

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

DOGGIE DENTAL INC, *et al.*,

Plaintiffs,

v.

AVANTDIGITAL, *et al.*,

Defendants.

Civil Action No.

21-565

(Judge Hornak)

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiffs for entry of a default judgment and permanent injunction against the Defendants identified on Schedule “A” filed herewith (hereinafter referred to as “Defaulting Defendants”) for Defaulting Defendants’ unauthorized use of Plaintiffs’ Patent in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling and/or sale of Infringing Products¹ on the eBay.com online marketplace platform.

The Court, having considered the Plaintiffs’ Motion for Default Judgment and Permanent Injunction, the Declaration of Brian Samuel Malkin in support of thereof, the Certificates of Service of the Summons and Complaint, the Entries of Default by the Clerk of Courts, and upon all other pleadings and papers on file in this Action, it is hereby ORDERED as follows

¹ As alleged in Plaintiff’s Complaint, “. . .the Defendants identified in **Schedule “A”** of the Complaint, were and/are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling products that have infringed upon one or more of the claims of U.S. Patent No. 10,477,838 (“Plaintiffs’ Patent” or “the ‘838 patent”) by offering for sale, selling, and distributing knock-off versions of Plaintiffs’ BRISTLY® dog toothbrush (“Infringing Products”). Defendants accomplish their infringing sales through the use of, at least, the Internet based e-commerce stores operated via at least the Third-Party Service Provider marketplace platform.

(hereinafter, "Order"):

I. Defaulting Defendants' Liability

Judgment is granted in favor of Plaintiffs on the claim of patent infringement asserted against Defendants in the Complaint.

II. Damage Awards

IT IS FURTHER ORDERED that because it serves the compensatory and punitive purpose of the prohibitions on willful infringement under the Patent Act; and because Plaintiffs have sufficiently set forth the basis for the damage awards requested in their supporting papers, the Court finds that such awards are reasonable and Plaintiffs are awarded damages against each of the Defaulting Defendants in Schedule "A" in the amount of \$2,128,500.00. This amount is awarded severally and distinctly as to each such Defendant.

III. Permanent Injunction

A. IT IS HEREBY ORDERED that each Defaulting Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defaulting Defendant having notice of this Default Judgment Order shall be permanently restrained and enjoined from:

- (1) from (a) their unauthorized and unlicensed use of Plaintiffs' Patent, distribution, marketing, advertising, offering for sale, or sale of any Infringing Products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products that infringe upon at least one claim of the Plaintiff's Patent;

- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,² Merchant Storefronts³ or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as “Defendants’ Assets”);
- (3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, and/or display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;
- (4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately offering for sale the Infringing Products within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites, from search engines’ databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs; and
- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs.

² As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them.

³ As defined in the Application, a “Merchant Storefront” is any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

B. IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 283, the Defaulting Defendants must deliver up for destruction to Plaintiffs any and all Infringing Products.

C. IT IS FURTHER ORDERED that Third Party Service Providers⁴ and Financial Institutions⁵ are permanently enjoined and restrained from:

(1) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts"); and

(2) providing services to Defaulting Defendants, Defaulting Defendants' User Accounts and Defaulting Defendants' Merchant Storefronts, including, without limitation, continued operation of Defaulting Defendants' User Accounts and Merchant Storefronts which are connected in any way in the distribution, marketing, advertising, offering for sale, or sale of any products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner Infringing Products.

IV. Follow-Up Requests

IT IS FURTHER ORDERED, the following products as pictured in the **Schedule "B"** are either made, used by, offered for sale or sold into the United States contain every element or equivalent of at least one claim of the Plaintiff's Patent; consequently, all online marketplaces,

⁴ Third Party Service Providers are any third-party providing services in connection with any Defaulting Defendant and/or any Defaulting Defendant's Merchant Storefront, including, without limitation, Internet Service Providers, back-end service providers, web designers, sponsored search engine providers, sponsored ad-words providers, sponsored shopping providers, merchant account providers, third-party processors and other payment processing services, shippers, domain name registrars and domain name registries.

⁵ Financial Institutions are any banks, financial institutions, credit card companies and payment processing agencies, such as Amazon Payments Inc. d/b/a Pay.amazon.com, and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defaulting Defendant.

including but not limited to, amazon.com, ebay.com, aliexpress.com, and wish.com,, and thus there is sufficient cause such that, within no later than five (5) calendar days of Plaintiffs' request, the relevant Third Party Service Provider, the same shall upon receipt of this Order, suspend, block, tombstone, and/or delete any and any product listings identified by the Plaintiff as either identical or substantially similar, to the above-described products in **Schedule "B"**, whether sold by the Defendant or other persons or entities;

(2) however, the Seller controlling such listings shall not be subject to financial account restraint.

V. Post-Judgment Asset Transfer and Asset Freeze Order

A. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure, and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiffs would have enforcing this Order, Defaulting Defendants' Assets from Defaulting Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the Temporary Restraining Order and/or Preliminary Injunction Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action (collectively, "Defaulting Defendants' Frozen Assets" and "Defaulting Defendants' Frozen Accounts"), are, to the extent that a given Defaulting Defendant's Frozen Assets equal the Defaulting Defendants' Individual Damages Award, hereby released and transferred to Plaintiffs as full satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant. Those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiffs by Financial Institution(s) through Plaintiffs' counsel within twenty (20) business days following service of this Default Judgment Order. Upon receipt by Plaintiffs' counsel of such Defaulting

Defendant's Frozen Assets in full satisfaction of the Defaulting Defendants' Individual Damages Award, the Financial Institution(s) holding that Defaulting Defendant's Frozen Assets and Defaulting Defendants' Frozen Accounts may unfreeze that Defaulting Defendant's Frozen Assets and Defaulting Defendant's Frozen Accounts. To the extent that a Defaulting Defendant's Frozen Assets are less than the Defaulting Defendants' Individual Damages Award, that Defaulting Defendant's Frozen Assets are hereby released and transferred to Plaintiffs as partial satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant and those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiffs, by the Financial Institution(s), through Plaintiffs' counsel forthwith.

B. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiffs would have enforcing this Order, the Court also hereby grants Plaintiffs' request for a post-judgment restraining order continuing the attachment of each Defaulting Defendant's Frozen Assets until Plaintiffs have recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by that Defaulting Defendant under this Order, or until further order of this Court.

C. IT IS FURTHER ORDERED that in accordance with this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiffs would have enforcing this Order:

1. until Plaintiffs have recovered the full payment of the Defaulting Defendants' individual damages award owed to them by any Defaulting Defendant under this

Order, in the event that Plaintiffs discover new and/or additional Defaulting Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defaulting Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defaulting Defendants' Additional Assets" and "Defaulting Defendants' Additional Financial Accounts," respectively), Plaintiffs shall have the ongoing authority to serve this Order on any Financial Institutions controlling or otherwise holding such Defaulting Defendants' Additional Assets and/or Defaulting Defendants' Additional Financial Accounts ("Financial Institutions holding Defaulting Defendants' Additional Assets and/or Financial Accounts");⁶

2. upon notice of this Order, Financial Institutions holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall immediately locate Defaulting Defendants' Additional Financial Accounts, attach and restrain such Defaulting Defendants' Additional Assets in Defaulting Defendants' Additional Financial Accounts from being secreted, concealed, transferred or disposed of or withdrawn; and
3. no later than after twenty (20) business days following the service of this Order on Financial Institutions holding Defaulting Defendants' Additional Assets and/or Financial Accounts, Financial Institutions holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets to Plaintiffs as partial or full satisfaction of the Defaulting Defendants' Individual Damages Award, unless Defaulting Defendant has filed with this Court

⁶ This Order contemplates that investigation and/or discovery during judgment collection may reveal that Defaulting Defendants may have used other user accounts, operated by other Third Party Service Providers and Financial Institutions other than those named and that any additional discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall be subject to the restraints, asset seizure and turn over in this Order.

and served upon Plaintiffs' counsel a request that such Defaulting Defendants' Additional Assets be exempted from this Order; at the time the funds are transferred, Financial Institutions holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall provide to Plaintiffs a breakdown reflecting: the (i) total funds restrained in this matter per Defaulting Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defaulting Defendant's funds, restrained prior to release; and (iii) the total funds transferred per Defaulting Defendant to the Plaintiffs.

VI. Miscellaneous Relief

- A. Upon Plaintiffs' request, the Third Party Service Provider(s) or Financial Institution(s) shall disable and/or cease facilitating access to the Seller IDs, including deleting, and/or suspending identified listings, and any other alias seller identification names being used to offer for sale and/or sell Infringing Products;
- B. The Plaintiffs may serve this injunction on any e-mail service provider, including, Google LLC and Microsoft, Inc., with a request that the service provider permanently suspend the e-mail addresses which are used by the Defaulting Defendants in connection with the Defaulting Defendants' promotion, offering for sale, and/or sale of Counterfeit Products;
- C. Upon the Plaintiffs' request, any Internet marketplace website operator and/or administrator who is in possession, custody, or control of the Defendants' Infringing Products, including but not limited to Amazon.com, Inc. and its affiliates, Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform, eBay Inc., and Etsy, Inc., shall permanently cease fulfillment of and sequester those goods, and surrender the same to the Plaintiff;
- D. Any failure by a Defaulting Defendant to comply with the terms of this Default Judgment Order

shall be deemed contempt of Court, subjecting the Defaulting Defendant to contempt remedies to be determined by the Court, including fines and seizure of property;

- E. Interest from the date of this action was filed shall accrue at the legal rate pursuant to 28 U.S.C § 1961;
- F. The bond posted by Plaintiffs in the amount of \$5,000.00 is hereby ordered released by the Clerk;
- G. Plaintiffs shall serve the Defaulting Defendants with a copy of this Order in accordance with the Alternative Service Order; and
- H. This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Judgment and permanent injunction.

SO ORDERED.

SIGNED this ____ day of _____, 2021
Pittsburgh, Pennsylvania

Mark. R. Hornak
Chief United States District Judge

cc: Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

Schedule “A”
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
█	██████████	██████████
2	0731*2013	264358064699
3	2013BLINGMALL	372657554625
4	2018OUTDOOR5	113881101110
5	777MYSHOP777	312851162528
█	██████████	██████████
7	ABIGALEKIDS	163998900765
8	AIWENGOING	264570773784
9	ALMINKO_0	392620628407
█	██████████	██████████
11	ANTOP3302	223766125027
█	██████████	██████████
13	ARROWHUNT	133278654922
█	██████████	██████████
15	AVRAM-2-DEALS	114054879835
16	AWESOME.365	143468073178
17	AZBASE	352776594675
18	AZCOOL	163812406734
19	BAN6067	283731592587
20	BAYSHINECOOLER	333340822090

Defendant No.	Defendant/Store Name	Seller ID
21	BELABU0	193200279599
22	BEST_FASHIONAL	164273595246
■	██████████	██████████
■	██████████	██████████
■	██████████	██████████
26	BUYADISE	184102976494
27	BUYITNPW	133489860155
28	CCS3226	223763062302
29	CENTERSTOCK	113951084441
30	CHOLLATIS	274122803013
31	CLOUD1437	143478416113
32	COACHEER	312731674586
33	CRAFTDIYONLINE	372866370318
■	██████████	██████████
35	DAYBUYDAYFORYOU	163946768803
36	DISCOUNT-E-MALL	392534370753
37	D-MALL	163860365170
38	DOGSTAGRAMLOVE	124006622658
■	██████████	██████████
40	DOUBLAWIN	233371613174
41	E.SHOP.2019	312565371324
42	EIFACTION	293204505573
43	ENERGYSAVING-LED	163755339541
44	ESTORES G	113831782676

Defendant No.	Defendant/Store Name	Seller ID
■	■■■■■■	■■■■■■
46	FAAASHION_STORE	283603616551
47	FAIRYARD	293331718874
48	FASTNEWSALES	124001711587
49	FEABOA0	383071343627
50	FEIAIA0213S	153735447637
■	■■■■■■	■■■■■■
52	FREESTYLE_SHOPPING	352885610729
53	FUNBUYIT	233375502283
■	■■■■■■■■■■■■■■■■■■■■	■■■■■■
■	■■■■■■■■■■■■■■■■■■■■	■■■■■■
■	■■■■■■■■■■■■■■■■■■■■	■■■■■■
■	■■■■■■■■■■■■■■■■■■■■	■■■■■■
58	HAPPYLIFEDEALS	174119467409
59	HEBA_KH	401877607094
60	HOMIES_GOOD	163745449534
■	■■■■■■■■■■■■■■■■■■■■	■■■■■■
62	I-DOMESTIC	113841227571
63	ILOVETABLETPC2014	202680519565
64	IN*GOD*WE*TRUST	113901221334
65	INBARFARKASH2001	153784306800
■	■■■■■■■■■■■■■■■■■■■■	■■■■■■
67	IUCOOL	233281726583
68	JAMES2012	123429913849

Defendant No.	Defendant/Store Name	Seller ID
■	■■■■■■■■■■	■■■■■■■■■■
70	JULAPANYA-0	392564481520
71	JUNE_085	254070575583
72	JUSTINYRD	383137659115
73	JUVY97	183801005946
74	KINGSEA8	163828756170
75	KYUCIM	324019228431
76	LARGEWORLD3	202781277044
77	LETTERBU619	264573932362
78	LIFEFIRSTPLACE	303301960701
79	LILLYK91	332925089849
■	■■■■■■■■■■	■■■■■■■■■■
81	LINYAN1986_3	202859618622
82	LOVE.SUNFLOWER	202751830727
83	LPCHENMJ	264498250039
84	LUCKYAUCTION2011	143373384669
■	■■■■■■■■■■	■■■■■■■■■■
86	LYNWORRAL_0	143374452638
87	MAGIC.HOUSE2013	163808640129
■	■■■■■■■■■■	■■■■■■■■■■
89	MANFREDOG	372766306534
90	MICHAEEELIYAH_0	153624866049
91	MIGOSTORE87	202750360621
92	MSW4BABY	264414891858

Defendant No.	Defendant/Store Name	Seller ID
117	ROSY_DAYS	163660341166
118	SAFELECTRON	264428221704
119	SAMSUN16	323711282483
120	SATUKEREK	352747106774
121	SAVEONLINEDEALS	372752737702
122	SCARBOROUGH-8	123836582850
█	██████████	██████████
124	SHOP667788	273991716320
125	SHUSHHO-0	123762427055
█	██████████	██████████
█	██████████	██████████
█	██████████	██████████
129	STAYPOSITIVE_STORE	401862599047
130	STOREADIL	193102459921
131	STYLISHMOMENT	223491681303
█	██████████	██████████
133	THTA70	324032846916
█	██████████	██████████
█	██████████	██████████
136	TRANSBETTER	372851702556
137	TURTGOODS	223658138543
138	UNIVERSALSTORE2018	132876527010
139	VAKEWEAR	392544851502
█	██████████	██████████

**Schedule “B”
Patent Infringing Products**

Type 1 Infringing Product



Type 2 Infringing Product



Type 3 Infringing Product



Type 4 Infringing Product



Type 5 Infringing Product



Type 6 Infringing Product

