbonate to form granules; and injection molding such mixture into the shape of the dog chew." A copy of said Letters Patent is attached hereto as Exhibit B.

ii) U.S. Patent No. 6,086,940 entitled "High Starch Content Dog Chew." Claim 1 of this Patent recites "A method of producing a hardness-modified edible dog chew, comprising the steps in sequence of: mixing vegetable starch and about 2% lecithin, and about 4-6% calcium carbonate, wherein said mixture comprises about 90-94% by weight vegetable starch; adjusting the moisture content of said mixture to about 12% by weight; extruding said mixture into beads of about 3-10 millimeters; injection molding the beads into the shape of a dog chew, such injection molding causing most of the beads to melt and sterilizing the ingredients of the beads; cooling the resulting dog chew; and ejecting the dog chew wherein said water content, subsequent to injection molding is adjusted below 12% by weight." A copy of said Letters Patent is attached hereto as Exhibit C.

iii) U.S. Patent No. 6,159,516 entitled "Method of Molding Edible Starch." Claim 1 of this Patent recites "A process for forming starch into a molded article using melt processing techniques which process comprises: (a) combining starch and water to form a mixture wherein the water content is in the range of about 20.0 to 40.0% by weight with respect to that of said starch; b) introducing and heating said mixture in a vented barrel extruder to form extruded beads wherein the water content of said mixture entering said extruder is less than the water content of said mixture entering said extruder; and c) introducing the extruded beads of (b) into a heated injection molding machine and injection molding and cooling to form said molded article wherein the water of said molded article is at or below about 20% by weight." A copy of said Letters Patent is attached hereto as Exhibit D.

**FIRST COUNT**

**(Infringement of U.S. Letters Patent)**

25. The allegations of paragraphs 1 through 24 are incorporated herein by reference as though fully set forth herein.

26. By distributing and selling the Gourmet Rawhide Bone™ in the United States in interstate commerce, defendants have directly infringed and continue to infringe U.S. Patent No. 5,476,069 because said products are manufactured according to the claims of said Patent.

27. Bonybone has actively induced and currently is actively inducing others, such as Our Pet's, to infringe U.S. Patent No. 5,476,069 through its exportation to, and/or sale in, the United States of the Gourmet Rawhide Bone.™

28. Our Pet's has infringed and currently is infringing U.S. Patent No. 5,476,069 by its offer for sale and sale of the Gourmet Rawhide Bone.™

29. The aforesaid acts of infringement are being carried out by defendants willfully and with full knowledge by defendants of U.S. Patent No. 5,476,069.

30. The defendants may also be directly infringing and/or inducing others to infringe one or more U.S. Patent Nos. 5,827,565, 6,086,940 and 6,159,516.

WHEREFORE, TFH prays for relief against defendants jointly, severally and in the alternative as follows:

A. That a judgment be entered that defendants have infringed and/or actively induced others to infringe U.S. Patent No. 5,476,069 pursuant to 35 USC § 271;

B. That defendants, their agents, sales representatives, servants and employees, associates, attorneys, parents, successor and assigns, and any and all persons or entities acting at, through, under or in active concert or participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action and thereafter permanently, from infringing and/or actively inducing others to infringe U.S. Patent No. 5,476,069 pursuant to 35 U.S.C. §283;

C. That a judgment be entered against defendants for compensatory damages sustained by TFH, or alternatively, reasonable royalties due to such patent infringement and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;

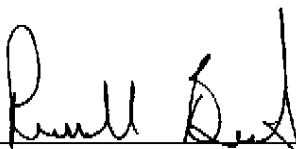
D. That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling TFH to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded;

E. That TFH be awarded its costs and prejudgment interest on all damages; and

F. That TFH be awarded such other and further relief as the Court deems just and proper.

Dated: April 16, 2004

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