

IN THE 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.

22-629

(Judge Hornak)

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

Plaintiffs,

v.

CUTEBEAR STORE, *et al.*,

Defendants.

Civil Action No.

22-1063

(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 409 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.

7. Before the Defendants were served with the Default, they were each served with a copy of the Complaint and Discovery. Thus, they had an opportunity to both answer the Complaint and respond to the Discovery, including the requests for admissions noted above. None of the active Defendants filed an answer or responded to the discovery.

8. As noted in the Plaintiffs' Memorandum of Law in Support of its Motion for Default Judgment ("Memorandum of Law"), the discovery sought by the Plaintiffs from the Defendants included the total amount of sales and profits of the infringing product and the total amount of sales and profits of the conveyed dog toothpaste. (*See* Memorandum of Law, p. 10). Likewise, in the Requests for Admissions served upon the Defendants, the Plaintiffs sought to narrow the issues by seeking admissions about the Defendants' sales and profits. (*Id.*) In this case, by defaulting on these requests, each Defendant admitted that over the two months that they intentionally infringed they deprived the Plaintiffs of at least \$709,500.00 in lost profits between the lost sales of the Bristly[®] dog toothbrush and the conveyed sales of the dog toothpaste. (*Id.*)

9. **Exhibit 1** is a chart filed at the docket for the *Colorflowers* and *Cutebear* defaulting defendants, respectively for each case, that includes the admitted damages (convoyed sales for 2 months) and the total amount of funds in each Defendant's account (*in descending order*) at the time the restraints were first placed by the respective Third-Party Service Providers and/or Financial Institutions in accordance with the Court's temporary restraining order. This information was provided to Plaintiffs by each of the respective Third-Party Service Providers and/or Financial Institutions when served with the Court's temporary restraining order.

10. Based upon my personal experiences with these online counterfeiting cases, China based sellers, such as Defaulting Defendants, sell into the United States across multiple e-commerce platforms and do not limit their sales to one e-commerce platform.

11. Examples of such other e-commerce platforms include Alibaba.com, AliExpress.com, Amazon.com, DHgate.com, eBay.com, etsy.com, Walmart.com and Wish.com

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 26th day of April, 2023, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin