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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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INVISIBLE FENCE, INC.,)
)
 Plaintiff,)
 v.)
)
 PERIMETER TECHNOLOGIES, INC.,)
)
 Defendant.)

CAUSE NO:

ST. J. 05 CV 0361
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

TLS

COMPLAINT AND JURY DEMAND

Comes now the plaintiff, Invisible Fence, Inc. (hereinafter "Invisible Fence"), by counsel, and for its Complaint against the defendant, Perimeter Technologies, Inc. (hereinafter "Perimeter"), states as follows:

I. JURISDICTION AND PARTIES

1. Invisible Fence is a Delaware corporation with its principal place of business in Garrett, Indiana.

2. Upon information and belief, Perimeter is a Delaware corporation with its principal place of business in Cincinnati, Ohio.

3. Both Invisible Fence and Perimeter are in the business of manufacturing and selling pet containment systems.

4. This action arises under the Trademark Act of 1926, 15 U.S.C. § 1051 et seq., the Patent laws of the United States, Title 35 of the United States Code, and the common law of the State of Indiana.

5. Jurisdiction of this Court is proper under 15 U.S.C. § 1121, 28 U.S.C. § 1331, 1332(a), 1338(a) and (b), and the principals of supplemental jurisdiction under 28 U.S.C. §

1367. The amount in controversy exceeds the sum of Seventy-Five Thousand Dollars, exclusive of interest and costs.

6. Venue is properly laid in this district pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to this Complaint occurred in this judicial district and because Perimeter is deemed to reside in this judicial district.

7. Venue is properly laid in this district pursuant to 28 U.S.C. § 1400(b) because Perimeter is deemed to reside in this district.

8. Pursuant to 28 U.S.C. § 1391(c), Perimeter is deemed to reside in this judicial district because it was subject to personal jurisdiction in this district at the time the action was commenced.

9. This Court has personal jurisdiction over Perimeter because many of the acts alleged in this Complaint have occurred and threaten to occur in this district, and the claims inserted in this Complaint arise in this district.

COUNT I – FEDERAL TRADEMARK INFRINGEMENT

1. Invisible Fence incorporates herein by this reference the same as is set forth in full rhetorical paragraphs 1 through 10 of the Jurisdiction and Parties' provision of this Complaint.

2. Invisible Fence manufactures and sells a pet containment system under the registered trademark "INVISIBLE FENCE," registration number 16000470.

3. Invisible Fence has used and continues to use the trademark "INVISIBLE FENCE" in connection with the sale or offering for sale of products in the United States.

4. The trademark "INVISIBLE FENCE" is one that is entitled to protection under the Lanham Act. 15 U.S.C. § 1051 et seq.

5. As a result of the constant and extensive use by Invisible Fence of the Trademark in connection with its products, and as a result of Invisible Fence's constant and widespread advertising, the Trademark, and particularly the words "INVISIBLE FENCE" and the Trademark, became and now are identified with Invisible Fence's products in the public mind and by the containment trade generally.

6. Perimeter has utilized the Trademark "INVISIBLE FENCE" in connection with its products that, as used, are confusingly similar to the Trademark and likely to deceive the public.

7. Perimeter's use of the Trademark has caused or is likely to cause confusion.

8. Perimeter has actual knowledge that the Trademark was registered.

9. The exact amount of profits made by Perimeter as a result of its infringement is unknown to Invisible Fence and cannot be ascertained without an accounting.

10. Unless an injunction is granted, Perimeter will continue to infringe on the Trademark and cause irreparable injury to Invisible Fence from loss of profits and deprivation of the benefit of the goodwill that is attached to the Trademark.

11. Perimeter purposely shipped its infringing products into this judicial district.

12. Perimeter's acts of infringement are willful and deliberate.

Wherefore, Invisible Fence, by counsel, respectfully requests the Court: (1) enter an order providing for a permanent injunction against Perimeter's infringing use of the Trademark; (2) order an accounting of all of Perimeter's profits obtained by use of the Trademark; (3) enter judgment for Invisible Fence and against Perimeter for the amount of Invisible Fence's damages, including Perimeter's profits, Invisible Fence's attorneys' fees,

treble damages, and the costs of this action as provided for by 15 U.S.C. § 1117; and (4) for all other just and proper relief.

COUNT II – COMMONLAW TRADEMARK INFRINGEMENT

1. Invisible Fence incorporates herein by this reference the same as if set forth in full in rhetorical paragraphs 1 through 12 of Count I of its Complaint.

2. Invisible Fence owns a valid trademark for the Trademark.

3. Invisible Fence was the first to use the Trademark, or any trademark similar to it, in association with a pet containment system.

4. As a result of the continued sale by Invisible Fence of its products with the Trademark, the Trademark has become widely known and Invisible Fence has become identified in the public mind as the manufacturer of the product to which the Trademark is applied.

5. Perimeter, with intentional disregard to Invisible Fence's rights, is selling and advertising, within this judicial district, a battery using the Trademark.

6. Perimeter has purposely shipped its infringing battery into the judicial district.

7. Perimeter's past and continuing use of the Trademark on its products is likely to cause confusion, deception or be mistaken as misleading the public to believe that Perimeter's product is manufactured by Invisible Fence, thereby depriving Invisible Fence of the goodwill attached to its product.

8. As a result of Perimeter's infringement of the Trademark, Invisible Fence has and will continue to suffer damages.

Wherefore, Invisible Fence, by counsel, respectfully requests that the Court (1) enter an order providing for a permanent injunction against Perimeter's infringing use of the

Trademark; (2) order an accounting of all of Perimeter's profits obtained by use of the Trademark; (3) enter judgment for Invisible Fence and against Perimeter for the amount of its damages, including Perimeter's profits, Invisible Fence's attorneys' fees, and the costs of this action; and (4) for all other just and proper relief.

COUNT III – UNFAIR COMPETITION

1. Invisible Fence incorporates herein by this reference the same as is set forth in full in rhetorical paragraphs 1 through 12 of Count I of its Complaint and rhetorical paragraphs 1 through 8 of Count II of its Complaint.

2. Invisible Fence has developed substantial goodwill and consumer recognition in the pet containment industry.

3. Perimeter has a duty to ensure that its name and packaging for its products are not confusingly similar to those used by Invisible Fence which has developed goodwill and consumer recognition.

4. Perimeter has breached its duty by misleading the public into believing they are buying goods of Invisible Fence when, in fact, they are purchasing goods of Perimeter.

5. The natural and probable result of Perimeter's acts is to deceive the public.

6. Perimeter's deceptive acts have taken place within this judicial district.

7. Perimeter's acts are willful and deliberate.

Wherefore, Invisible Fence, by counsel, respectfully requests the Court: (1) enter an order providing for a permanent injunction against Perimeter's unfair use of the Trademark; (2) order an accounting of all of Perimeter's profits obtained by use of the Trademark; (3) enter judgment for Invisible Fence and against Perimeter for the amount of its damages, including the costs of this action; and (4) for all other just and proper relief.

COUNT IV – TRADE DRESS INFRINGEMENT

1. Invisible Fence incorporates herein by this reference the same as is set forth in full in rhetorical paragraphs 1 through 12 of Count I of its Complaint, rhetorical paragraphs 1 through 8 of Count II of its Complaint, and rhetorical paragraphs 1 through 7 of Count III of its Complaint.

2. Invisible Fence manufactures and sells a battery for use in connection with its pet containment system.

3. The battery sold by Invisible Fence in connection with its pet containment system has a “trade dress” which is inherently distinctive and which has acquired a secondary meaning.

4. A battery manufactured and sold by Perimeter solely in connection with use in the pet containment system manufactured by Invisible Fence¹ has a similarity of trade dress to the extent that there exists a likelihood of confusion on the part of the consumer.

5. The trade dress of the Invisible Fence’s battery is non-functional.

6. The trade dress of the battery sold by Perimeter constitutes a violation of the Lanham Act, 15 U.S.C. § 1125(a).

7. The exact amount of profits made by Perimeter as a result of Perimeter’s trade dress infringement is unknown to Invisible Fence and cannot be ascertained without an accounting.

8. Unless an injunction is granted, Perimeter will continue to infringe upon the trade dress and cause irreparable injury to Invisible Fence from loss of profits and devaluation of the goodwill that is attached to the trade dress.

¹ The battery manufactured by Perimeter has no use in any product manufactured b Perimeter.

9. Perimeter's acts of trade dress infringement are willful and deliberate.

Wherefore, Invisible Fence, by counsel, respectfully requests the Court: (1) enter an order providing a permanent injunction against Perimeter's infringing use of the trade dress; (2) order an accounting of all of Perimeter's profits obtained by use of the trade dress; (3) enter judgment for Invisible Fence and against Perimeter for the amount of Invisible Fence's damages, including Perimeter's profits, Invisible Fence's attorneys' fees, treble damages, and the costs of this action provided for by 15 U.S.C. § 1117; and (4) grant all other just and profit relief.

COUNT V – PATENT INFRINGEMENT

1. Invisible Fence incorporates herein by this reference the same as is set forth in full in rhetorical paragraphs 1 through 12 of Count I of its Complaint, rhetorical paragraphs 1 through 8 of Count II of its Complaint, rhetorical paragraphs 1 through 7 of Count III of its Complaint, and rhetorical paragraphs 1 through 9 of Count IV of its Complaint.

2. Invisible Fence is the owner of U.S. Patent No. 5,445,900 ("Patent"), issued on August 29, 1995. A true and accurate copy of the Patent is attached hereto and marked as Exhibit "A".

3. Invisible Fence has been the lawful owner of all right, title and interest in the Patent at all times since its issuance.

4. The Patent is for a battery utilized in the pet containment system manufactured by Invisible Fence.

5. Perimeter manufactures a battery for use in connection with Invisible Fence's pet containment systems.

6. Perimeter's batteries have been and are still infringing upon one or more of the claims of the Patent.

7. Invisible Fence has suffered damage by reason of Perimeter's infringement of the Patent and will suffer additional damage unless the Court enjoins Perimeter from continuing such infringing acts and initiating such acts in the future.

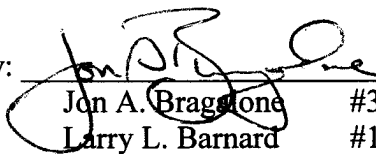
8. Perimeter has carried out its various acts of infringement in deliberate and willful disregard of Invisible Fence's rights in the Patent.

Wherefore, Invisible Fence, by counsel, respectfully requests the Court: (1) enter an order providing for a permanent injunction against Perimeter's continued infringement; (2) order an accounting of all of Perimeter's profits obtained by use of the infringing products; and (3) enter judgment in favor of Invisible Fence and against Perimeter for Invisible Fence's damages, including an accounting of all profits, and an assessment against Perimeter for interest, costs, treble damages, and reasonable attorneys' fees, and for all other just and proper relief.

DEMAND FOR A JURY TRIAL

Invisible Fence, by counsel, pursuant to Federal Rule of Civil Procedure 38(b), hereby demands a trial by jury on all issues properly triable by a jury.

Respectfully submitted,

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