

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

AQUAPAW LLC,

Plaintiff,

v.

FLO PET, *et al.*,

Defendants.

Civil Action No. 21-988

(Judge Wiegand)

**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. Simultaneously with the 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. 10,834,894 (“the Plaintiff’s Patent”), issued for “Animal Feeder System and Method of Use” and which covers Plaintiff’s Product.

You were on notice of the Plaintiff’s 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 Plaintiff’s 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

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 Plaintiff’s Product.

At all times relevant hereto, Plaintiffs have the manufacturing and marketing capability to meet the consumer demand for the Plaintiff’s Product.

Admit that there is no acceptable non-infringing substitute for the Plaintiff’s Product.

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

Admit that lost profits is the appropriate measure for Plaintiff’s damage claims against you.

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

Your sales of substandard infringing and/or counterfeit products have undermined and damaged Plaintiff’s reputation and goodwill associated with Plaintiff’s Product requiring Plaintiff to expend \$15,000.00 in corrective advertising costs.

Admit that your profits from the sales of your infringing and/or counterfeit products totals more than \$300,000.00.

Your unfair competition has driven the market place of Plaintiff’s genuine goods down.

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

6. By August 13, 2021, Amazon, eBay, AliExpress, and Wish had confirmed that all the Defendants' accounts were restrained and the infringing listings were no longer active.

7. 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 28th of April, 2022, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin