

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOGGIE DENTAL INC, *et al.*,

Plaintiffs,

v.

CDOFFICE, *et al.*,

Defendants.

Civil Action No.

21-271

(Judge Hornak)

DOGGIE DENTAL INC, *et al.*,

Plaintiffs,

v.

AVANTDIGITAL, *et al.*,

Defendants.

Civil Action No.

21-565

(Judge Hornak)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

I, Brian Samuel Malkin, hereby affirm as follows:

1. I am over eighteen (18) years of age and not a party to this action. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to attest to the matters stated herein. I have personal knowledge of every statement made in this Certificate of Service and such statements are true and correct.

2. I am an attorney with the law firm of Ference & Associates LLC, which is located at 490 Broad Street, Pittsburgh, Pennsylvania 15143.

3. I am an attorney for the Plaintiffs in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiffs' Motion for Default Judgment and Permanent Injunction (hereinafter "Motion for Default Judgment") against those Defendants for whom the Clerk has entered Default (the "Defendants").

5. Concurrent with service of the Summons and Complaint, Plaintiff served all of the Defendants, with Requests for Admissions, which included, *inter alia*, the following:

Plaintiffs are the owner of U.S. Patent No. 10,477,838 B2 ("the '838 Patent"), issued November 19, 2019, for "PET CHEW TOY FOR DENTAL SELF-CLEANING BY DOMESTIC PETS" and which covers Plaintiffs' Product.

You were on notice of the '838 patent before you began manufacturing, offering for sale, selling, promoting, advertising, and otherwise distributing the Infringing Product.

You have intentionally infringed and continue to infringe at least one claim of the '838 patent either directly or indirectly through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271, by making, using, selling, importing and/or offering to sell Infringing Products, namely the pet toothbrushes that are nearly identical to Plaintiffs' genuine BRISTLY[®] dog toothbrush.

But for your infringement and/or counterfeiting of Plaintiffs' products, Plaintiff would have made each sale you made instead and at Plaintiffs' pre-infringement selling price.

At all times relevant hereto, there was consumer demand for the Plaintiffs' BRISTLY[®] dog toothbrush.

At all times relevant hereto, Plaintiffs have the manufacturing and marketing capability to meet the consumer demand for the Plaintiffs' genuine BRISTLY[®] dog toothbrush.

Admit that there is no acceptable non-infringing substitute for the Plaintiffs' genuine BRISTLY[®] dog toothbrush.

Admit that you are selling the infringing product on multiple online platforms including the online platform identified in this lawsuit.

Admit that the profit per unit of the Infringing Product was at least \$20.00.

Admit that each month you sold 15,000 units of the Infringing Product.

Admit that the profit per unit of toothpaste sold was \$7.50.

Admit that you sold 7300 units of toothpaste per month.

Your sales of substandard infringing and/or counterfeit products have undermined and damaged Plaintiffs' reputation and goodwill associated with its BRISTLY[®] products requiring Plaintiffs' to expend \$15,000.00 in corrective advertising costs.

Not one of the Defendants has responded to these Requests for Admissions. Thus, each request is deemed admitted.

6. I am informed and believe that none of the Defendants are infants or incompetent persons, and upon information and belief, the Servicemembers Civil Relief Act does not apply.

I declare under the penalty of perjury laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed this 10th day of December, 2021, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2021, the foregoing document is being filed via the Case Management/Electronic Case Filing (CM/ECF) system; I also certify that on the same day, a true copy of the foregoing is being served in accordance with the Order Authorizing Alternate Service.

/s/ Stanley D. Ference III
Stanley D. Ference III