

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PAWESOME PET PRODUCTS LLC., *et al.*,

Plaintiffs,

v.

COLORFLOWERS, *et al.*,

Defendants.

CIVIL ACTION NO.

FILED UNDER SEAL

**DECLARATION OF CINDY GHUKASYAN
IN SUPPORT OF PLAINTIFFS' *EX PARTE* APPLICATION
FOR ENTRY OF A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, **CINDY GHUKASYAN**, 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 a named Plaintiff, and the President and sole member of Co-Plaintiff, PAWESOME PET PRODUCTS LLC ("PAWESOME"), a limited liability company organized and existing under the laws of the State of Texas.

3. I make this declaration in support of Plaintiffs' *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 (“Online Marketplace Platforms”, hereafter “OMPs”) using the seller identities and store names set forth on **Schedule “A”** to the Complaint.

5. I am the owner of the intellectual property for the BRISTLY[®] dog toothbrush. Pawsome is the exclusive licensee of such intellectual property.¹ We are the named Plaintiffs in this lawsuit.

6. Plaintiffs’ Product is a unique and revolutionary product sold under the BRISTLY[®] trademark (“Plaintiffs’ Mark”) that safely and easily permits dogs to brush their own teeth removing plaque and tarter (“Plaintiffs’ Product”).

7. June 2017 saw the launch of the Plaintiffs’ Product for beta testing. Over 50,000 dog owners experienced effortless daily tooth brushing of their dogs with Plaintiffs’ Product. In early 2018, development and testing of a new version of the Plaintiffs’ Product occurred.

8. In June 2018 a crowdfunding campaign was launched on kickstarter.com. In less than two months, \$466,000 was raised with the assistance of nearly 11,000 backers and reached its funding goal in one day; the campaign was featured on the homepage of kickstarter.com as one of its successful campaigns. The crowdfunding campaign was continued on indiegogo.com where an additional \$534,000 was raised with the assistance of 11,466 additional backers. The crowdfunding campaign for the Plaintiffs’ Product is the campaign with the highest number of backers and the highest amount raised of any pet campaigns.

9. The new version of the Plaintiffs’ Product went on sale in October 2018. Plaintiffs’ Product is sold through the bristly.com website; the amazon.com Internet marketplace

¹ I acquired the Intellectual Property from Petros Dertsakyan and his company (Doggie Dental, Inc.) was the former exclusive licensee of the Intellectual Property. They brought multiple lawsuits related to the facts and claims in this lawsuit and are the predecessors in interest to this lawsuit.

and various retail stores across the United States. The Amazon Standard Identification Numbers for the Plaintiffs Products are: B075KYV2DT (small BRISTLY[®]), B075L4L1T2 (medium BRISTLY[®]), and B075KTSHRT (large BRISTLY[®]). Authentic versions of Plaintiffs' Product are not sold on eBay by authorized sellers.

10. Plaintiffs' Product has been featured in videos or articles by numerous media outlets, including MSN (<https://www.msn.com/en-sg/lifestyle/lifestylegeneral/a-new-chew-toy-will-help-your-dog-brush-its-own-teeth/ar-AAA8pvh>) , Pet Lover Geek (<https://www.facebook.com/petlovergeek/videos/613996128985404>), Askmen (https://www.askmen.com/entertainment/guy_gear/best-new-kickstarters-for-june-28-2018.html), Interesting Engineering (<https://interestingengineering.com/this-chew-stick-for-dogs-helps-them-achieve-good-oral-health>), Awesome Stuff 365 (<https://awesomestuff365.com/bristly-toothbrush-for-dogs/>), star2.com (<https://www.star2.com/living/2018/07/28/toothbrushing-stick-dogs-clean-teeth/>), Dude (<http://www.dudeiwantthat.com/household/pets/bristly-toothbrush-for-dogs.asp>), Gaget flow (<https://thegadgetflow.com/blog/bristly-is-the-chew-toy-that-cleans-your-dogs-teeth/> and <https://thegadgetflow.com/portfolio/dog-tooth-brushing-stick/>), The Gadgeteer (<https://thegadgeteer.com/2018/07/20/micro-veggie-growing-tray-tiny-edc-pen-a-toothbrush-for-dogs-and-more-notable-crowdfunding-campaigns/>), Steemit (<https://steemit.com/steemhunt/@adarshagni/bristly-chew-stick-for-dogs>), New Atlas (<https://newatlas.com/bristly-dog-toothbrush/55401/>), TheThings.com (<https://www.thethings.com/chew-toy-helps-dogs-brush-teeth>), slashpets (<https://www.slashpets.com/bristly-toothbrush/>), Cool Business Ideas (<https://www.coolbusinessideas.com/archives/toothbrush-for-your-doggy/>), Cool Hunting

(<https://coolhunting.com/design/bristly-dog-toothbrush/>), MNN (<https://www.mnn.com/family/pets/stories/answer-dog-toothbrushing-struggle>), Gismo Review (<https://www.gismoreview.com/bristly-the-toothbrush-for-dog/>), Product Watch (<https://productwatch.co/hate-brushing-your-dogs-teeth-meet-bristly-and-forget-your-troubles/>), Mental Floss (<http://mentalfloss.com/article/551054/new-chew-toy-will-help-your-dog-brush-its-own-teeth>), and Trend Hunter (<https://www.trendhunter.com/trends/bristly>).

11. Genuine goods bearing the Plaintiffs' Mark and Plaintiffs' Trade Dress are widely legitimately advertised and promoted by Plaintiffs, their 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 has become increasingly important to Plaintiffs' overall marketing.

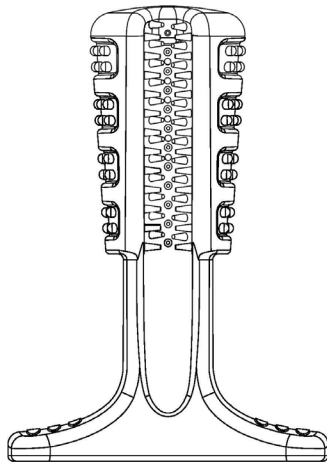
12. Thus, Plaintiffs and their authorized distributors expend significant monetary resources on Internet marketing, including search engine optimization ("SEO") strategies. Those strategies allow Plaintiffs and their authorized retailers to fairly and legitimately educate consumers about the value associated with Plaintiffs' brand and the goods sold thereunder. Similarly, Defendants' individual seller stores are indexed on search engines and compete directly with Plaintiffs for space in the search results.

13. I am the owner of U.S. Trademark Registration No. 5,815,298 for BRISTLY directed to "Non-medicated dental preparations for pets, namely, toothpaste and preparations for removing plaque; Home dental care products for dogs and cats, namely, toothpaste; Dental care and oral hygiene products for pets, namely, tooth cleaning preparations; Non-edible dental chews for pets; Non-medicated oral dental chews for dogs." A copy of this registration is attached to the Complaint as **Exhibit 1**. I am also the owner of U.S. Trademark Registration No. 5,844,832

for BRISTLY directed to “Toothbrushes for animals; Toothbrushes for pets; Home dental care products for dogs and cats, namely, toothbrush.” A copy of this registration is attached to the Complaint as **Exhibit 2**.

14. Plaintiffs have taken numerous steps to protect the BRISTLY[®] dog toothbrush. I am the owner of U.S. copyright registration VA 2-122-455 directed to various photographs related to the BRISTLY[®] dog toothbrush. A copy of my copyright registration certificate, together with copies of the deposit materials, is attached to the Complaint as **Exhibit 3**. (the “Plaintiffs’ Works”). I am also the owner of unregistered copyrights related to the BRISTLY[®] dog toothbrush.

15. I am also the owner of various design patent applications directed to the BRISTLY[®] dog toothbrush, including an issued European Registered Community Design (005818606-0001), an issued U.S. design patent D 901104, and a pending Chinese design patent application. A copy of my Registered Community Design is attached to the Complaint as **Exhibit 4**. All of the design patent applications have common figures, and one of the figures is set forth below:



.....

16. I am also the owner of U.S. Patent No. 10,477,838 B2 for “Pet chew toy for dental self-cleaning by domestic pets,” a copy of which is attached to the Complaint as **Exhibit 5**. (“Plaintiffs’ Product” or “the ‘838 Patent”).

17. Plaintiffs’ Products have a unique and distinctive trade dress, which is characterized by the ornamental features shown and described in Plaintiffs’ design patent applications and variations thereof (the “Plaintiffs’ Trade Dress”). The arrangement and combination of these features are arbitrary, non-functional, and fanciful and constitute legally protectable trade dress. The Plaintiffs’ Trade Dress has acquired secondary meaning identifying Plaintiffs as the source of products bearing it. This secondary meaning was acquired prior to use of the Plaintiffs’ Trade Dress by Defendant.

18. Plaintiffs’ Mark and Plaintiffs’ Trade Dress have been used in interstate commerce to identify and distinguish Plaintiffs’ goods. Plaintiffs’ Mark and Plaintiffs’ Trade Dress have been used by Plaintiffs prior in time to Defendants’ use of this mark and trade dress. The Plaintiffs’ Mark and Plaintiffs’ Trade Dress has never been assigned or licensed to any of the Defendants in this matter. The Bristly Mark and Bristly Trade Dress is a symbol of Plaintiffs’ quality, reputation, and goodwill and have never been abandoned.

19. Due to the success of Plaintiffs’ Product, Plaintiffs have become the target of multiple counterfeiters seeking to profit off the goodwill and reputation and fame enjoyed by BRISTLY[®] and its Plaintiffs’ Product. Plaintiffs have been forced to police the various Internet marketplaces to identify and seek takedowns of unlawful listings for the Infringing Products² since allowing the unlawful listings to continue is causing damage to Plaintiffs’ reputation and

² As set forth in the Complaint, Defendants have offered for sale, sold, and distributed knock-off versions of the BRISTLY[®] dog toothbrush that infringe upon at least one claim of the Plaintiffs’ Patent (the “Infringing Product”) and which closely mimic the appearance of Plaintiffs’ product.

bottom line. Some Defendants sell their fake BRISTLY[®] dog toothbrushes at a fraction of the controlled retail price, going as low as \$3.00 or \$4.00. 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. The genuine BRISTLY[®] dog toothbrush is ignored. Plaintiffs have 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 manufacturers to the 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.

20. For these reasons, Plaintiffs 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 Plaintiffs’ business. This damage to Plaintiffs’ business will continue unless Plaintiffs receive the sought after restraining order and injunctive relief.

21. Defendants’ sale, distribution, and advertising of the Infringing Product are highly likely to cause consumers to believe that Defendants are offering genuine BRISTLY[®] dog toothbrushes when in fact they are not. To illustrate, below are several examples which vividly show that the Infringing Product itself and the manner in which it is marketed is designed to

confuse and mislead consumers into believing that they are purchasing Plaintiffs' Plaintiffs' Product or that the Infringing Product is otherwise approved by or sourced from Plaintiffs:

Plaintiffs' Product



Type 1 Infringing Product



Plaintiffs' Product



Type 2 Infringing Product



Plaintiffs' Product



Type 3 Infringing Product



Plaintiffs' Product



Type 4 Infringing Product



Plaintiffs' Product



Type 5 Infringing Product



Plaintiffs' Product



Type 6 Infringing Product



22. Defendants' actions have resulted in actual confusion in the marketplace between Defendants' Infringing Product and genuine BRISTLY[®] dog toothbrushes. Numerous purchasers of Defendants' Infringing Product have contacted Plaintiffs to complain about the performance of the Infringing Product believing same to be a genuine BRISTLY[®] dog toothbrush. Examples of such complaints include "my dog destroyed your teeth cleaning thing in 10 seconds" and "I was so worried my dog may have eaten parts of it that I had to check him

over at the vet.” Such complaints and negative comments are not just made directly to Plaintiffs, but are also posted by buyers of the Infringing Products on various websites and social media sites for all the world to see.

23. Defendants’ Infringing Products are substantially inferior to the genuine product. Plaintiffs’ genuine BRISTLY[®] dog toothbrush is made of natural rubber. Defendants’ Infringing Products are made with silicone or other materials. As poorly designed and manufactured products, Defendants’ Infringing Products create serious risk of harm to animals and threaten to destroy the reputation of high quality that Plaintiffs’ Products have earned.

24. As poorly designed and manufactured products, Defendants’ Infringing Products create serious risk of harm to animals. Concern about the health and safety of dogs who might be injured by the unauthorized, illegal, and dangerous knock offs of the authentic BRISTLY[®] dog toothbrush is warranted. An illustration of the dangerous situation was brought to Doggie Dental’s attention by a pet owner who believed that Doggie Dental (a predecessor in interest to Pawsome and I) sold a faulty and defective product when in actuality the pet owner purchased a knock off masquerading as an authentic BRISTLY[®] dog toothbrush. (The seller of the knock off is not a current defendant in this lawsuit because the product was not sold into this judicial district.) Specifically, the pet owner contacted Petros Dertsakyan (a predecessor in interest to Pawsome and I) complaining that her dog had chewed apart the fake product, swallowed a portion, and underwent corrective surgery to remove the piece. The pet owner provided the photographs below.

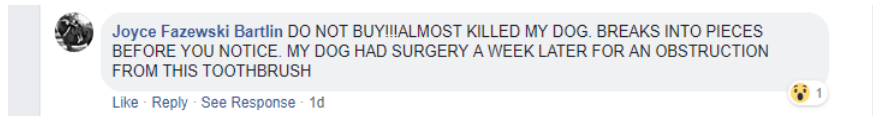
Bristly Knock Off Chewed by Dog



Injured Dog After Surgery



The pet owner wanted Doggie Dental (a predecessor in interest) to pay for the damages caused by the fake product. Additionally, the pet owner has previously publicized this post on Doggie Dental's publicly available Facebook page:



This pet owner's experience and posting highlight both the actual confusion between the knock offs and the genuine BRISTLY® dog toothbrush and the immediate and irreparable injury being incurred by the Plaintiffs.

25. Defendants do not have, nor have they ever had, the right or authority to use Plaintiffs' Trade Dress, Plaintiffs' Mark, and/or Plaintiffs' Works, or sell products that infringe upon at least one claim of the Plaintiffs' Patent for any purpose. Defendants' unlawful activities have deprived and continue to deprive Plaintiffs of their rights to fair competition. By their activities, Defendants are defrauding Plaintiffs and the consuming public for Defendants' benefit. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiffs ongoing irreparable harm. Accordingly, Plaintiffs are seeking entry of a temporary restraining order prohibiting Defendants' further wrongful unfair competition and infringement of Plaintiffs' federally registered copyrights.

26. Given Defendants' copying and use of Plaintiffs' Trade Dress, Plaintiffs' Mark, and/or Plaintiffs' Works, the Infringing Products are indistinguishable to consumers, both at the point of sale and post-sale. By using Plaintiffs' intellectual property, Defendants have created a false association between their Infringing Products, their Internet e-commerce stores, and Plaintiffs. Such false association is in violation of 15 U.S.C. § 1125(a) and is causing and will continue to cause Plaintiffs' irreparable harm and damage. The infringements deprive Plaintiffs of the ability to control the creative content protected by the copyright, it devalues the BRISTLY brand by associating it with inferior quality goods, and it undermines the value of the copyright by creating the impression that infringement may be undertaken with impunity which threatens Plaintiffs' ability to attract investors and markets for the BRISTLY Products.

27. I have reviewed **Composite Exhibit 1** and the pictured web listings and upon my information and belief, 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 non genuine versions of Plaintiffs' Product and copying and using Plaintiffs' Trade Dress and/or Plaintiffs' Mark and/or Plaintiffs' Works and infringing at least one claim of the Plaintiffs' Patent directed to U.S. consumers, including those consumers in Pennsylvania, through their e-commerce stores.

28. None of the identified Defendants are authorized re-sellers of genuine BRISTLY product. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell any Infringing Product. Further, Plaintiffs never consented or granted permission to any of the identified Defendants to use Plaintiffs' Trade Dress and/or Plaintiffs' Marks and/or Plaintiffs' Works and infringe upon at least one claim of the Plaintiffs' Patent.

29. I have confirmed that all of the identified products in **Composite Exhibit 1** are knock-offs of the Plaintiffs' Product that infringe upon at least one claim of the Plaintiffs' Patent. Through visual inspection of Defendants' listings for Infringing Products, it was confirmed that each Defendant is featuring, displaying and/or using the Plaintiffs' Trade Dress and/or Plaintiffs' Mark and/or or Plaintiffs' Works without authorization and that the products that each Defendant is offering for sale infringe at least one claim of the Plaintiffs' Patent. 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 States, 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.

30. Monetary damages cannot adequately compensate Plaintiffs for ongoing infringement because monetary damages fail to address the damage to Plaintiffs' control over their rights in the BRISTLY[®] dog toothbrush, their reputation, associated goodwill, and ability to exploit the BRISTLY[®] dog toothbrush. Furthermore, monetary damages are difficult, if not impossible, to ascertain due to the inability to calculate measurable damages in dollars and cents caused to Plaintiffs' control over their rights in the BRISTLY[®] dog toothbrush, their reputation,

associated goodwill, and ability to exploit the BRISTLY[®] dog toothbrush by acts of infringement.

31. Plaintiffs' goodwill and reputation are irreparably damaged by the making, using, offering for sale, selling, or importing of goods that infringe the '838 patent. Moreover, brand confidence is damaged, which can result in a loss of future sales and market share. The extent of harm to Plaintiffs' reputation and goodwill and the possible diversion of customers due to loss in brand confidence are largely unquantifiable.

32. Plaintiffs are further irreparably harmed by the unauthorized selling, or importing of goods that infringe the '838 patent because infringers take away Plaintiffs' ability to control the nature and quality of the Infringing Products. Loss of quality control over goods made, used, offered for sale, sold, or imported featuring the BRISTLY[®] dog toothbrush and, in turn, loss of control over Plaintiffs' reputation is neither calculable nor precisely compensable.

33. The making, using, offering for sale, selling, or importing of goods featuring the BRISTLY[®] dog toothbrush and not authorized, produced, or manufactured by Plaintiffs is likely causing and will continue to cause consumer confusion, which weakens Plaintiffs' brand recognition and reputation. Inferior quality products will result in increased skepticism and hesitance in consumers presented with Plaintiffs' genuine products, resulting in a loss or undermining of Plaintiffs' reputation and goodwill.

34. Plaintiffs are further irreparably damaged due to a loss of exclusivity. The BRISTLY[®] dog toothbrush is meant to be exclusive. Plaintiffs' extensive marking efforts and innovative designs are aimed at growing and sustaining sales. When infringers make, use, offer for sale, sell, or import goods that infringe the '838 patent without Plaintiffs' authorization, the

exclusivity of Plaintiffs' products, as well as Plaintiffs' reputation, is damaged and eroded, resulting in a loss of unquantifiable future sales.

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

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

37. In addition to trying to stop the injuries and damages caused to Plaintiffs' business, Plaintiffs are also seeking in this lawsuit to protect consumers and their pets from being exposed to and purchasing the substandard, faulty, and potentially dangerous knock-offs that infringe upon at least one claim of the Plaintiffs' Patent that wrongly indicate their origin as being from Plaintiffs or wrongfully use Plaintiffs' Trade Dress and/or Plaintiffs' Mark and/or Plaintiffs' Works and infringe upon at least one claim of the Plaintiff's Patent.

38. I have worked with Plaintiffs' 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 knock-off products. If called upon by the Court, Plaintiff's legal counsel is able to explain additional differences between the Plaintiffs' product and the knock-off products offered by the identified Defendants.

39. To be sure that none of the Defendants receive advance notice of the relief and remedies requested in Plaintiffs' Complaint, or the *Ex Parte* Application for Entry of a

