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

MUNCHKIN, INC., and KIM LAUBE & CO., INC.	)	
Plaintiffs,	)	
v.	)	**Case No. 4:08-CV-00367-ERW**
PORTERVISION, INC., f/k/a FURMINATOR, INC.	)	
	)	**JURY TRIAL DEMANDED**
and	)	
FURMINATOR, INC., f/k/a FM ACQUISITION CORP.	)	
Defendants.	)	

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs, Munchkin, Inc. ("Munchkin"), and Kim Laube & Co., Inc. ("Laube"), by and through undersigned counsel, and for their complaint against Defendants FURminator, Inc. ("FURminator"), and PorterVision, Inc. ("PorterVision"), state as follows:

INTRODUCTORY STATEMENT

1. On February 26, 2008, PorterVision, then known as FURminator, Inc., a Missouri corporation based in St. Louis, filed suit against Munchkin and Laube in the United States District Court for the Eastern District of Texas, Marshall Division (Case No. 2:08-CV-85 TJW), alleging infringement of United States Patent No. 7,334,540 (the "'540 Patent"), entitled: "PET GROOMING TOOL AND METHOD FOR REMOVING LOOSE HAIR FROM A FURRY PET." A copy of PorterVision's Complaint is attached hereto as Exhibit 1. A copy of the '540 Patent is attached hereto as Exhibit 2.

2. The ‘540 patent issued on February 26, 2008, and is a continuation from a series of applications that relate back to U.S. Patent No. 6,782,846 B1 (the “‘846 Patent”), U.S. Patent No. 7,077,076 B2 (the “‘076 Patent”), and U.S. Patent No, 7,222,588 B2 (the “‘588 Patent”).

3. PorterVision filed the Texas lawsuit in bad faith with knowledge that the ‘540 patent is unenforceable and invalid based on substantial evidence of prior art and prior public uses of numerous pet grooming tools that include all of the elements of the claims of the ‘540 Patent and perform the methods described therein. The evidence of invalidity and unenforceability was disclosed in three prior lawsuits in this District, two of which were against Munchkin and Laube. The sole purpose of PorterVision’s abusive lawsuit is to illegally restrain competition in the market for pet grooming tools, and its decision to file suit in the Eastern District of Texas is an extraordinarily blatant example of forum shopping, as that venue has no relationship to the parties or the underlying action.

4. PorterVision filed suit in the Eastern District of Texas to avoid this forum, the Eastern District of Missouri, which it views as unfavorable and where PorterVision previously covenanted not to sue Munchkin on the ‘846 Patent and Laube on the ‘846 and ‘076 Patents after extensive litigation. This Court should not countenance PorterVision’s abusive and manipulative litigation tactics.

5. On or about September 10, 2008, PorterVision, Inc. entered into an Asset Purchase Agreement with FM Acquisition Corp., now known as FURminator, Inc., an Indiana corporation with its principal place of business in St. Louis, Missouri. As part of the Asset Purchase Agreement, PorterVision assigned all rights in the ‘540 Patent to FURminator and FURminator assumed certain liabilities of PorterVision. A copy of the Patent Assignment is attached as Exhibit 3.

THE PARTIES

6. Plaintiff Munchkin is a Delaware Corporation having a principal place of business at 16689 Schoenborn Street, North Hills, California 91343. Munchkin sells its pet products via its Bamboo division.

7. Plaintiff Laube is a California corporation having a principal place of business at 2221 Statham Blvd., Oxnard, California 93033.

8. Defendant PorterVision, formerly known as FURminator, Inc., is a corporation organized and existing under the laws of Missouri with its principal place of business in St. Louis, Missouri.

9. Defendant FURminator, formerly known as FM Acquisition Corp., is a corporation organized and existing under the laws of Indiana with its principal place of business at 1638 Headland Drive, Fenton, Missouri 63026.

JURISDICTION AND VENUE

10. The claims asserted by Plaintiffs are for (1) declaratory relief under the patent and trademark laws, (2) antitrust violations for attempted monopolization under § 2 of the Sherman Act, (3) unfair competition under the Lanham Act, (4) common law injurious falsehood and product disparagement, (5) common law tortious interference with economic relations, (6) common law tortious interference with prospective economic advantage, (7) defamation per se, and (8) common law unfair competition.

11. This Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

BACKGROUND FACTS

12. Munchkin, Inc. was founded in 1991, and is a market-leading designer, developer, manufacturer and distributor of baby care products. Munchkin's success is attributable to the company's keen ability to transform ordinary products into extraordinary ones using a unique combination of design, innovation, and concern for safety.

13. Since its founding, Munchkin has set the benchmark in a number of critical baby care product categories, including infant feeding utensils, bottle cleaning supplies, teething and bath safety. In 2003, Munchkin was chosen as Nickelodeon's long-term partner to develop licensed products in the infant category. In recognition of the company's success, Munchkin has won 29 industry awards and has been granted 52 United States Patents.

14. In 2002, Munchkin launched its newest venture--Bamboo, a pet care division that applies the same combination of innovation and design originality to pet products as that which propelled Munchkin to market leadership in the baby care arena.

15. Bamboo understands that consumers want a single, trustworthy source that can address all their pet care needs, no matter what species, size or age of pet in their family. Munchkin used an international branding/design firm to help develop the distinctive Bamboo brand and packaging architecture.

16. Plaintiff Kim Laube & Co. has been serving the pet grooming industry for over 30 years in a variety of areas.

17. Laube is widely recognized in the industry as a leading manufacturer of pet grooming products, including electric clippers, scissors, nail grinders, and deshedding tools.

18. Kim Laube, the owner and founder of the company, is the named inventor on nine issued United States patents related to pet grooming tools and has designed products for other leading manufacturers.

19. David and Angela Porter are the founders of FURminator, Inc., now known as PorterVision, Inc.

20. Angela Porter owned a pet grooming business in the 1990s, and, together with her husband, formed PorterVision in 2002.

21. Prior to the formation of PorterVision, David Porter had no involvement in the pet grooming industry, but instead worked in advertising and marketing.

22. On or about September 10, 2008, PorterVision assigned all rights in the '540 Patent to FURminator.

LITIGATION HISTORY

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23. Since its formation, PorterVision has demonstrated a propensity for litigiousness, having instituted a number of meritless patent and trademark infringement lawsuits for the purpose of illegally restraining competition in the pet grooming tool industry.

24. On January 5, 2006, PorterVision filed suit against Ontel Products Corp., Inc. and Munchkin in the United States District Court for the Eastern District of Missouri. The case was styled FURminator, Inc. v. Ontel Prods. Corp. et al., 4:06CV00023CAS ("FUR I"), and alleged infringement by both defendants of the '846 Patent, and a purported trademark on the word "deshedding."

25. PorterVision sought a preliminary injunction against both defendants, which was denied in an opinion published as FURminator, Inc. v. Ontel Prods. Corp. et al., 429 F. Supp.2d 1153 (E.D. Mo. 2006).

26. The evidence introduced at the hearing demonstrated that the Porters falsely claimed to have coined the word "deshedding" and that the word had been in use in the pet grooming industry for decades prior to PorterVision's claimed creation.

27. The evidence also demonstrated that the accused products did not infringe the asserted claims of the patent.

28. The Court found that PorterVision's purported trademark was generic and that there was no likelihood that PorterVision would prevail on the merits of its patent infringement claim.

29. The Court also noted that the defendants had submitted evidence concerning prior art to the '846 patent and arguments as to the invalidity and unenforceability of that patent, but did not find it necessary to reach the questions of invalidity or unenforceability.

30. PorterVision appealed that ruling to the United States Court of Appeals, which affirmed the District Court's ruling in an unpublished opinion, styled FURminator, Inc. v. Ontel Prods. Corp. et al., 214 Fed.Appx. 982, 2007 WL 200938 (Fed. Cir. Jan. 16, 2007).

31. Following the Federal Circuit's decision, Munchkin moved for summary judgment of invalidity of all claims of the '846 patent on March 1, 2007, submitting clear and convincing evidence of prior public uses of a grooming tool that embodied all of the elements of the claims of the '846 Patent and that had been used to perform the methods claimed in the patent for years prior to the application for the '846 Patent.

32. Instead of defending against the motion, on March 23, 2007, PorterVision moved to dismiss its claims against Munchkin and covenanted not to sue Munchkin for any of the products Munchkin had offered for sale on its website (www.bamboopet.com) prior to that date.

33. Munchkin opposed PorterVision's motion on various grounds, including: (a) that David and Angela Porter had threatened Steven Dunn, Munchkin's Chief Executive Officer, with litigation under additional patents at a trade show in Orlando, Florida, on February 22, 2007; and (b) that Munchkin had informed PorterVision that it intended to sell a grooming device with an elongate handle portion in a letter from counsel on February 22, 2007.

34. On April 30, 2007, Munchkin moved to amend its counterclaims to add counts related to the invalidity and unenforceability of the '076 Patent, the only other issued patent PorterVision had at the time, based on the threats made by David and Angela Porter at the Orlando trade show.

35. PorterVision opposed the motion, claiming that the Porters made no threats to Mr. Dunn at the Orlando trade show and that PorterVision was attempting to conclude the litigation by providing Munchkin with a covenant not to sue.

36. Munchkin subsequently informed the Court and PorterVision that it was planning to sell the Furbuster product, now the subject of FURminator's new Texas lawsuit, but the Court dismissed the action based on PorterVision's claim that there was no justiciable controversy among the parties sufficient to support declaratory judgment jurisdiction with regard to that product.

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37. While the Munchkin appeal was pending, PorterVision filed two additional patent infringement lawsuits: a second action for patent infringement against Ontel on August

28, 2006, styled FURminator, Inc., v. Ontel Prods. Corp., Case No. 4:06CV1294 CAS ("FUR II"), alleging infringement of the '076 Patent; and a lawsuit against Laube on August 31, 2006, styled FURminator, Inc., v. Kim Laube & Co., Inc., Case No. 4:06CV1314 RWS ("FUR III"), alleging infringement of both the '846 and '076 Patents.

38. In FUR II, PorterVision again sought a preliminary injunction against Ontel, but withdrew that motion on the eve of the hearing after Ontel produced evidence of prior art and public uses of grooming tools that disclosed all of the elements of the claims of the '076 Patent and that had been used to perform the methods claimed in that patent years before the application for the '846 Patent, the parent application, was filed. Thereafter, PorterVision settled its claims against Ontel.

39. In FUR III, the parties engaged in extensive discovery related to the claims of infringement and invalidity. PorterVision disclosed its preliminary infringement contentions, Laube disclosed voluminous preliminary invalidity contentions that conclusively demonstrated the invalidity of the asserted clams, and the parties completely briefed their claim construction positions.

40. Consistent with PorterVision's past practice, PorterVision announced its intention to provide Laube with a covenant not to sue under the '846 and '076 Patents at a prehearing conference that took place just days before the scheduled *Markman* hearing.

41. Over Laube's objection, the Court granted PorterVision's motion to dismiss Laube's declaratory judgment counterclaims based on PorterVision's covenant not to sue.

COUNT I
DECLARATORY JUDGMENT FOR MUNCHKIN'S PATENT NONINFRINGEMENT
(AGAINST FURMINATOR, INC.)

42. Munchkin incorporates by reference the preceding paragraphs of this Complaint.

43. This is a claim for a declaratory judgment that the ‘540 Patent is not infringed by Munchkin, either directly or as an inducing or contributory infringer.

44. Munchkin promotes, markets, offers for sale, and sells pet grooming products known as the “Furbuster” (hereinafter “the accused product”).

45. PorterVision has commenced an action for infringement of the ‘540 Patent against Munchkin in the United States District Court for the Eastern District of Texas alleging that Munchkin’s Furbuster products infringe one or more claims of the ‘540 Patent, despite the fact that none of the parties has any connection with that forum. PorterVision has sought substitution of FURminator as the plaintiff in that action. FURminator now owns all right, title and interest in the ‘540 Patent.

46. The accused products do not infringe any valid or enforceable claim of the ‘540 Patent.

47. Munchkin has not directly infringed, induced the infringement of, nor has it been a contributory infringer, of any of the claims of the ‘540 Patent.

48. There is a justiciable controversy between the parties regarding the non-infringement of the ‘540 Patent by Munchkin, and Munchkin is entitled to a declaratory judgment that will finally resolve this issue.

COUNT II
DECLARATORY JUDGMENT FOR LAUBE’S NONINFRINGEMENT
(AGAINST FURMINATOR, INC.)

49. Laube incorporates by reference the preceding paragraphs of this Complaint.

50. This is a claim for a declaratory judgment that the ‘540 Patent is not infringed by Laube, either directly or as an inducing or contributory infringer.

51. Laube promotes, markets, offers for sale, and sells pet grooming products known as the "Laube Quick Change Tool," the "Laube Adjustable Blade Rake," and the "Laube iVac Tool" (hereinafter "the accused tools").

52. PorterVision has commenced an action for infringement of the '540 Patent against Laube in the United States District Court for the Eastern District of Texas alleging that Laube's accused tools infringe one or more claims of the '540 Patent, despite the fact that none of the parties has any connection with that forum. PorterVision has sought substitution of FURminator as the plaintiff in that action. FURminator now owns all right, title and interest in the '540 Patent.

53. The accused tools do not infringe any valid or enforceable claim of the '540 Patent.

54. Laube has not directly infringed, induced the infringement of, nor has it been a contributory infringer, of any of the claims of the '540 Patent.

55. There is a justiciable controversy between the parties regarding the non-infringement of the '540 Patent by Laube, and Laube is entitled to a declaratory judgment that will finally resolve this issue.

COUNT III
DECLARATORY JUDGMENT FOR PATENT INVALIDITY
(AGAINST FURMINATOR, INC.)

56. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

57. More than one year prior to the filing of the application that resulted in the '540 Patent and its predecessor patents, there appeared in the prior art, patents, publications, and products describing apparatuses and methods for grooming pets, and specifically for removing

the loose hair from pets while not removing the non-loose hair, including but not limited to, stripping knives, and so-called "40-blades" used with paintbrush handles or with tape formed as a grip.

58. More than one year prior to the filing of the application that resulted in '540 Patent and prior to any purported invention made by David and/or Angela Porter that is claimed or described in any related patents, the prior art (patents, publications, and publicly-used devices and products) described apparatuses and methods for grooming pets, and specifically for removing the loose hair from pets while not removing the non-loose hair, including but not limited to, devices comprised of an Oster A5 40 blade or its equivalent attached to an elongate handle, such as a paintbrush handle, or used with tape wrapped around one part of the blade to form a grip.

59. Sometime after the patenting, sale or public use of the prior art described above, David and Angela Porter, the named inventors of the '540 Patent, attempted to develop and patent the same or similar pet grooming tools.

60. The pet grooming tools and methods of use that the Porters ultimately patented were conceived of and publicly disclosed and used by others prior to the filing date of the '540 Patent and at least one of the Porters was present at least one of the times when the public disclosure(s) occurred.

61. Each of the claims of the '540 Patent are invalid because they are anticipated by the pertinent prior art under 35 U.S.C. § 102, would have been obvious to one of ordinary skill in the art in light of the pertinent prior art at the time of the claimed invention under 35 U.S.C. § 103, and for improper inventorship under 35 U.S.C. § 116.

62. The claims of the '540 patent are also invalid for lack of enablement, insufficient written description, and failure to disclose the best mode of the invention under 35 U.S.C. § 112 in that the claims of the '540 patent incorporate methods and limitations that are neither disclosed, described in, explained by, nor enabled by the specification of the '540 patent.

63. There is a justiciable controversy between the parties regarding the invalidity of the '540 Patent, and Munchkin and Laube are entitled to a declaratory judgment that will finally resolve these issues.

COUNT IV
DECLARATORY JUDGMENT FOR INEQUITABLE CONDUCT AND FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE (AGAINST FURMINATOR, INC.)

64. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

65. PorterVision, the named inventors of the '540 Patent, and their agents engaged in inequitable conduct by intentionally omitting material information from, or submitting false and misleading information to, the United States Patent and Trademark Office ("PTO") in the course of prosecuting and ultimately obtaining the '540 Patent and its predecessors, including U.S. Patent Nos. 6,784,846 B1, 7,077,076 B2, and 7,222,588 B2.

66. PorterVision and its agents intended to mislead and materially misled the Patent Examiner by intentionally withholding material information from the Examiner. Plaintiffs are informed and believe, and on that basis allege, that had the Patent Examiner been advised of the withheld material information, the Examiner would have rejected some or all of the claims of the '540 Patent and its predecessors on that basis.

67. By way of example, at all times during the prosecution of the '540 Patent and its predecessors, PorterVision and the named inventors knew that stripping knives were described in

printed publications and were in public use in this country for more than one year before the filing date of the '540 Patent application and its predecessors.

68. The Background of the Invention section of the '540 Patent and its predecessors describes a prior art process of removing loose hair from a pet using a blade that has been removed from an electric grooming shear. This process is commonly known as "carding."

69. PorterVision knew during the time of the prosecution of the '540 Patent and its predecessors that stripping knives had been in public use by groomers for more than one year prior to the application filing date of the '540 Patent and its predecessors to perform carding.

70. PorterVision, the named inventors, and their attorneys failed to disclose the existence of stripping knives and the fact that stripping knives were in public use to perform carding to the Patent Examiner during the examination process of the '846 patent, which is the first in the series of applications that culminated in the issuance of the '540 Patent.

71. Instead, PorterVision remained silent about stripping knives while the Patent Examiner was relying on prior art that was clearly less relevant than stripping knives (including the Deneen patent, which was for cutting human hair, not grooming pets, and had a razor blade that cut rather than pulled hair) to reject the claims of the '846 Patent, which is the first in the series of applications that culminated in the issuance of the '540 Patent.

72. PorterVision was aware of a prior art U.S. Design Patent relating to a Bowsprit™ brand stripping knife during the prosecution of the '846 Patent, and failed to disclose this Design Patent to the Patent Examiner although it was (a) more relevant than many other references that FURminator did bring to the Examiner's attention in an Information Disclosure Statement; (b) more relevant than references that the Examiner was relying upon to reject the claims of the '846 Patent; and (c) more relevant than any other prior art that was of record.

73. David Porter, one of the named inventors on the '846 and '540 Patents, discovered the aforementioned U.S. Design Patent relating to a Bowsprit™ brand stripper knife in an Internet patent search that he conducted prior to the filing of the patent application that led to the issuance of the '846 Patent, but he failed to disclose the reference to the PTO.

74. During the prosecution of the application that led to the issuance of the '540 Patent, PorterVision knowingly withheld and failed to disclose to the PTO information of which it was aware that was material to the examination of the application, in particular, pleadings, prior art references, and information disclosed in litigation involving the '846 and '076 Patents that related to the invalidity and unenforceability of the claims of those patents, which are substantially identical to the claims of the '540 Patent, in violation of PorterVision's duty to disclose such information.

75. For example, and not by way of limitation, PorterVision failed to disclose at least the following information to the PTO: (a) Munchkin's Motion for Summary Judgment of Invalidity of the '846 Patent; (b) the Statement of Undisputed Material Facts in Support of Munchkin's Motion for Summary Judgment of Invalidity of the '846 Patent; (c) Munchkin's Memorandum in Support of its Motion for Summary Judgment of Invalidity of the '846 Patent; (d) Munchkin's Exhibits, Declarations, and Claim Charts in Support of its Motion for Summary Judgment of Invalidity of the claims of the '846 Patent (all in Case No. 4:06-CV-0023 CAS); (e) the Briefs filed by Munchkin and Ontel in PorterVision's appeal to the United States Court of Appeals for the Federal Circuit in Case No. 2006-1355, which set forth arguments and evidence concerning the invalidity and unenforceability of the claims of the '846 Patent; (f) Munchkin's Proposed Findings of Fact and Conclusions of Law in Case No. 4:06-CV-0023 CAS, which set forth arguments and evidence concerning the invalidity and unenforceability of the claims of the

‘846 Patent; and (g) Laube’s Preliminary Invalidity Contentions in Case No. 4:06-CV-1314 RWS, which set forth arguments and evidence concerning the invalidity of the ‘846 and ‘076 Patents.

76. Additionally, during the prosecution of the ‘540 Patent, PorterVision, the named inventors, and their attorneys failed to call to the Examiner’s attention the significance of the information that it did submit from the three cases involving the related predecessor patents. Instead, FURminator buried the material information it did submit to the PTO (*e.g.*, the Declarations of Kim Laube, Michele Greaves, and Theone Andrew and the exhibits thereto) in a mountain of less pertinent information in the hope that the Examiner handling the application would be overwhelmed by the amount of material submitted and incapable of distinguishing the invalidating prior art and prior public uses of the invention claimed in the ‘540 Patent from information that was only marginally pertinent.

77. In view of the foregoing, PorterVision knowingly failed to disclose to and/or hid from the PTO information of which it was aware that was material to the examination of the applications that matured into the ‘846 Patent and the ‘540 Patent. The information was material to patentability and was withheld with the intent to deceive the PTO into issuing the ‘846 Patent and the ‘540 Patent.

78. In view of the inequitable conduct of PorterVision and its agents before the PTO in prosecuting the ‘846 Patent, and the ‘540 Patent and/or the assertion by PorterVision of the validity and infringement of the ‘540 Patent with knowledge of the inequitable conduct by which the patent and its predecessor patents were obtained, all claims of the ‘540 Patent are unenforceable.

79. In view of the inequitable conduct of PorterVision and its agents before the PTO in prosecuting the series of applications that resulted in the issuance of the '540 Patent and the relationship between the patent and PorterVision's misconduct, the '540 Patent is also unenforceable under the doctrine of unclean hands.

80. PorterVision assigned the rights to the '540 Patent to FURminator on or about September 10, 2008, and FURminator now owns all right, title and interest in the '540 Patent.

81. There is a justiciable controversy between the parties regarding PorterVision's inequitable conduct, unclean hands and the consequent unenforceability of the '540 Patent, and Laube and Munchkin are entitled to a declaratory judgment that will finally resolve these issues.

COUNT V
INJURIOUS FALSEHOOD AND PRODUCT DISPARAGEMENT
(AGAINST BOTH DEFENDANTS)

82. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

83. Written and verbal representations impliedly or expressly stating that Munchkin and Laube infringe PorterVision's and FURminator's valid and enforceable patent rights were made to Munchkin's and Laube's customers and potential customers despite PorterVision's and FURminator's knowledge that these statements were false.

84. The false and derogatory statements made by PorterVision and FURminator about the business dealings and products of Munchkin and Laube were made maliciously and without justifiable excuse, as part of a calculated effort expressly intended to prevent others from dealing with or purchasing products from Munchkin and Laube.

85. Such statements played, and continue to play a material and substantial part in inducing customers and potential customers not to deal with Munchkin and Laube.

86. In addition, as the direct and proximate result of PorterVision's and FURminator's false statements, Munchkin and Laube have been damaged as they have been forced to expend, and continue to expend, significant employee hours and other resources in administrative costs, consultant fees, additional research and development expenditures as well as legal fees and costs of making and sending additional samples in an effort to combat the effects of PorterVision's and FURminator's false statements. The costs sustained by Munchkin and Laube as the result of PorterVision's and FURminator's false misrepresentations are continuing to accrue.

87. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT VI
TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS
(AGAINST BOTH DEFENDANTS)

88. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

89. Munchkin and Laube had economic relationships with various customers that had purchased and/or promoted Munchkin's and Laube's products in the past and were likely to do so in the future.

90. As a direct competitor in a niche market, PorterVision and FURminator were aware of these relationships.

91. In making the false and misleading representations detailed herein relating to the allegedly infringing nature of Munchkin's and Laube's products and the validity and enforceability of PorterVision's and FURminator's patent rights, PorterVision and FURminator intentionally interfered with Plaintiffs' economic relationships and/or potential contractual

relationships with customers and others. PorterVision and FURminator had no reasonable basis in law or fact for their false statements.

92. PorterVision and FURminator interfered with these economic relationships and/or potential contractual relationships in an attempt to gain a competitive advantage and with the malicious intent to cause harm to Munchkin and Laube.

93. As a result of PorterVision's and FURminator's willful and intentional interference with these relationships, Munchkin and Laube have suffered, and continue to suffer damages including lost profits derived from its relationships with customers and prospective customers and other intangible economic injuries for which it is entitled to compensation and equitable relief.

94. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT VII
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(AGAINST BOTH DEFENDANTS)

95. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

96. Because of their quality service and products, Munchkin and Laube have developed business relationships with several customers, through which they have derived or have the potential to derive substantial economic benefit.

97. PorterVision and FURminator were aware of these relationships and are interfering with them with the malicious intent to injure through the use of wrongful means including fraudulent and misleading representations pertaining to the patented nature of their products and the alleged infringing nature of Munchkin's and Laube's products. PorterVision

and FURminator had no reasonable basis in law or fact for these false statements since PorterVision and FURminator knew they had no valid or enforceable patent rights.

98. Such interference has resulted in and continues to result in irreparable injury to Munchkin's and Laube's goodwill and reputation in addition to proximately causing harm in the form of lost profits for which Munchkin and Laube are entitled to compensation and injunctive relief.

99. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT VIII
DEFAMATION PER SE
(AGAINST BOTH DEFENDANTS)

100. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

101. In its written and verbal communications with various customers and potential customers of Munchkin and Laube, PorterVision and FURminator state that Munchkin and Laube infringe valid and enforceable patent rights owned by PorterVision and/or FURminator.

102. These purported factual statements were false at the time they were made and continue to be false. Said statements were transmitted by PorterVision and FURminator to third parties either verbally or in writing with the malicious intent to injure Munchkin's and Laube's business, without justification or excuse, without any reasonable basis in law or fact, and with knowledge of their falsity.

103. PorterVision's and FURminator's false statements impugn the integrity of Munchkin's and Laube's business practices and are the direct, immediate and proximate cause of

irreparable damage to Munchkin's and Laube's reputation in the marketplace rendering these statements defamatory *per se* such that Munchkin and Laube are entitled to damages.

104. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT IX
COMMON LAW UNFAIR COMPETITION
(AGAINST BOTH DEFENDANTS)

105. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

106. PorterVision and FURminator made false and misleading representations to customers, potential customers and those with whom Munchkin and Laube had existing economic relations that products developed, manufactured and sold by Munchkin and Laube infringe valid and enforceable patent rights then owned by PorterVision and now owned by FURminator.

107. PorterVision and FURminator made these statements of infringement without a reasonable belief that Munchkin's or Laube's products could possibly infringe any valid or enforceable patent issued to PorterVision or FURminator.

108. PorterVision's and FURminator's statements were made without a reasonable factual or legal basis in an effort to undermine Munchkin's and Laube's position in the marketplace and to unfairly gain a competitive advantage over Munchkin and Laube.

109. PorterVision's and FURminator's statements and misrepresentations proximately caused, and continue to cause, immediate and irreparable harm to Munchkin's and Laube's goodwill and commercial reputation for which there is no adequate remedy at law in addition to

causing lost sales and lost profits for which Munchkin and Laube are entitled to monetary and equitable relief.

110. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT X
UNFAIR COMPETITION UNDER THE LANHAM ACT
(AGAINST BOTH DEFENDANTS)

111. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

112. This is a claim for unfair competition under the Lanham Act, 15 U.S.C. § 1125.

113. PorterVision and FURminator made false and misleading representations to Munchkin's and Laube's customers and potential customers in order to promote its products and to disparage Munchkin's and Laube's products, *i.e.*, that products developed, manufactured and sold by Munchkin and Laube infringe valid and enforceable patents then owned by PorterVision.

114. PorterVision's and FURminator's false and misleading statements actually deceived or are likely to deceive a substantial segment of the intended audience, *i.e.*, Munchkin's and Laube's customers and potential customers for the accused products.

115. PorterVision's and FURminator's false and misleading statements are material in that they have or are likely to influence purchasing decisions of Munchkin's and Laube's customers and potential customers for the accused products.

116. PorterVision and FURminator caused the false and misleading statements to enter interstate commerce.

117. PorterVision's and FURminator's false and misleading statements have resulted in actual or probable injury to Munchkin and Laube by causing actual, and/or potential customers not to purchase Munchkin's and Laube's accused products.

118. PorterVision's and FURminator's false and misleading statements were undertaken in bad faith in that they were made with knowledge of the invalidity and/or unenforceability of the '540 Patent and with knowledge that Munchkin's and Laube's accused products do not infringe any valid or enforceable claim of the '540 Patent.

119. PorterVision's and FURminator's statements and misrepresentations proximately caused and continue to cause immediate and irreparable harm to Munchkin and Laube for which there is no adequate remedy at law in addition to causing Munchkin and Laube to suffer lost profits, lost sales, and to incur attorneys' fees, court costs and expenses.

120. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT XI
WALKER PROCESS CLAIM
(AGAINST BOTH DEFENDANTS)

121. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

122. This is a claim for attempted monopolization under § 2 of the Sherman Act and the Supreme Court's decision in *Walker Process Equip., Inc., v. Food Mach. & Chem. Corp.,* 382 U.S. 172 (1965), and its progeny.

123. PorterVision committed deliberate fraud on the PTO in the prosecution of the original application leading to the issuance of the '846 Patent by intentionally withholding and failing to disclose material information to the PTO with knowledge that the withheld information

was far more pertinent to patentability than the prior art that it had submitted to the PTO, as set forth above in paragraphs 64 to 81, which are incorporated herein by reference.

124. PorterVision withheld this material information from the PTO with the intent to deceive the PTO into granting a patent on claims for a method and a device that PorterVision knew was disclosed in the prior art.

125. PorterVision's fraud in the prosecution of the '846 Patent permeated and tainted the prosecution of each of the continuation applications that derived from the '846 Patent such that each and every patent obtained on its claimed invention: "PET GROOMING TOOL AND METHOD FOR REMOVING LOOSE HAIR FROM A FURRY PET," is unenforceable for fraudulent procurement.

126. PorterVision also committed deliberate fraud on the PTO in the prosecution of the '540 Patent by withholding and failing to disclose material information to the PTO with knowledge that a reasonable Patent Examiner would consider the withheld information material to patentability and by burying the material information it did submit in a mountain of less pertinent material to overwhelm and mislead the Examiner, as set forth above in paragraphs 64 to 81, which are incorporated herein by reference.

127. PorterVision withheld this material information from the PTO with the intent to deceive the PTO into granting a patent on claims for a method and a device that PorterVision knew was disclosed in the prior art and had previously been publicly used and disclosed.

128. PorterVision and FURminator have engaged in a pattern of anticompetitive conduct by fraudulently procuring and then repeatedly attempting to enforce patents that it knew were invalid, not infringed, and/or unenforceable against Munchkin and Laube.

129. PorterVision and FURminator illegally acquired monopoly power in the U.S. market for pet grooming tools, specifically, pet grooming tools designed for the purpose of removing loose hair from a furry pet (also known as deshedding tools) by fraudulently procuring and attempting to enforce the '846 Patent and each related patent, including the '540 Patent.

130. PorterVision and FURminator engaged in the conduct described above for the purpose of monopolizing the relevant market, *i.e.*, the U.S. market for pet grooming tools, specifically, pet grooming tools designed for the purpose of removing loose hair from a furry pet (also known as deshedding tools).

131. PorterVision's and FURminator's conduct has a dangerous probability of achieving monopoly power in the relevant market by excluding competitors, such as Munchkin and Laube, from the market and thereby harming competition and damaging consumers.

132. PorterVision's and FURminator's actions proximately caused and continue to cause immediate and irreparable harm to Munchkin and Laube and for which there is no adequate remedy at law in addition to causing Munchkin and Laube to suffer lost profits, lost sales, and to incur attorneys' fees and costs such that treble damages should be awarded.

133. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

COUNT XII
SHAM LITIGATION CLAIM
(AGAINST BOTH DEFENDANTS)

134. Munchkin and Laube incorporate by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

135. This is a claim for attempted monopolization under § 2 of the Sherman Act under the sham litigation theory set forth in the Supreme Court's decision in *Professional Real Estate Investors v. Columbia Pictures Indus.*, 508 U.S. 49 (1993), and its predecessors and progeny.

136. PorterVision committed deliberate fraud on the PTO in the prosecution of the original application leading to the issuance of the '846 Patent by intentionally withholding and failing to disclose material information to the PTO with knowledge that the withheld information was far more pertinent to patentability than the prior art that it had submitted to the PTO, as set forth above in paragraphs 64 to 81, which are incorporated herein by reference.

137. PorterVision withheld this material information from the PTO with the intent to deceive the PTO into granting a patent on claims for a method and a device that PorterVision knew was disclosed in the prior art.

138. PorterVision's fraud in the prosecution of the '846 Patent permeated and tainted the prosecution of each of the continuation applications that derived from the '846 Patent such that each and every patent obtained on its claimed invention: "PET GROOMING TOOL AND METHOD FOR REMOVING LOOSE HAIR FROM A FURRY PET," is unenforceable for fraudulent procurement.

139. PorterVision also committed deliberate fraud on the PTO in the prosecution of the '540 Patent by withholding and failing to disclose material information to the PTO with knowledge that a reasonable Patent Examiner would consider the withheld information material to patentability and by burying the material information it did submit in a mountain of less pertinent material to overwhelm and mislead the Examiner, as set forth above in paragraphs 64 to 81, which are incorporated herein by reference.

140. PorterVision withheld this material information from the PTO with the intent to deceive the PTO into granting a patent on claims for a method and a device that PorterVision knew was disclosed in the prior art and had previously been publicly used and disclosed.

141. PorterVision and FURminator have engaged in a pattern of anticompetitive conduct by fraudulently procuring and then repeatedly attempting to enforce patents that it knew were invalid, not infringed, and/or unenforceable against Munchkin and Laube, among others.

142. In particular, PorterVision commenced Case No. 4:06-CV-0023 CAS against Munchkin, and Case No. 4:06-CV-1314 RWS against Laube, both in the Eastern District of Missouri, with knowledge that the patents asserted in those cases were invalid, unenforceable, and/or not infringed.

143. In Case No. 4:06-CV-0023 CAS against Munchkin, PorterVision ultimately dismissed the case, but only after (a) the District Court found that PorterVision had failed to show a likelihood of success on the merits of its patent claims (a finding affirmed by the U.S. Court of Appeals for the Federal Circuit), and (b) Munchkin moved for summary judgment of invalidity of all claims of the ‘846 Patent. PorterVision’s dismissal prevented the Court from ruling on Munchkin’s motion for summary judgment of invalidity.

144. In Case No. 4:06-CV-1314 RWS, PorterVision dismissed its claims against Laube, but only after Laube had disclosed highly detailed preliminary invalidity contentions that clearly and conclusively established the invalidity of all claims of both of the asserted patents, the ‘846 and ‘076 Patents. Once again, PorterVision’s dismissal prevented the Court from having an opportunity to rule on Laube’s claims of invalidity and/or unenforceability.

145. On February 26, 2008, PorterVision commenced Case No. 2:08-CV-85 TJW, against both Munchkin and Laube in the Eastern District of Texas alleging infringement of the '540 Patent.

146. Based on the clear and convincing evidence of invalidity and unenforceability of the claims of the PorterVision/FURminator patents, no reasonable litigant could realistically expect to secure favorable relief, such that PorterVision's and FURminator's claims against Laube and Munchkin are objectively baseless.

147. PorterVision and FURminator illegally acquired monopoly power in the U.S. market for pet grooming tools, specifically, pet grooming tools designed for the purpose of removing loose hair from a furry pet (also known as deshedding tools) by fraudulently procuring and attempting to enforce the '846 Patent and each related patent, including the '540 Patent.

148. PorterVision and FURminator engaged in the conduct described above for the purpose of monopolizing the relevant market, *i.e.*, the U.S. market for pet grooming tools, specifically, pet grooming tools designed for the purpose of removing loose hair from a furry pet (also known as deshedding tools).

149. PorterVision's conduct and FURminator's continued conduct has a dangerous probability of achieving monopoly power in the relevant market by excluding competitors, such as Munchkin and Laube, from the market and thereby harming competition and damaging consumers.

150. PorterVision's actions and FURminator's continued actions proximately caused and continue to cause immediate and irreparable harm to Munchkin and Laube and for which there is no adequate remedy at law in addition to causing Munchkin and Laube to suffer lost

profits, lost sales, and to incur attorneys' fees and costs such that treble damages should be awarded.

151. FURminator has assumed certain liabilities of PorterVision, including liability for all or part of PorterVision's actions as outlined above.

PRAYER FOR RELIEF

WHEREFORE, Munchkin and Laube pray for judgment as follows:

a. For judgment in Munchkin's and Laube's favor and against Defendant FURminator on Counts I through IV of the First Amended Complaint;

b. For judgment in Munchkin's and Laube's favor and against Defendants PorterVision and FURminator on Counts V through XII of the First Amended Complaint;

c. For a judicial determination and declaration that Munchkin and Laube have not infringed, contributed to the infringement of or induced the infringement of any valid, enforceable claim of U.S. Patent No. 7,334,540 B2;

d. For a declaration that U.S. Patent No. 7,334,540 B2 is invalid and/or unenforceable, in whole or in part;

e. For costs of suit and reasonable attorneys' fees pursuant to the "exceptional case" provision of 35 U.S.C. § 285 and other applicable law, because PorterVision and FURminator have accused Munchkin and Laube of patent infringement despite knowing that U.S. Patent No. 7,334,540 B2 is invalid and/or unenforceable and/or not infringed by Munchkin and Laube;

f. For a preliminary and permanent injunction enjoining FURminator and all of its officers, agents, employees, representatives and counsel, and all persons in active concert or participation with any of them, directly or indirectly, from charging infringement or instituting any action for infringement of U.S. Patent Nos. 6,782,846 B1, 7,077,076 B2, 7,222,588 B2, and 7,334,540 B2 against Munchkin, Laube, and/or any of their customers and contractors;

g. For a preliminary and permanent injunction enjoining FURminator and all of its officers, agents, employees, representatives and counsel, and all persons in active concert or participation with any of them, directly or indirectly, from charging infringement or instituting any action for infringement of any patent related to U.S. Patent Nos. 6,782,846, 7,077,076 B2, 7,222,588 B2, and 7,334,540 B2, including but not limited to any patent that may issue from any continuation, continuation-in-part or divisional application claiming priority to U.S. Patent No. 6,782,846, in the future against Munchkin, Laube, and/or any their customers and contractors;

h. For costs of suit and reasonable attorneys' fees pursuant to the "exceptional case" provision of 15 U.S.C. § 1117 and other applicable law;

i. For an order requiring PorterVision and FURminator to produce to Munchkin and Laube a list of all those to whom letters or other communications containing statements about PorterVision's and/or FURminator's alleged patent rights or Munchkin's and Laube's alleged infringement;

j. For damages in favor of Munchkin and Laube and against PorterVision and FURminator sufficient to compensate Munchkin and Laube for the economic and non-economic damages sustained by Munchkin and Laube as a result of PorterVision's and FURminator's actions, including but not limited to PorterVision's and FURminator's profits from sale and/or Munchkin's and Laube's lost profits, along with treble damages; and

k. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2008, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which sent Notice of Electronic Filing to the following:

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