

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PAWS ABOARD, LLC, A FLORIDA
LIMITED LIABILITY COMPANY.

Plaintiff,

vs.

PIETRO (“Pete”) DIDONATO, AN
INDIVIDUAL, AND DOES 1 THROUGH 20,
INCLUSIVE.

Defendants.

Case No.:8:11-cv-1978-T

**VERIFIED FIRST AMENDED
COMPLAINT FOR:**

- 1. DEFAMATION;
- 2. DEFAMATION;
- 3. DECLARATORY JUDGMENT,
and;
- 4. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE.

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, by and through its attorneys, hereby alleges and claims against the Defendant as follows:

Introduction

This is a complaint for declaratory and monetary relief brought against the Defendant for his illegal actions in asserting false and non-existent patent infringement claims relating to his alleged dog leash patent.

Jurisdiction

1. Plaintiff brings this civil action under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the patent laws of the United States, 35 U.S.C. §§ 1 et seq and the laws of the State of Florida. Plaintiff seeks to obtain declaratory judgments of non-infringement

and invalidity with respect to Defendant's patents and for causes of action under the common law that are related to the foregoing claims and within the Court's original jurisdiction such that they form part of the same case or controversy. This court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, as the parties are citizens of different states and the amount in controversy exceeds \$75,000.00, 1338 and 1367. This Court has personal jurisdiction over the Defendant under the appropriate provisions of Federal and Florida Law (Florida Statutes 48.193(1) and/or (2)).

Venue

2. Venue is proper in this jurisdiction under 28 U.S.C. Section 1391(b)(2) as a substantial part of the events giving rise to this complaint occurred within this judicial district.

The Parties

3. Plaintiff Paws Aboard, LLC (hereinafter "Paws Aboard") is a Florida Limited Liability Company organized under and existing pursuant to the laws of the state of Florida.

4. Plaintiff is informed and believes and thereon alleges that Defendant Pietro "Pete" DiDonato is an individual whose primary residence is 212 Bement Avenue Staten Island, New York 10310-1506.

5. Plaintiff is unaware of the names and capacities of the Defendants listed as Does 1 through 20, inclusive and will seek leave to amend this Complaint when such names and capacities are ascertained.

Facts Common To All Causes Of Action

6. Plaintiff is in the business of selling pet products, especially relating to dogs. Plaintiff is the originator of, distributes, markets and sells a non-tangling, dual dog leash known as the "Freedom Leash."

7. Plaintiff is informed and believes and thereon alleges that Defendant DiDonato holds a patent for a non-tangling, dual dog leash.

8. Plaintiff is informed and believes and thereon alleges that the Defendant's patent is invalid.

9. On or about May 17th, 2011 Defendant DiDonato, by and through his attorney, James A. Finder, of the Law Firm of Ostrolenk Faber, LLP, transmitted to Richard W. Tinberg, whom Plaintiff is informed and believes and thereon alleges is the President and Chief Executive Officer of Hammacher Schlemmer & Company, Inc, an independent dealer of the Freedom Leash, and Ms. Christine A. Aguilera, whom Plaintiff is informed and believes and thereon alleges is the President of SkyMall, Inc, another independent dealer of the Freedom Leash, demand letters (hereinafter the "Letters") alleging, *inter alia*, patent infringement relating to said Freedom Leash. True and correct copies of the Letters are attached hereto as Exhibits "A" and "B" and fully incorporated herein by this reference.

10. Plaintiff's Freedom Leash does not infringe on the rights of any patent held by Defendant DiDonato.

11. As a result of receiving the Letters from Defendant's counsel, at least two of Plaintiff's independent dealers are now, understandably, scared to continue distribution, sales and marketing of the Freedom Leash and have ceased and desisted from doing the same, despite the fact that Plaintiff is not infringing on any patent rights of Defendant DiDonato.

12. Plaintiff is informed and believes and thereon alleges that Defendant knows that both Hammacher Schlemmer and Skymall are primarily "internet stores" which do substantial business in the State of Florida. Plaintiff is further informed and believes and thereon alleges

that Defendant knew and knows that Plaintiff is a Florida business and that, in sending the Letters, Defendant intended to cause damage to Plaintiff in the State of Florida.

13. An internet website named “coolest gadgets .com” exists at the internet web address www.coolest-gadgets.com. On their page addressed <http://www.coolest-gadgets.com/20110121/tangle-free-dual-dog-leash/> (hereinafter the “Page”) they advertise the Freedom Leash sold by the Plaintiff.

14. The Page contains a “comments” section immediately below the advertisement for the Freedom Leash.

15. Plaintiff is informed and believes and thereon alleges that, on or about July 30th, 2011, Defendant DiDonato posted a comment on the “comments” section of the Page stating that “the tangle free dual leash has no patent and is infringing on my existing patent.” A true and correct copy of the Page is attached hereto as Exhibit “C” and incorporated herein by this reference as though set forth in full.

16. Again, Plaintiff’s Freedom Leash does not infringe on the rights of any patent held by Defendant DiDonato.

17. As a result of Defendant’s Letters and internet posting Plaintiff is now suffering immediate and irreparable harm financially and to its reputation and to the reputation of its products in the State of Florida in an amount no less than \$75,000.00.

18. On or about November 10, 2011 through November 21, 2011 Defendant, by and through his agents, reached out to the State of Florida and purposefully availed himself to the jurisdiction and laws of the State of Florida by engaging a process server to search for and serve a summons and complaint against the Plaintiff relating to the exact same subject matter as contained herein, despite the fact that this exact action is already pending in this Court. A true

and correct copy of the Defendants' Affidavit of Service is attached hereto as Exhibit "D" and incorporated herein as though set forth in full.

**COUNT 1
FOR DEFAMATION**

19. Plaintiff incorporates by reference the allegations made in Paragraphs 1 through 18 of this complaint as though set forth in full herein.

20. The internet posting published and/or republished on the Page by Defendant falsely states, among other things, that Plaintiff's Freedom Leash is infringing upon patent rights of the Defendant.

21. Defendant's statements were published and/or republished in the State of Florida and accessed in the State of Florida and concerned a Florida company and a Florida product.

22. Defendant's statements are false and defamatory and are not statements of opinion.

23. Defendant's statements were made without justification, privilege and/or excuse and were and are in bad faith.

24. Defendant's statements and their publication and/or republication are defamatory on their face without resort to inducement, innuendo or extrinsic fact and falsely suggest that Plaintiff's Freedom Leash is infringing on patent rights of the Defendant. By innuendo, the Defendant's statements and publications are defamatory against the Plaintiff as the Plaintiff is the only originator and original distributor of the Freedom Leash, a very easily discernable fact.

25. Plaintiff is informed and believes and thereon alleges that Defendant knew of the false and defamatory nature of its patent infringement allegations and other statements at the time they were made and, despite said knowledge, intentionally published and/or republished those allegations and statements without regard to the falsity thereof.

26. As a result of Defendant's actions Plaintiff has suffered irreparable injury to its reputation, the reputation of its Members and the reputation of its products, especially its Freedom Leash, along with other general and special damages in an amount to be proven at trial.

27. Plaintiff is informed and believes and thereon alleges that Defendant's conduct was and is fraudulent, malicious and oppressive and, as such, an award of punitive damages is both necessary and proper to prevent this Defendant and those similarly situated from engaging in the same or similar conduct in the future.

**COUNT 2
FOR DEFAMATION**

28. Plaintiff incorporates by reference the allegations made in Paragraphs 1 through 27 of this complaint as though set forth in full herein.

29. The Letters published and/or republished by Defendant falsely states, among other things, that Plaintiff is infringing upon patent rights of the Defendant.

30. Defendant's statements and the publication and/or republication thereof are false and defamatory and are not opinion.

31. Plaintiff is informed and believes and thereon alleges that Defendant's statements were made without justification, privilege and/or excuse and were and are made in bad faith. Plaintiff is further informed and believes and thereon alleges that the Defendant has no legitimate interest in protecting his patent as he has never commercially exploited his version of a tangle-free, dual dog leash and, prior to Plaintiff's instigation of this current action, he has never taken any judicial or other steps to determine, clarify and/or enforce his alleged patent rights. The Defendant's sole interest is to prevent anyone else from profiting from their lawful products and with good reason, as Defendant knows or should know that Plaintiff's Freedom Leash does not infringe on any of his patents.

32. Defendant's statements and their publication and/or republication are defamatory on their face without resort to inducement, innuendo or extrinsic fact and falsely suggest that Plaintiff's Freedom Leash is infringing on patent rights of the Defendant. By innuendo, the Defendant's statements and publications are defamatory against the Plaintiff as the Plaintiff is the only originator and original distributor of the Freedom Leash¹.

33. Plaintiff is informed and believes and thereon alleges that Defendant knew of the false and defamatory nature of its patent infringement allegations and other statements at the time they were made and, despite said knowledge, intentionally published and/or republished those allegations and statements without regard to the falsity thereof.

34. Defendant has published and/or republished its false statements to third parties, including at least two independent dealers of Plaintiff's Freedom Leash.

35. As a result of Defendant's actions Plaintiff has suffered irreparable injury to its reputation, the reputation of its Members and the reputation of its products, especially its Freedom Leash, along with other general and special damages in an amount to be proven at trial.

36. Plaintiff is informed and believes and thereon alleges that Defendant's conduct was and is fraudulent, malicious and oppressive and, as such, an award of punitive damages is both necessary and proper to prevent this Defendant and those similarly situated from engaging in the same or similar conduct in the future.

**COUNT 3
FOR DECLARATORY JUDGMENT**

37. Plaintiff incorporates by reference the allegations made in Paragraphs 1 through 36 of this complaint as though set forth in full herein.

¹ If there is any question about the innuendo in this instance, after receiving Defendant's Letters, which did not specifically name Plaintiff, both Hammacher Schlemmer and Skymall immediately contacted Plaintiff Paws Aboard; they certainly didn't have any confusion as to whom the Defendant was referring to.

38. As a result of the wrongful actions of the Defendant, as alleged *supra*, an actual and present controversy has arisen with respect to Defendant's claim of patent infringement which requires a declaration of the respective rights and duties of the parties to resolve.

39. For the reasons stated herein and because of the requirements of federal and common law, Defendant cannot establish that a patent infringement has occurred with respect to any patent held by the Defendant.

40. Plaintiff seeks a declaratory judgment of this Court declaring that Plaintiff's Freedom Leash does not infringe on any patent rights of the Defendant.

41. Plaintiff also seeks a declaratory judgment of this Court declaring that Defendant's patents, Numbers 7,207,296 and 7455,034 regarding a dual dog lease are invalid pursuant to 35 U.S.C. 102 and/or 35 U.S.C. 103.

COUNT 4
FOR INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE

42. Plaintiff incorporates by reference the allegations made in Paragraphs 1 through 41 of this complaint as though set forth in full herein.

43. There exists between and among Plaintiff and its independent dealers an economic relationship wherein Plaintiff manufactures, markets, distributes and sells its Freedom Leash, among other things, to its independent dealers for pecuniary gain and prospective economic advantage.

44. Plaintiff's relationships with its independent dealers are the result of the trust built up over years of hard work and the supply to them of successful, quality products. These relationships are not created overnight and are difficult to replace or repair if diminished or destroyed.

45. Plaintiff is informed and believes and thereon alleges that the Plaintiff knew and knows of these relationships between the Plaintiff and its independent dealers.

46. Plaintiff is informed and believes and thereon alleges that the actions taken by Defendant in sending the Letters and making the internet posting on the Page were and are intentional and done with the wrongful and unjustified intent to disrupt the valuable relationships Plaintiff holds with its independent dealers and to intentionally interfere with Plaintiff's prospective economic advantage.

47. Plaintiff is informed and believes and thereon alleges that Defendant's actions were and are in bad faith and without justification, privilege and/or excuse and that the Letters and internet posting on the Page were and are objectively baseless. Plaintiff is further informed and believes and thereon alleges that the Defendant has no legitimate interest in protecting his patent as he has never commercially exploited his version of a tangle-free, dual dog leash and, prior to Plaintiff's instigation of this current action, he has never taken any judicial or other steps to determine, clarify and/or enforce his alleged patent rights. The Defendant's sole interest is to prevent anyone else from profiting from their lawful products and with good reason, as Defendant knows or should know that Plaintiff's Freedom Leash does not infringe on any of his patents.

48. Plaintiff has suffered and continues to suffer damages as a result of Defendant's conduct in an amount to be proven at trial.

49. Plaintiff is informed and believes and thereon alleges that Defendant's conduct was and is fraudulent, malicious and oppressive and, as such, an award of punitive damages is both necessary and proper to prevent this Defendant and those similarly situated from engaging in the same or similar conduct in the future.

Prayer for Relief

Wherefore, Plaintiff does hereby respectfully pray for and request the following relief against the Defendant as follows:

On the First Cause of Action, for Defamation:

1. For damages according to proof at trial;
2. For an award of punitive damages;
3. For full costs of suit, including reasonable attorneys' fees, and;
4. For any other such relief that this Court should deem proper and just.

On the Second Cause of Action, for Defamation:

1. For damages according to proof at trial;
2. For an award of punitive damages;
5. For full costs of suit, including reasonable attorneys' fees, and;
4. For any other such relief that this Court should deem proper and just.

On the Third Cause of Action, for Declaratory Judgment:

1. For a declaratory judgment that Plaintiff's Freedom Leash does not infringe on any patent rights of the Defendant;
2. For a declaratory judgment that the Defendant's patents are invalid;
3. For full costs of suit, including reasonable attorneys' fees, and;
4. For any other such relief that this Court should deem proper and just.

On the Fourth Cause of Action, for Intentional Interference with Prospective Economic Advantage:

1. For damages according to proof at trial;
2. For an award of punitive damages;
6. For full costs of suit, including reasonable attorneys' fees, and;
7. For any other such relief that this Court should deem proper and just.

Respectfully Submitted,



Date: November 23, 2011

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