

1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 **OurPet's Company,**  
5 1300 East Street  
6 Fairport Harbor, Ohio 44077,

7 Plaintiff,

8 v.

9 **Bergan, LLC,**  
10 c/o Erik Elmburg, Registered Agent,  
11 2402 Industrial Parkway  
12 Miami, OK 74354,

13 Defendant.

)  
) Case No. \_\_\_\_\_

)  
) Judge \_\_\_\_\_

)  
) Magistrate \_\_\_\_\_

)  
) **COMPLAINT FOR**  
) **PATENT INFRINGEMENT**

)  
) *(Jury Demand Endorsed Hereon)*  
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14 NOW COMES the Plaintiff, *OurPet's Company*, and for its Complaint against the Defendant  
15 hereby alleges as follows:

16 **THE PARTIES**

- 17 1. The Plaintiff, OurPet's Company, is a corporation organized under the laws of Colorado, and  
18 has its principal place of business in Fairport Harbor, Ohio, which is in Lake County.  
19 2. The Defendant, Bergan, LLC, is a corporation organized under the laws of Oklahoma and  
20 has its principal place of business in Oklahoma.

21 **JURISDICTION AND VENUE**

- 22 3. This is an action for patent infringement. The patent claims arise under the patent laws of the  
23 United States, specifically 35 U.S.C. § 281. This Court has federal question subject matter  
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jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 because this action arises under the patent laws of the United States.

4. In addition or in the alternative to this Court’s federal question jurisdiction, this Court also has subject matter jurisdiction pursuant to diversity of citizenship principles as the parties are from different states and the amount in controversy exceeds \$75,000.
5. This Court has personal jurisdiction over the Defendant by virtue of their sale of products, transaction of business, and solicitation of business within the State of Ohio, within this judicial district and elsewhere.
6. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims occurred in this judicial district, the Defendant is subject to personal jurisdiction in this district, and the infringement occurred within this judicial district.

**FACTUAL ALLEGATIONS**

7. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of innovative, high-quality accessory and consumable pet products in the United States and overseas.
8. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical link to nature.
9. Along with proper nutrition, mental stimulation, physical exercise, and veterinary care, the Plaintiff’s products help to maintain the health and wellness of pets.
10. The Plaintiff strives to develop truly unique and innovative products. In fact, almost all of the Plaintiff’s products are patented and are the only ones of their kind in the marketplace.

1 11. The Plaintiff has become a leader in feeding systems to improve the health and comfort of  
2 pets. It has also developed interactive toys that provide fun, rewarding mental and physical  
3 challenges to pets. It has also developed healthy consumables for achieving and maintaining  
4 high mental, physical, and immune levels for pets.

5 12. Dr. Steven Tsengas, PhD is the founder and CEO of the Plaintiff corporation.

6 13. On October 16, 2012, United States Utility Patent No. 8,286,589, entitled “Covered Bowls  
7 Such as Pet Food and Water Bowls” (hereinafter referred to as the ‘589 patent) duly and  
8 legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and  
9 accurate copy of the ‘589 patent as issued is attached hereto as “Exhibit 1.”)

10 14. All rights to the ‘589 patent, including but not limited to, the right to recover for infringement  
11 thereunder, have been assigned to the Plaintiff, OurPet’s Company.

12 15. The ‘589 patent teaches a pet bowl with a rubber or plastic cover that is permanently or  
13 removeably secured to the outer surface of the bowl, to make the bowl skid resistant, among  
14 other things.

15 16. On March 25, 2008, United States Design Patent No. D565,253, entitled “Pet Feeder with  
16 Non-Skid Lower Surface” (hereinafter referred to as the ‘253 patent) duly and legally issued  
17 to Siddarth Modi and Steven Tsengas, as inventors, for the aforementioned invention. (A  
18 true and accurate copy of the ‘253 patent as issued is attached hereto as “Exhibit 2.”)

19 17. All rights to the ‘253 patent, including but not limited to, the right to recover for infringement  
20 thereunder, have been assigned to the Plaintiff, OurPet’s Company.

21 18. The Plaintiff has widely and continuously promoted and sold its patented products under the  
22 Durapet® brand, which products embody the ‘589 and/or ‘253 patents.  
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1 19. The Plaintiff has invested considerable time and resources in marketing and advertising their  
2 patented products.

3 20. On or about September 26, 2011, Plaintiff, through counsel, notified the Defendant of its  
4 infringing conduct, among other things. (A true and accurate copy of the Sep. 26, 2011 letter  
5 is attached hereto as “Exhibit 3.”)

6 21. The Defendant has had actual knowledge of the Plaintiff’s intellectual property rights in the  
7 Plaintiff’s Durapet® product line by virtue of the Plaintiff’s marking of its products as  
8 patented and/or patent pending.

9 22. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
10 importing product that infringes the ‘589 utility patent and the ‘253 design patent.

11 23. The Defendant’s products infringe the ‘589 utility patent, as evidenced by the attached claims  
12 chart. (A claims chart comparing the Defendant’s product to the noted claims in the  
13 Plaintiff’s ‘589 utility patent is attached hereto as “Exhibit 4.”) (The inclusion of the  
14 attached claims chart is for illustrative purposes only, and the Plaintiff reserves the right to  
15 amend and modify its claim assertions, allegations, and construction pursuant to the local  
16 patent rules.)

17 24. The Defendant’s products infringe the ‘253 design patent, as evidenced by the attached  
18 claims chart. (A claims chart comparing the Defendant’s product to the noted claims in the  
19 Plaintiff’s ‘253 design patent is attached hereto as “Exhibit 5.”) (The inclusion of the  
20 attached claims chart is for illustrative purposes only, and the Plaintiff reserves the right to  
21 amend and modify its claim assertions, allegations, and construction pursuant to the local  
22 patent rules.)

1 25. The Defendant has sold its infringing product in this judicial district in Ohio and elsewhere.

2 26. The aforementioned activities of the Defendant have also injured and threaten future injury to  
3 the Plaintiff. More specifically, the Defendant's activities have diminished the Plaintiff's  
4 goodwill and caused the Plaintiff to lose sales that it otherwise would have made but for the  
5 sales of the Defendant.

6 27. The Defendant is not authorized in any way to sell their infringing products or to use the  
7 patents owned by the Plaintiff.

8 28. The Plaintiff is entitled to an award of damages against Defendant, and is entitled to  
9 injunctive relief.  
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11 **CLAIM NO. 1**

12 *(Patent Infringement 35 U.S.C. § 271 et seq.)*

13 29. The Plaintiff hereby incorporates by reference each statement, whether written above or  
14 below, as if each is fully re-written herein.

15 30. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
16 importing products that infringe the '589 utility patent. (See Exs. 1 & 4.)

17 31. The Defendant's conduct is an infringement of the '589 patent, and in violation of 35 U.S.C.  
18 § 271 within this judicial district and elsewhere.

19 32. The Defendant will continue to make, use, offer for sale, sell, and import their infringing  
20 products unless enjoined by this Court.

21 33. The Defendant has been, and is, actively inducing infringement of the '589 patent, by  
22 offering for sale and selling their infringing products to dealers at wholesale prices who have,  
23 and will continue to, offer them for sale and sell them to end users.  
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1 34. The Defendant's infringement is, and at all times has been, deliberate, willful, with full  
2 knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to  
3 treble damages pursuant to 35 U.S.C. § 284.

4 35. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
5 appropriate attorney's fees is justified  
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7 **CLAIM NO. 2**

8 *(Patent Infringement 35 U.S.C. § 271 et seq.)*

9 36. The Plaintiff hereby incorporates by reference each statement, whether written above or  
10 below, as if each is fully re-written herein.

11 37. The Defendant has been and is currently making, using, offering for sale, selling, and/or  
12 importing products that infringe the '253 design patent. (See Exs. 2 & 5.)

13 38. The Defendant's conduct is an infringement of the '253 patent, and in violation of 35 U.S.C.  
14 § 271 within this judicial district and elsewhere.

15 39. The Defendant will continue to make, use, offer for sale, sell, and import their infringing  
16 products unless enjoined by this Court.

17 40. The Defendant has been, and is, actively inducing infringement of the '253 patent, by  
18 offering for sale and selling their infringing products to dealers at wholesale prices who have,  
19 and will continue to, offer them for sale and sell them to end users.

20 41. The Defendant's infringement is, and at all times has been, deliberate, willful, with full  
21 knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to  
22 treble damages pursuant to 35 U.S.C. § 284.

23 42. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
24 appropriate attorney's fees is justified.  
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1 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

2 WHEREFORE, the Plaintiff prays that this Court enter an Order against the Defendant as  
3 follows:

- 4 A) A preliminary injunction enjoining the Defendant from making, using, selling, or importing  
5 any product that infringes upon the '589 and '253 patents;
- 6 B) A permanent injunction enjoining the Defendant from making, using, selling, or importing  
7 any product that infringes upon the '589 and '253 patents;
- 8 C) An accounting for damages resulting from Defendant’s patent infringement and the trebling  
9 of such damages because of the knowing, willful, and wanton nature of the Defendant’s  
10 conduct;
- 11 D) An assessment of interest on the damages so computed;
- 12 E) An award of attorney’s fees and costs in this action under 35 U.S.C. § 285;
- 13 F) Judgment against Defendant indemnifying the Plaintiff from any claims brought against the  
14 Plaintiff for negligence, debts, malpractice, product liability, or other breaches of any duty  
15 owed by the Defendant to any person who was confused as to some association between the  
16 Plaintiff and Defendant as alleged in this Complaint;
- 17 G) Judgment against Defendant for an accounting and monetary award in an amount to be  
18 determined at trial;
- 19 H) Requiring Defendant to account to the Plaintiff for all sales and purchases that have occurred  
20 to date, and requiring the Defendant to disgorge any and all profits derived by Defendant for  
21 selling infringing product;
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- 1 D) Requiring Defendant to provide full disclosure of any and all information relating to its  
2 supplier or suppliers of infringing product;
- 3 J) Requiring Defendant to provide the location of any and all manufacturing equipment,  
4 including but not limited to, molds used to manufacture infringing product;
- 5 K) Requiring Defendant to destroy any and all manufacturing equipment used to manufacture  
6 infringing product or to deliver said equipment to the Plaintiff;
- 7 L) Ordering a product recall of infringing product for destruction;
- 8 M) Requiring Defendant to file with this Court and serve on the Plaintiff within thirty (30) days  
9 of this Court's order a report setting forth the manner in which they complied with the order;
- 10 N) Requiring Defendant to provide to Plaintiff all sales records, including but not limited to,  
11 email, mail, and advertising lists;
- 12 O) Damages according to each cause of action herein;
- 13 P) Prejudgment interest; and
- 14 Q) Any such other relief in law or equity that this honorable Court deems just.

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17 **JURY DEMAND**

18 WHEREFORE, the Plaintiff requests a trial by jury on all issues so triable.  
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Most Respectfully Submitted,

/s/ David A. Welling  
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