

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

_____)
Royal Pet Incorporated,)
)
Plaintiff,)
)
v.)
)
Timothy and Mary Edwards)
)
Defendant.)
_____)

Civil Action No. 05-825
DWF/ISM

COMPLAINT FOR
DECLARATORY JUDGMENT
(JURY TRIAL DEMANDED)

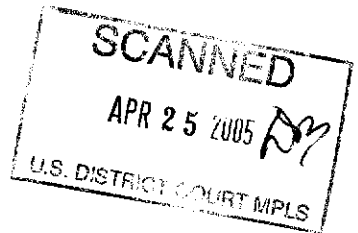
Plaintiff, Royal Pet Incorporated ("RPI") for its complaint against Defendants,
Timothy and Mary Edwards ("Edwards"), alleges as follows:

THE PARTIES

1. Plaintiff, RPI, is a corporation organized and existing under the laws of the state of Minnesota having a principal place of business at 625 Yankee Doodle Road, Eagan, Minnesota 55121.
2. Upon information and belief, Defendants, Edwards have an address and principle place of business at 2090 Dewberry Court, Westlake Village, California 91361.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201(a) and 2202.
4. Upon information and belief, this court has personal jurisdiction over Edwards because Edwards transacts business within Minnesota and Edwards has accused RPI of infringement by mailing a cease and desist letter to RPI within the state of Minnesota.



6. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

RELATIONSHIP BETWEEN THE PARTIES

7. RPI and Edwards are competitors in providing supplies for domestic pets.

8. The relationship between RPI and Edwards has been litigious.

9. On or about June 11, 2002, Edwards sent RPI a cease and desist letter to RPI along with a signed Complaint demanding that RPI cease all production and advertisement of a certain product including at a tradeshow on June 12-14, 2002. A copy of the letter and the Complaint are attached hereto as Exhibit A.

10. Upon receipt of the cease and desist letter and signed Complaint, RPI filed a Complaint with this Court requested declaratory relief. RPI's Complaint was timely served upon Edwards. A copy of the Complaint is attached hereto as Exhibit B.

11. Subsequent to RPI's service of the Complaint attached as Exhibit B, the parties entered into a settlement where RPI continued to produce and sell the product at issue.

12. The parties have remained staunch competitors in the marketplace since the 2002 litigation.

13. On or about March 31, 2005, Edwards sent another letter informing RPI of U.S. Patent Nos. D498,955 and 6,076,717, which upon information and belief are owned by Edwards, demanding RPI cease manufacturing and sale of the "Bags To Go" bone shaped bag dispenser. A copy of the March 31, 2005 letter is attached as Exhibit C.

14. Based upon the prior litigation between the parties, the competitive relationship between the parties and Edwards demand that RPI cease production of the "Bags To Go" bone shaped bag dispenser, RPI has a reasonable apprehension of that it will face a patent infringement

lawsuit.

15. An actual controversy exists as to RPI's alleged infringement of U.S. Patent No. D498,955 and U.S. Patent No. 6,076,717.

COUNT I
DECLARATORY JUDGMENT THAT U.S. PATENT NO. D498,955 IS INVALID

16. RPI re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 15 of the Complaint as fully set forth herein.

17. Upon information and belief, the bag dispenser disclosed in U.S. Patent No. D498,955 ("D955 patent") is invalid under 35 U.S.C. § 102(a) as being known or used by others in the United States before the alleged invention by Edwards. A copy of the D955 patent is attached hereto as Exhibit D.

18. Upon information and belief, the bag dispenser disclosed in the D955 patent is invalid under 35 U.S.C. § 102(f) as Edwards is not the inventor of the subject matter sought to be patented in the D955 patent.

19. Upon information and belief, the bag dispenser disclosed in U.S. Patent No. D498,955 is invalid under 35 U.S.C. § 103(a) as being obvious in view of the prior art.

COUNT II
DECLARATORY JUDGMENT THAT THE D955 PATENT IS UNENFORCEABLE

20. RPI re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 19 of the Complaint as fully set forth herein.

21. Upon information and belief, Edwards attended the HH Packer Show in Chicago, Illinois in October 2003.

22. Upon information and belief, Edwards while at the HH Packer Show viewed a bag dispenser sold by United Pets and having the BON TON trademark. A copy of a brochure disclosing

the BON TON dispenser is attached hereto as Exhibit E.

23. Upon information and belief, Edwards viewed the BON TON dispenser prior to filing a patent application for the bag dispenser as claimed in the D955 patent.

24. Under 37 C.F.R. §1.56(a), Edwards, as an applicant for a patent, has a duty of candor before the United States Patent and Trademark Office (“USPTO”) to the Office all information known to that individual to be material to patentability.

25. Upon information and belief, Edwards was aware of the BON TON dispenser prior to filing the application that resulted in the D955 patent and did not disclose the BON TON dispenser to the USPTO.

26. Upon information and belief, Edwards breached his duty of candor before the USPTO and committed inequitable conduct before the USPTO.

27. Upon information and belief, Edwards breach of his duty of candor before the USPTO and inequitable conduct before the USPTO renders the D955 patent as unenforceable.

COUNT III
DECLARATORY JUDGMENT THAT RPI'S BAGS TO GO PRODUCT
DOES NOT INFRINGE THE D955 PATENT

28. RPI re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 27 of the Complaint as fully set forth herein.

29. RPI's BAGS TO GO bone shaped bag dispenser is sufficiently different in appearance from the dispenser claimed in the D955 patent that the BAGS TO GO bone shaped dispenser would not be confused with the bag dispenser in the D955 patent.

30. RPI's BAGS TO GO bone shaped bag dispenser does not infringe the D955 patent.

COUNT IV
DECLARATORY JUDGMENT THAT THE BAGS TO GO PRODUCT
DOES NOT INFRINGE U.S. PATENT NO. 6,076,717

31. RPI re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 30 of the Complaint as fully set forth herein.

32. Upon information and belief, Edwards has alleged that RPI's BAGS TO GO bone shaped bag dispenser infringes U.S. Patent No. 6,076,717 ("717 patent") in March 31, 2005 letter. A copy of the '717 patent is attached hereto as Exhibit F.

33. RPI's BAGS TO GO bone shaped bag dispenser does not infringe the '717 patent.

COUNT IV
DECLARATORY JUDGMENT THAT THE '617 PATENT IS INVALID

34. RPI re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 33 of the Complaint as fully set forth herein.

35. Upon information and belief, the invention claimed in the '617 patent is invalid under 35 U.S.C. §§ 102 and/or 103.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, RPI, prays for the following relief:

- a. That RPI's BAGS TO GO product does not infringe the D598 patent;
- b. That the D598 patent is invalid;
- c. That the D598 patent is unenforceable;
- d. That RPI's BAGS TO GO product does not infringe the '617 patent;
- e. That the '617 patent is invalid;
- f. That RPI be awarded its costs and attorneys' fees incurred in prosecuting this action,

plus interest; and

e. That RPI be awarded such other relief as the Court deems just and proper.

JURY DEMAND

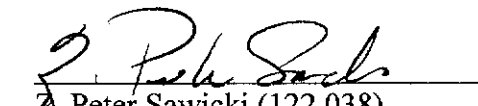
RPI demands a jury trial on all issues so triable.

Westman, Champlin & Kelly, P.A.

Dated:

April 25, 2005

By:


Peter Sawicki (122,038)

Peter J. Ims (294,834)

Suite 1600 – International Centre

900 Second Avenue South

Minneapolis, MN 55402

(612) 334-3222

**ATTORNEYS FOR PLAINTIFF
ROYAL PET INCORPORATED**