

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

OURPET'S COMPANY	)	CASE NO. 1:09-CV-00409-PAG
Plaintiff,	)	
	)	Judge Patricia Ann Gaughan
v.	)	
	)	
INDIPETS, INC.,	)	Jury Trial is Demanded
Defendant.	)	
_____	)	

**PLAINTIFF'S AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT AND JURY DEMAND**

Plaintiff, OURPET'S COMPANY (hereinafter, "OurPet's") files this Amended Complaint against Defendant, INDIPETS, INC. (hereinafter, "Defendant" or "Indipets") for patent infringement.

**NATURE OF THE CASE**

1. Plaintiff, OurPet's, seeks legal and equitable remedies against Defendant, Indipets, for infringement of U.S. Design Patent No. D565,253 for a Pet Feeder with Non-Skid Lower Surface (hereinafter, "the '253 patent").

**JURISDICTION AND VENUE**

2. This is an action for patent infringement, arising under the patent laws of the United States, 35 U.S.C. §1, et seq. This Court has subject matter jurisdiction over the cause of action set forth herein under 28 U.S.C. §§1331, 1332 and 1338.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400.

## **THE PARTIES**

4. Plaintiff, OurPet's, is an Ohio corporation having its principal place of business located at 1300 East Street, Fairport Harbor, Ohio 44077. OurPet's is the owner of the entire right, title and interest in and to the '253 patent.

5. Defendant Indipets, Inc., is a New Jersey corporation with offices located at 216 US Highway 206, Suite #5, Hillsborough, NJ 08844. On information and belief, Indipets has done and is doing business in the State of Ohio, including in this judicial district.

## **BACKGROUND AND RELATED FACTS**

6. Since 1995, OurPet's has been involved in and has built a successful United States business for pet feeding bowls. Prior to OurPet's entering the market, many pet feeders were available in the market, but the only metal pet feeders available were plain stainless steel metal bowls. These bowls had advantages, in that being made of stainless steel they were naturally anti-microbial as well as durable enough for repeated cleaning in an automated dishwasher. These bowls suffered from a significant disadvantage – they would slip or move on hard surfaces such as wood or tile.

7. In developing a solution to the perceived problems of existing products, in 1999, OurPet's introduced a line of rubber bowl covers, in various colors and styles, designed to be placed over the bottom of a round bottom bowl. These bowl covers were and are marketed under the name FASHION-A-BOWL® and are still generally available.

8. In a further development, OurPet's Company introduced a line of premium, round bottom, non-slip stainless steel pet feeders having a bonded rubber lower surface, marketed under the SELECT-A-BOWL™, DURAPET® and the DURABOLZ® brands. These designs were a dramatic success, and OurPet's made and continues to

make significant and substantial investments in its SELECT-A-BOWL™, DURAPET® and DURABOLZ® line of products in an effort to make its products the ones of choice among consumer pet owners.

9. On March 25, 2008, United States Design Patent No. D565,253, entitled “PET FEEDER WITH NON-SKID LOWER SURFACE” was duly and legally issued to the inventors, Dr. Steven Tsengas of Mentor, Ohio and Siddarth Modi of New Dehli, India. A true and an accurate copy of the ‘253 patent is attached hereto and marked as Exhibit “A”. OurPet’s is the Assignee of the ‘253 patent.

10. Plaintiff, OurPet’s, manufactures, distributes, markets and sells pet feeders that embody the design covered by the ‘253 patent utilizing the OurPet’s brand name and the OurPet’s registered trademark.

11. The patented SELECT-A-BOWL™, DURAPET® and DURABOLZ® line of products has grown to 25 separate patented products, representing various sizes for dogs or cats. Overall, the SELECT-A-BOWL™, DURAPET® and DURABOLZ® line of products represents a significant percent of the overall gross revenue of OurPet’s, and OurPet’s continues to expend significant time, effort and resources in the sales and marketing of its products, as well as the development of new variants and improvements.

12. In spite of the presence of an availability in the public domain of other available designs, on or about 2008, Indipets copied OurPet’s patented design in its own round-bottom stainless steel pet feeders having a bonded rubber surface in violation of OurPet’s patent rights and sold and offered said products for sale.

13. On or about February 11-13, 2009, Defendant, Indipets, attended the American Pet Products Association (APPA) tradeshow in which Indipets’ copies of OurPet’s patented pet feeders were displayed, offered for sale and marketed to a national

buying audience, including, but not limited to, those very same national retailers (Target, PetSmart, Petco) that currently distribute and sell OurPet's pet feeder products. These national retailers have a presence throughout the United States, including in this judicial district. Indipets' only identified competitive advantage over OurPet's pet feeder products, as advertised at the APPA tradeshow, is pricing well below that at which OurPet's prices its products. Indipets' products comprise the entire patented design, including all ornamental features, as disclosed and claimed in the '253 patent. Exemplars of Indipets' infringing products are shown on the brochure distributed by Indipets at the APPA tradeshow in February, 2009 in which they are called "Heavy Premium Dishes with Bonded Rubber Ring". The brochure is attached hereto as Exhibit "B". By copying OurPet's '253 patented design, Indipets has avoided the costs and efforts of developing its own innovative design and has knowingly and intentionally engaged in conduct, all in violation of the '253 patent. This selling of these products is conducted at least in part through established distribution channels and, upon information and belief, Defendant will continue to do so unless enjoined by this Court.

14. During the pendency of the application leading to the '253 patent, OurPet's products were marked "patent pending", and since the issuance of the '253 patent, OurPet's products have been properly marked in accordance with 35 U.S.C. §287(a). Defendant has had actual and constructive knowledge of OurPet's '253 patent rights since early 2008.

#### **COUNT I – PATENT INFRINGEMENT**

15. Plaintiff restates and incorporates by reference the allegations set forth in Paragraphs 1 through 14 of the Amended Complaint.

16. Upon information and belief, Defendant, Indipets, has and is manufacturing, importing, offering for sale, and/or selling its accused pet feeder designs into the United States, including advertising on the Internet as a direct seller and selling products through retail stores throughout the United States, including in this judicial district.

17. Indipets' pet feeding bowls comprise the entire patented design, including all ornamental features, as disclosed and claimed in the '253 patent, in violation of 35 U.S.C. §271(a).

18. Neither Plaintiff, OurPet's, nor inventors, Dr. Steven Tsengas or Siddarth Modi, have granted a license, assignment or any other right to Defendant, Indipets, to make, import, use, offer for sale or sell the products covered by the '253 patent. The conduct committed by Defendant is, therefore, without authorization.

19. Based upon Indipets' knowing and intentional copying of the patented design, Indipets' conduct constitutes willful infringement.

20. Unless enjoined, Indipets' conduct has and will continue to cause serious damage and irreparable harm to OurPet's for which there is no adequate remedy at law.

21. Indipets' infringing conduct has and will continue to cause monetary damage to OurPet's in an amount to be proven at trial.

## **COUNT II – DESIGN PATENT INFRINGEMENT**

22. Plaintiff restates and incorporates by reference the allegations set forth in Paragraphs 1 through 14 of the Amended Complaint.

23. By virtue of its conduct as alleged herein, Indipets utilized and is utilizing a colorable imitation of OurPet's patented design and has sold and exposed for sale its infringing product.

24. Indipets' actions as alleged herein constitute infringement of OurPet's design patent pursuant to 35 U.S.C. §289 and entitles OurPet's to recover the greater of Indipets' total profit or \$250 per incident of infringement.

### **PRAYER FOR RELIEF**

Plaintiff, OurPet's Company, respectfully requests that judgment be entered in its favor and against Defendant and that the Court grants the following relief to Plaintiff:

A. Finding that Defendant, Indipets, pursuant to 35 U.S.C. §271(a), has infringed the '253 patent;

B. Finding that Plaintiff OurPet's has been damaged by Defendant, Indipets' infringement and will suffer additional and irreparable damages unless this Court enjoins Defendant, Indipets, from continuing its infringement pursuant to 35 U.S.C. §283;

C. Preliminarily and permanently enjoining Defendant, Indipets, its officers, its agents, its employees, its representatives, its sales agents, its resellers, its distributors and all others acting in concert therewith from further infringement of the '253 patent;

D. Awarding damages to Plaintiff, OurPet's, pursuant to 35 U.S.C. §284 in an amount adequate to compensate Plaintiff for the patent infringement, that such award be increased three times the amount of the damages found in accordance with 35 U.S.C. §§284-285;

E. Finding this to be an exceptional case and awarding Plaintiff, OurPet's its reasonable attorney's fees under 35 U.S.C. §285;

F. Awarding to Plaintiff, OurPet's, pursuant to 35 U.S.C. §289, Defendant's gross profits derived from the infringement of the '253 patent; and

G. Awarding such further and other relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby requests a trial by jury of any and all issues triable at law to a jury.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of June, 2009, the foregoing Plaintiff's Amended Complaint for Patent Infringement and Jury Demand was filed electronically, and that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's System.

/s/ Mark B. Cohn\_\_\_\_\_  
Mark B. Cohn (0027878)