

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

PIKE BRANDS LLC,

Plaintiff,

v.

TEEGEM, *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

**DECLARATION OF NATE JELOVICH
IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION
FOR ENTRY OF A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, **NATE JELOVICH**, do hereby declare:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am an executive of the Plaintiff company, PIKE BRANDS LLC, a Delaware limited liability with a registered address of 113 Cherry Street, PMB 89249, Seattle, Washington 98104-2205. Plaintiff owns 100% of the assets and intellectual property comprising business of the Grabease and Nooli baby utensils.

3. I make this declaration in support of Plaintiff's *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction against Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on **Schedule "A"** to the Complaint.

4. The Defendants use the interactive commercial Internet websites and Internet based e-commerce stores using the seller identities and store names set forth on **Schedule “A”** to willfully infringe one or more of the Plaintiff’s design patents (“Plaintiff’s Patents”) (true and correct copies of which are attached as **Exhibits 2A -2D**) to the Complaint and/or Plaintiff’s distinct trade dress, by offering for sale, selling, and distributing knock-off versions of Plaintiff’s Grabease and Nooli brand baby utensils (“Infringing Products”).

5. The Plaintiff’s innovative Grabease and Nooli brand baby utensils were created with a baby in mind. All of the combined features did not exist until these utensils were brought to market. The idea was to promote a baby’s safe and independent feeding. Thus, the utensils are of a size and shape that is perfect for the baby’s grip. They help strengthen the baby’s fingers by promoting grip while facilitating hand-to-mouth feeding motion. The combination of the short handle and the built-in choke protection barrier prevent the baby from putting the utensil too far into its mouth. The utensils are recommended by Occupational Therapists because they help the baby develop fine and gross motor skills, getting them ready to color, draw, and write in the months to come.



Plaintiff’s Grabease Baby Utensils



Plaintiff’s Nooli Baby Utensils

6. Plaintiff's Products have been featured in videos, articles, or podcasts by numerous outlets, including:

10 Essentials for Traveling with Infants - <https://www.tlcme.com/stuff-we-love/essentials-for-traveling-with-infants>

42 Products You Didn't Know You've Been Dreaming Of - <https://www.buzzfeed.com/malloryannp/products-didnt-know-been-dreaming-of>

Valentines Day Gifts for Kids 2020 - <https://consumerqueen.com/lifestyle/valentines-day-gifts-for-kids-2020>

Save Me Steve: Baby Safety Products - <https://www.fox4news.com/video/606259>

Toddler Feeding Essentials: 18 Months - <https://www.eatsleepwear.com/2020/02/18/toddler-feeding-essentials-18-months/>

I'm Going to Spain with a 1-Year-Old and This is What I'm Packing - <https://www.purewow.com/travel/spain-packing-list-with-kids>

The Best Baby & Toddler Feeding Tools of 2021 - <https://redtri.com/best-feeding-tools-and-utensils/slide/8>

Meet the Makers: Getting to Know Grabease Founder Maya Shalev - <https://babiesandtots.macaronikid.com/articles/5f17b22240430c50f98b4e59/meet-the-makers:-getting-to-know-grabease-founder-maya-shalev>

Best Plates, Placemats and Utensils for Toddlers - <https://www.parenting.com/toddler/gear/best-plates-placemats-and-utensils-for-toddlers/>

These Gifts That Give Back Will Remind You What The Holidays Are All About -
<https://www.romper.com/p/10-holiday-gifts-that-give-back-this-holiday-season-because-giving-twice-is-even-more-nice-13211151>

StrollerTraffic Round-Up: 10 Mealtime Must-Haves for Baby -
<https://babiesandtots.macaronikid.com/articles/5dc1bd8759510a057bf92106/strollertraffic-round-up-10-mealtime-must-haves-for-baby>

Baby Must Haves - <https://famadillo.com/baby-must-haves/>

Toys That Will Grow with Your Tot - <https://www.tlcme.com/stuff-we-love/toys-that-will-grow-with-your-tot>

Best Baby Spoons - <https://www.whattoexpect.com/baby-products/nursing-feeding/best-baby-spoons/>

Favorite Products for Baby-to-Toddler Feeding -
<https://consumerqueen.com/lifestyle/valentines-day-gifts-for-kids-2020>

Open wide! The 15 Best Baby Feeding Spoons That Will Simplify the Transition to Solids - <https://www.scarymommy.com/spotted/best-baby-feeding-spoons/>

Best Teethers - <https://www.lucieslist.com/guides/introduction-teething/best-teethers/>

Best Baby Spoons - <https://www.whattoexpect.com/baby-products/nursing-feeding/best-baby-spoons/>

7. Plaintiff's Products are sold under the brand names Grabease and Nooli baby utensils, and are widely advertised and promoted by Plaintiff, its authorized distributors, and unrelated third parties via the Internet. Over the past several years, visibility on the Internet, particularly via Internet search engines such as Google, Yahoo!, and Bing have become

increasing important to Plaintiff's overall marketing. During the relevant times, the Plaintiff and its predecessors have sold its baby utensils through Amazon.com and other online and retail outlets enjoying great commercial success for their baby utensils.

8. Thus, Plaintiff and its authorized distributors expend significant monetary resources on Internet marketing, including search engine optimization ("SEO") strategies. Other costs include social media ads, tradeshows, and handing out free samples. Those strategies allow Plaintiff and its authorized retailers to fairly and legitimately educate consumers about the value associated with Plaintiff's brand and the goods sold thereunder. Similarly, Defendants' individual seller's stores are indexed on search engines and compete directly with Plaintiff for space in the search results.

9. As a result of the commercial activities by Pike Brands and its predecessors as set forth herein, Pike Brands' trade dress has developed and now has a secondary and distinctive meaning to consumers and the baby products industry. Specifically, Pike Brands' trade dress has come to indicate that the Grabease baby utensils and Nooli baby utensils come from or originate only with Pike Brands.

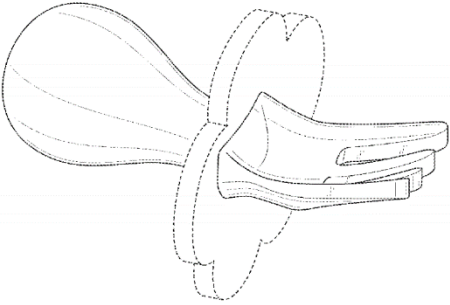
10. The Plaintiff's Products are designed to permit babies to safely feed themselves. The Plaintiff's Products retail for between \$8.99 and \$13.95:

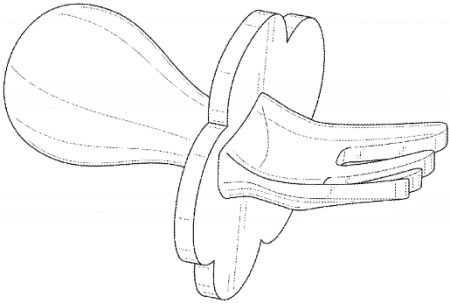
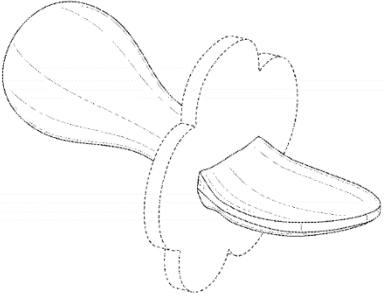
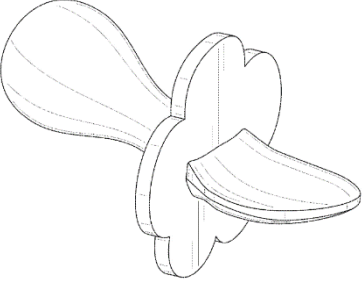




11. The unique features of Plaintiff’s Products, including, the distinct photographs, the design, the instructions, the packaging, and the unique presentation of the product, all comprise Plaintiff’s valuable intellectual property (“IP”) and all have become distinct in consumer’s minds such that consumers associate all of this IP with Plaintiff’s Products. Screenshots of Plaintiff’s Websites and Amazon Stores are attached as Complaint **Exhibit 1**.

12. The innovative features of Plaintiff’s Products are protected by numerous design patents as set forth below and more fully described in Complaint **Exhibits 2A – 2D** which are true and correct copies of each of the Plaintiff’s Patents. Plaintiff owns all of these patents:

| | | |
|--|---------------------|--|
| <p>U.S. Design Patent No. RE48,520 for TODDLER FORK (the "520 Patent")</p> | <p>TODDLER FORK</p> |  |
|--|---------------------|--|

| | | |
|---|----------------------|--|
| <p>U.S. Design Patent No. RE48,743 for TODDLER FORK (the “743 Patent”)</p> | <p>TODDLER FORK</p> |  |
| <p>U.S. Design Patent No. RE48,531 for TODDLER SPOON (the “531 Patent”)</p> | <p>TODDLER SPOON</p> |  |
| <p>U.S. Design Patent No. 799,280 for TODDLER SPOON (the “280 Patent”)</p> | <p>TODDLER SPOON</p> |  |

Although the '531 Patent is a reissue of the '280 Patent, the '280 Patent has not been surrendered because there remains a pending application for reissue of the '280 Patent. Further, the claims of the '743 Patent are substantially similar to those of the original Design Patent D799,910 ("the '910 Patent"). Each of the Plaintiff's Patents covers the unique, novel, and non-obvious ornamental design and appearance of Pike Brands' baby utensils.

13. Due to the success of Plaintiff's Products, Plaintiff has become the target of multiple infringers seeking to profit off the goodwill and reputation and fame enjoyed by Plaintiff's Products. Defendants have flooded the market with cheap imitations and caused Plaintiff's sales and profit to plummet.

14. Plaintiff has been forced to police the various Internet marketplaces to identify and seek takedowns of unlawful listings for the Infringing Products¹ since allowing the unlawful listings to continue is causing damage to Plaintiff's reputation and bottom line. Some Defendants sell their infringing products at a fraction of the controlled retail price. Because of the software provided by the various Internet Marketplaces, the lowest priced items are sorted to the top and/or promoted by the software and then purchased by the consumers. Plaintiff's Products are thus ignored. Plaintiff has had varied success in identifying and requesting takedowns of the various unlawful listings and as soon as one is taken down another unlawful listing replaces it. Another major problem with the Internet Marketplaces is that there is a direct and convenient connection between various Chinese and other unidentified manufactures to the

¹ As set forth in the Complaint, Defendants have offered for sale, sold, and distributed knock-off versions of Plaintiff's Products that infringe on the claims of the Plaintiff's Patents (the "Infringing Products").

Infringing Products. In essence, a counterfeiter in Vietnam or Russia, for example, may order a crate of Infringing Products from a Chinese manufacturer, have them drop shipped to a fulfillment center in the United States, and then sell the Infringing Products to a US consumer through a Third-Party Service Provider. The ease of this system encourages knock-offs to flourish.

15. For these reasons, Plaintiff retained the legal counsel of Ference & Associates LLC (“the Ference firm”) to perform the policing of various Internet marketplaces. During the process, the Ference firm identified many Chinese manufacturers operating on Marketplace Storefronts hosted by the Internet marketplaces. These manufacturers were supplying many of the other identified Defendants with infringing products flooding the Internet marketplaces and damaging Plaintiff’s business. This damage to Plaintiff’s business will continue unless Plaintiff receives the sought-after restraining order and injunctive relief.

16. Defendants’ sale, distribution, and advertising of the Infringing Product are highly likely to cause consumers to believe that Defendants are offering genuine versions of Plaintiff’s Products when in fact they are not. The Defendants’ conduct as set forth herein is all the more egregious when measured against competing baby utensils made and sold by other manufacturers on Amazon. A survey of the trade dress used by other manufacturers shows the multiple baby utensil designs available to other companies such as the Defendants. The similarity of the Defendants’ baby utensils to the Plaintiff’s baby utensils is all the more striking when viewed in light of this range of available options.



Other baby utensils.

17. To illustrate further, below are several examples of the Infringing Products compared to the Plaintiff's Products:



Plaintiff's Baby Utensils



Defendant chaelmody's Infringing Listing



Defendant TeeGem Infringing Listing



Defendant Infant Self Infringing Listing

18. As a result of the Defendants' conduct as set forth herein, consumers may come to attribute the inferior qualities of the Defendants' baby utensils to the Plaintiff's baby utensils, to Plaintiff's detriment. The often flimsy and low-quality Infringing Products may disappoint a customer who may give the product a bad review.

19. The Infringing Products threaten to destroy the reputation of high quality that Plaintiff's Products have earned.

20. Defendants do not have, nor have they ever had, the right or authority to use Plaintiff's Patents. Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its rights to control its IP. By their activities, Defendants are defrauding Plaintiff and the consuming public for Defendants' benefit. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiff ongoing irreparable harm. Accordingly, Plaintiff is seeking entry of a temporary restraining order prohibiting Defendants' further wrongful infringement..

21. Given Defendants' use of Plaintiff's Patents, the Infringing Products are indistinguishable to consumers, both at the point of sale and post-sale is causing and will continue to cause Plaintiff's irreparable harm and damage.

22. The infringements of Plaintiff's IP devalues the Plaintiff's Grabease and Nooli brand dog baby utensil by associating it with inferior quality goods, and it undermines the value of the Plaintiff's IP by creating the impression that infringement may be undertaken with impunity which threatens Plaintiff's ability to attract investors and markets for the Plaintiff's Products.

23. I have reviewed **Composite Exhibit 1** attached to the Declaration of Dee Odell and the pictured web listings and, upon my information and belief, the Defendants identified in **Schedule "A"** of the Complaint were and/or are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling non genuine, knock-off versions of Plaintiff's Products that infringe on at least one of the Plaintiff's Patents, with the non-genuine, copies of Plaintiff's Products directed to U.S. consumers, including those consumers in Pennsylvania, through their e-commerce stores.

24. None of the identified Defendants are authorized re-sellers of genuine version of Plaintiff's Products. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell Plaintiff's Products or knock-offs. Further, Plaintiff never consented or granted permission to any of the identified Defendants to use Plaintiff's Patents.

25. I have confirmed that all of the identified products pictured in **Composite Exhibit 1** are infringements of Plaintiff's Products, and upon information and belief, the Defendants set forth in Schedule "A" of the Complaint were and/or are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Infringing Products, to sell to U.S. consumers, including those consumers in Pennsylvania, through their Online Marketplace Storefronts. Through visual inspection of

Defendants' listings for Infringing Products, it was confirmed that each Defendant is offering an infringing version of the Plaintiff's Products. The checkout pages or order forms for the Infringing Products confirm that each Defendant was and/or is still currently offering for sale and/or selling Infringing Products through their respective Merchant Storefronts and User Accounts and that each Defendant provides shipping and/or has actually shipped Infringing Products to the United States², including to customers located in Pennsylvania. At checkout, a shipping address located in the Pittsburgh area ("the Pennsylvania Address") in the Western District of Pennsylvania verified that each Defendant provides shipping to the Pennsylvania Address. I inspected the detailed web listings describing the Infringing Products Defendants are offering for sale through the Internet based e-commerce stores operating under each of their respective Seller IDs, and determined the products were not genuine versions of Plaintiff's Products.

26. Defendants' actions have caused and will continue to cause, in the event the requested relief is not granted, irreparable harm to Plaintiff's goodwill and reputation as well as to the unassuming consumers who will continue to believe that the Defendants' infringing products and knock-offs are produced, authorized, approved, endorsed or licensed by Plaintiff, when they are not.

27. Defendants' intentional and illegal conduct, including offering for sale and selling infringing knock-offs has caused lost profits to Plaintiff and damaged the inherent value of Plaintiff's business, by diluting the brand and goodwill, damaging Plaintiff's reputation for providing high quality products, and interfering with Plaintiff's relationships with its customers

² If shipped and received, the products were physically examined to confirm that they are infringing and knock-offs and not genuine.

and authorized resellers, as well as impeding Plaintiff's ability to attract new customers and business.

28. All of the injuries and damages described above are taking place in the United States, including in Pittsburgh, Allegheny County, Pennsylvania.

29. In addition to trying to stop the injuries and damages caused to Plaintiff's business, reputation, and brands, Plaintiff is also seeking in this lawsuit to protect babies from being exposed to substandard, faulty, and potentially dangerous infringing products.

30. I have worked with Plaintiff's legal counsel in this case to assist them in identifying knock-off products and have provided them with various leads in order to find the various outlets for the infringing and knock-off products. If called upon by the Court, Plaintiff's legal counsel is able to explain additional differences between the genuine version of Plaintiff's Products and the knock-off products by the identified Defendants.

31. To be sure that none of the Defendants receive advance notice of the relief and remedies requested in Plaintiff's Complaint or the *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction in this case, neither I nor anybody else working for Plaintiff have publicized the filing of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 31, 2022

Seattle, Washington

/ NATE JELOVICH /
NATE JELOVICH