

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-cv-629

PLAINTIFF'S EXPEDITED REQUESTS FOR ADMISSIONS

AND NOW come Plaintiffs, by and through their attorneys, and serve the following Expedited Requests for Admissions on each Defendant in this action. In accordance with Fed. R. Civ. P. 26 and 36, and with the Court Order dated May 10, 2022 ("TRO"), your responses are due no later than fourteen (14) days after these Requests for Admissions are served on you.

DEFINITIONS

1. Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint, Plaintiffs' *Ex Parte* Application, and/or the TRO.
2. The terms "Defendant," "you," and "your" refer to the Defendant listed on Schedule A, including all affiliates and subsidiaries, receiving these Requests for Production.
3. The terms "concerning" or "relating to" (or any forms thereof) mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or relevant to.

As indicated, the terms necessarily include information which is in opposition to as well as in support of the position(s) and claim(s) of the parties in this civil action.

4. The terms “communication” or “communications” refer to any transmission of information, the information transmitted, and any process by which information is transmitted, and will include written communications, electronic communications, and oral communications.

5. The term “person” refers to natural persons, firms, proprietorships, associations, partnerships, corporations and every other type of organization or entity.

6. The terms “document” or “documents” refer to all written, typed, printed, recorded, filmed or reproduced by any other mechanical process, photographic, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, in any form, whether originals or copies, now or formerly in your possession, custody, or control, including, but not limited to: letters; correspondence; e-mails; memoranda; records; books; minutes of all types of meetings; contracts; subcontracts; agreements; exhibits; attachments; intra-office and inter-office communications; analyses; bulletins; regulations, rules, directives, advisory opinions, manuals, proposals; estimates; recommendations; opinions; messages; instructions; notes; notebooks; measurements; designs; sketches; drawings; blueprints; data sheets; telephone records; tapes; computer stored data; computer disks; diaries; desk calendars; work sheets; reports; facsimiles; records of telephone conversations, meetings and conferences; notes and records of conversations or interviews; invoices; bills; statements; accounts; checks; drafts; notices; computer printouts; computer tapes; photographs; slides; negatives; motion pictures; video recordings; tape or other voice recordings and transcriptions thereof; data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form; and any other

writings or recordings or data compilations from which information can be obtained in your actual or constructive possession, custody, or control, including drafts and multiple versions of documents containing marginalia or other comments or notes not appearing on the original. If any document was, but is no longer, in your possession or subject to your control, identify the document and identify its disposition, including, where applicable, the person who currently has possession and/or control of it.

7. The words “identify” or “identity” mean when used in reference to:
 - (a) a document, to state separately: (i) its type (letter, report, memorandum, etc.); (ii) its date; (iii) its subject matter; (iv) the identity of each author or signer; and (v) its present location and the identity of its custodian;
 - (b) an oral statement, communication, conference or conversation, to state separately: (i) its date and the place where it occurred; (ii) its substance; (iii) the identity of each person(s) participating in the communication or conversation; and (iv) the identity and location of all notes, memoranda or other documents memorializing, referring to or relating to the subject matter of the statement;
 - (c) a natural person or persons, to state separately: (i) the full name of each such person; (ii) his or her present or last known business address, or his or her present or last known residential address; and (iii) the employer of the person at the time to which the request or interrogatory is directed and the person’s title or position at that time; and
 - (d) an organization or entity (other than a natural person), a company, a corporation, a firm, an association, or a partnership, to state separately:
 - (e) the full name and type of organization or entity; (ii) the date and state of organization or incorporation, if a business entity; (iii) the address of each of its principal places of business and headquarters; and (iv) the nature of the business conducted or services rendered.

INSTRUCTIONS

1. Respond separately and in writing to each request.
2. These requests for admission shall be construed as referring to information now within the knowledge, possession, custody or control of you or your attorneys, agents, advisers,

employees or persons otherwise acting on your behalf, as well as any information, knowledge, data, document, or communication that subsequently is obtained or discovered by you or by your attorneys, agents, advisers, employees or persons otherwise acting on your behalf, that demonstrates that any answer originally provided in response to these requests for information was either incorrect or incomplete. Such supplemental information is to be supplied promptly to the party propounding these requests for information with a designation as to which request the information is responsive.

3. If you do not answer a request for admission because you claim the information requested is privileged, as to each such request, state the privilege claimed, set forth the facts relied upon to support your claim of privilege, and identify each document and/or communication upon which you base your claim of privilege.

4. If you deny a request for admission, set forth your reason and identify and produce any document relied upon in your denial.

REQUESTS FOR ADMISSIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. 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.

ADMITTED: _____ **DENIED:** _____

5. You were on notice of the ‘838 patent before you began manufacturing, offering for sale, selling, promoting, advertising, and otherwise distributing the Infringing Product.

ADMITTED: _____ **DENIED:** _____

6. 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.

ADMITTED: _____ **DENIED:** _____

7. Admit that there is no acceptable non-infringing substitute for the Plaintiffs’ genuine BRISTLY[®] dog toothbrush.

ADMITTED: _____ **DENIED:** _____

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. Admit that lost profits is the appropriate measure for Plaintiffs' damage claims against you.

ADMITTED: _____ **DENIED:** _____

29. Admit that the profit per unit of the Infringing Product was at least \$10.00.

ADMITTED: _____ **DENIED:** _____

30. Admit that the profit per unit of the Infringing Product was at least \$15.00.

ADMITTED: _____ **DENIED:** _____

31. Admit that the profit per unit of the Infringing Product was at least \$20.00.

ADMITTED: _____ **DENIED:** _____

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

ADMITTED: _____ **DENIED:** _____

33. Admit that the profit per unit of toothpaste sold was \$7.50.

ADMITTED: _____ **DENIED:** _____

34. Admit that you sold 7300 units of toothpaste per month.

ADMITTED: _____ **DENIED:** _____

[REDACTED]

[REDACTED]

[REDACTED]

42. 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.

ADMITTED: _____ **DENIED:** _____

[REDACTED]

[REDACTED]

[REDACTED]

ADMITTED: _____ **DENIED:** _____

/s/ Stanley D. Ference III
Stanley D. Ference III
Pa. ID No. 59899
courts@ferencelaw.com

Brian Samuel Malkin
Pa. ID No. 70448
bmalkin@ferencelaw.com

FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400 - Telephone
(412) 741-9292 - Facsimile

Attorneys for Plaintiffs