

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

PAWESOME PET PRODUCTS LLC, *et al.*,

Plaintiffs,

v.

CUTEBEAR STORE, *et al.*,

Defendants.

Civil Action No.

22-1063

(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 at least one of the Amazon.com, eBay.com, aliexpress.com, Walmart.com, or wish.com online platforms.

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

¹ As alleged in Plaintiffs’ 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”).

all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (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 cease 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

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, eBay.com, aliexpress.com, Walmart.com and wish.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.

- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs.
- 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.

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, including but not limited to, Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. AliPay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as "AliPay"), Amazon Payments, Inc., PayPal, Inc. d/b/a paypal.com, and Walmart Pay operated by Wal-Mart.com USA, LLC, ("Walmart") Context Logic, Inc. d/b/a wish.com, or marketplace platforms, including but not limited to, Amazon.com, ebay.com, alieexpress.com, Walmart.com and Context Logic, Inc d/b/a wish.com, and their related companies and affiliates, and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defaulting Defendant.

IV. Follow-Up Requests

IT IS FURTHER ORDERED, as sufficient cause has been shown, that, upon Plaintiffs' request, within no later than five (5) calendar days of Plaintiffs' request:

(1) Amazon is ordered to remove any seller identified by Plaintiffs from the following Amazon Standard Identification Numbers (ASINs): B075KYV2DT (small BRISTLY[®]), B075L4L1T2 (medium BRISTLY[®]), and B075KTSHRT (large BRISTLY[®]);

(2) Amazon is ordered to suspend any ASIN listing product that Plaintiffs assert infringes at least one claim of the Plaintiffs' Patent, and is identified as originating outside of the United States (i.e. any seller is prevented from listing for sale under the identified ASIN); and

(3) Amazon is ordered to suspend any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be Counterfeit, Infringing, or unfairly competing, as designated in the Amended Schedule A third column under "**Amazon ASIN Number(s)**" (i.e. any seller is prevented from listing for sale under the identified ASIN);

(4) The Plaintiff has proven that 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, including but not limited to, amazon.com, eBay.com, aliexpress.com, walmart.com and wish.com, 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.

(5) 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 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,

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.

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 Walmart.com, 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 to remain in place pending the final disposition of the claims against all the Defendants;
- 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 _____, 2023.
Pittsburgh, Pennsylvania

Mark. R. Hornak
Chief United States District Judge

cc: Stanley D. Ference III, Esq.
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Brian Samuel Malkin, Esq.
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Schedule “A”
Defendants with Store Name and Seller ID

Def. No.	Defendant/Store Name	Seller ID
2	CHPODOO	A114HQGLDP5A2Q
3	Kaoello	ASBPKW2T4OQGK
4	Xun HJ	A3B1BY2TLS5O4U
6	jncsffsp	A36ALE7HJP02H5
7	zxsdertgyhu	A2JLJKZ02LUE00
10	MoMo Home	A3ZW0K42IZKUD
11	Mingpinhuius	A191PCZOLW168F
13	HDddd	A39OYLPPRTKGGV
14	Animal AD World Store	cn1542039785oyzp
15	Hello Dog Pets Store	cn1064282351apiae
16	Pets' little planet Store	cn1540565471qlxp
17	Aww it Store	cn1537743673rktu
18	PET LOVE Store	cn1547788102xqsh
19	Pet Supplies---01 Store	cn1067904781wdiae
20	Future House Store	cn1522809785kbrg
21	Joyione houseware Store	cn1542016235yfgp
22	Your Colorful House Store	cn1541431973hhof
23	FCXDG PetsLife Store	cn1531486790sydc
24	Home Life Official Store	cn1060682035jwtae
25	Shop1102109831 Store	cn1062625399kghae
26	Ouyes Pet Life Store	cn1061088809jkpae
27	Oriental Pet Supply Store Store	cn1542183621zgmy
28	yifeiler	cn110579072
29	Shop1100182001 Store	cn1060944975ympae
30	Wellso Store	cn1512278167
31	choco small Store	cn1540103165gosw
32	kyjen_Store	cn1540996215tike
33	Detian Store	cn1537161797hnio
34	CNpeace Store	cn1538061639yypl
35	Shop5888429 Store	cn1533185122gqga
36	LGJ Pets Factory Store	cn1542566454bido
37	taotao Store	cn1531226804kduu
38	Shop110185029 Store	cn1060682026tirae
39	Good Pets Store	cn1540626065aygt
40	Xiang Bing Store	cn1531612127ljgq
41	Comfortable Stuff Store	cn1003064490
42	Yundropshipping Store	cn1533860790jnqd

43	Catus Pets Supplies Store	cn1513522682
44	Pething Mall	1101011805
45	All Stars Life Store	1101354857
46	KXBXYTEMAI Pet Buy Store	cn1541768409pajt
47	JiXiang Pet Store	cn1061258159etlae
48	Shop911472022 Store	cn1535765269mokr
49	PUPRETTY Store	cn1541252222mjsx
50	gzyounike Store	cn1530436784zywy
51	carepet Store	cn1538881986fngi
52	Animal ID Store	cn1530504208verf
53	evilto Store	cn1527130134epij
54	HJKL PetsLife Store	cn1532891753tylr
55	guanchi3 Store	cn1545958602zati
56	james dropshipping Store	cn1001852231pxbae
57	Worry-free Store	cn1531753130vefn
58	ATUBAN Pets Store	cn1545580555yswp
59	HouseStar Store	cn1541406983xblj
60	shop1102121962 Store (Condal Pet Diary Store)	cn1068506360hlpae
61	ranas_6743	2333395036
62	bestnewlife	2315954773
63	jg_buy_store	1663361291
64	swabsmart	304281575795
65	msc_stores	2211726564
66	fais87	228324532
68	ashen.perera	1200639973
65	msc_stores (PayPal)	1374578780304524294
68	ashen.perera (PayPal)	1661122335378365612
70	Blirik	101175999
75	Greatmoon Inc	101065177
82	Quintina	101133724
83	Shenzhenshi Sijiuzhou Keji Youxian Gongsi	101100092
89	PurpKSX	619059426442eaecf6b84d90
90	wangjulu	586e0087ec1a97419dade719
91	Happiness in the Shop	5d3d0e10e4b65d1d131e7286
92	Richard155	5e71f4b657b01087bf7829ba
93	Fancy Pet World	5fd029fa510c1d04cae87731

Schedule “B” Patent Infringing Products

Type 1 Infringing Product



Type 2 Infringing Product



Type 3 Infringing Product



Type 4 Infringing Product

