

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AQUAPAW BRANDS LLC,

Plaintiff,

v.

TROPICALPARADISE, *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

**DECLARATION OF MICHAEL SCOTESE
IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION
FOR ENTRY OF A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, **MICHAEL SCOTESE**, 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. Unless otherwise noted, I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am an executive of Cap Hill Brands, the 100% owner of the Plaintiff company, AQUAPAW BRANDS LLC, a Delaware limited liability with a registered address of 113 Cherry Street, PMB 89249, Seattle, Washington 98104-2205, and the 100% owner of all the assets of AQUAPAW LLC, the original company that developed and marketed the product at issue in this case (i.e., the AQUAPAW® Pet Bathing Tool).

3. I make this declaration in support of Plaintiff's *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. Plaintiff's legal team confirmed that the Defendants use the interactive commercial Internet websites and Internet based e-commerce stores using the seller identities and store names set forth on **Schedule "A"** to willfully infringe one or more of the Plaintiff's photographs, video images, or other artwork, which are protected by one or more federal copyright registrations ("Plaintiff's Works") and have offered for sale, selling, and distributing knock-off versions of Plaintiff's Aquapaw[®] Pet Bathing Tool ("Infringing Products").¹

5. Plaintiff's patented product solved the challenging the problem of bathing a dog by examining the task from the dog's perspective. By creating sprayer/scrubber operable by one hand, the inventor was able to hold and comfort the dog with the free hand while cleaning with the device. Today, the product is sold by Plaintiff under the brand name Aquapaw[®] Pet Bathing Tool ("Plaintiff's Product").

6. Plaintiff's Product has been featured in videos, articles, or podcasts by numerous media outlets, including: NBC's "The Today Show"; "Shark Tank", QVC, Business Insider, Ace Hardware Store, BuzzFeed, and Country Living.

7. Plaintiff's Product is sold under the brand name Aquapaw[®], and is widely and legitimately advertised and promoted by Plaintiff, its 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

¹ The innovative features of Plaintiff's Product are the subject of U. S. Patent No. 10,531,728 entitled "Hand Attachable Animal Washing Apparatus".

Plaintiff's overall marketing. Plaintiff's Product has won numerous awards, including: Editor's Choice Awards *Pet Product News* 2017 Winner, *Pet Business* 2017 Industry Recognition Award Winner, and *Global Pet Expo*, Best in Show, Dog Company.

8. Thus, Plaintiff and its authorized distributors expend significant monetary resources on Internet marketing, including search engine optimization ("SEO") strategies. Other costs include social media ads, tradeshow, and handing out free samples. Those strategies allow Plaintiff and its authorized retailers to fairly and legitimately educate consumers about the value associated with Plaintiff's brand and the goods sold thereunder. Similarly, Defendants' individual seller's stores are indexed on search engines and compete directly with Plaintiff for space in the search results.

9. Plaintiff sells its dog bathing device under the registered Aquapaw[®] trademark U.S. Reg. No. 5312909 for "Pet grooming device consisting of a sprayer that straps to the hand and an attachment that connects to a water source and/or a reservoir for a conditioning agent or shampoo" in class 21.

10. The Plaintiff's Product is an innovative wearable sprayer-scrubber combination that easily connects to a garden hose or faucet and permits the owner to operate the device with one hand while they hold its pet firmly with the other hand. The Plaintiff's Product, pictured below, retails for \$24.95:



11. The unique features of Plaintiff's Product, including the distinct photographs, the design, the instructions, the packaging, and the unique presentation of the product, all comprise Plaintiff's valuable intellectual property ("IP") and all have become distinct in consumer's minds such that consumers associate all of this IP with Plaintiff's Product. Screenshots of Plaintiff's Website and Amazon Store are attached as Complaint **Exhibit 1**.

12. The innovative features of Plaintiff's Product are the subject of U.S. Patent No. 10,531,728 entitled "Hand Attachable Animal Washing Apparatus". Plaintiff is the sole owner of U.S. Patent 10,531,728, and has not licensed the patent to any individual or entity. Plaintiff's Patent is valid.

13. Due to the success of Plaintiff's Product, Plaintiff has become the target of multiple infringers seeking to profit off the goodwill and reputation and fame enjoyed by Plaintiff's Product. Defendants have flooded the market with cheap imitations. Upon information and belief, this influx of illegal copies has negatively impacted Plaintiff's sales and profit.

14. Shown below are the two types of products offered for sale by the Defendants and which are the subject of this lawsuit:

TYPE 1 INFRINGING PRODUCT

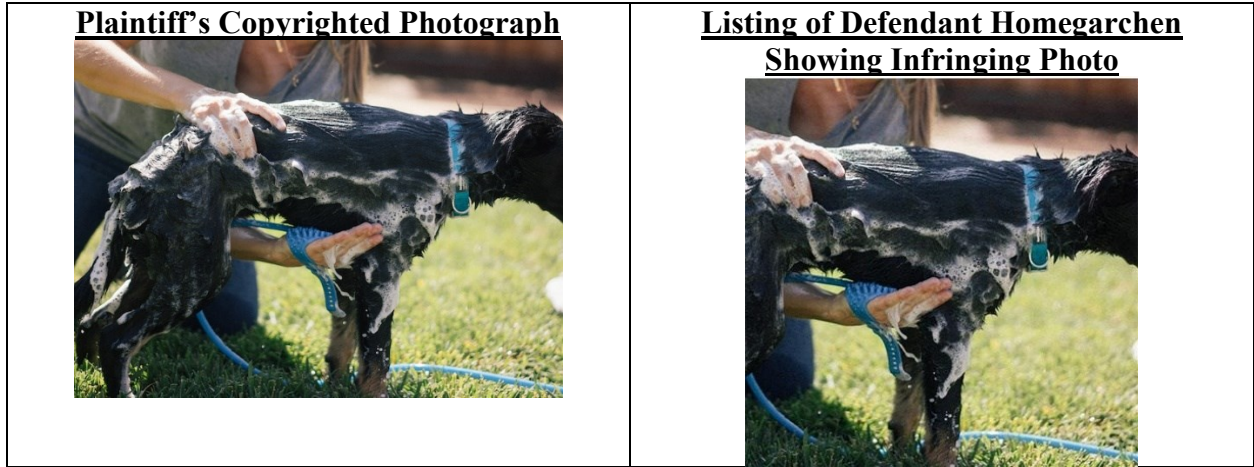


TYPE 2 INFRINGING PRODUCT



15. Shown below are examples of infringing listings through which Defendants offer their Infringing Products:





Additional examples of infringing listings are attached as **Complaint Exhibit 3**.

16. All of the Defendants have used without authorization at least one photo or screenshot from at least one of Plaintiff's copyrighted photographs covered by U.S. Copyright Reg. No. VA-0002098373, U.S. Copyright Reg. No. VA-0002098372, U.S. Copyright Reg. No. VA-0002096921, and U.S. Copyright Reg. No. PA-0002068689 ("Plaintiff's Copyrights").

Examples of Plaintiff's Photographs are shown below:



The electronic copyright registrations and exemplar deposit photos are attached to the Complaint as **Exhibits 2A, 2B, 2C, and 2D**.

17. Plaintiff has been forced to police the various Internet marketplaces to identify and seek takedowns of unlawful listings for the Infringing Products² since allowing the copycat listings to continue is causing damage to Plaintiff's reputation and bottom line. Some Defendants sell the Infringing Products at a fraction of the controlled retail price. 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. Plaintiff's Product is thus ignored. Plaintiff has 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.

18. For these reasons, Plaintiff 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. The Ference Firm further uncovered that these manufacturers were supplying many of the other identified Defendants illegal copies of the Plaintiff's Product, flooding the Internet marketplaces and damaging Plaintiff's business. This damage to Plaintiff's business will continue unless Plaintiff receives the requested restraining order and injunctive relief.

19. Upon information and belief, Defendants' sale, distribution, and advertising of the Infringing Product are highly likely to cause consumers to believe that Defendants are offering genuine versions of Plaintiff's Products when in fact they are not.

² As set forth in the Complaint, Defendants are promoting, selling, offering for sale, and distributing goods using confusingly similar imitations of one or more of the Plaintiff's copyrighted works (or an unauthorized derivative thereof), and/or (2) using Plaintiff's works in a willful attempt to pass off their goods as genuine versions of Plaintiff's goods, thus unfairly competing (the "Infringing Product").

20. The Infringing Products do not appear to be the same quality as the Plaintiff's Product, and may disappoint a customer who may give the product a bad review.

21. The Infringing Products threaten to destroy the reputation of high quality that Plaintiff's Products have earned.

22. At all times relevant hereto, Plaintiff has not authorized or licensed any of the Defendants to use images that are the subjects of Plaintiff's Copyrights. Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its rights to control its IP. By their activities, Defendants are defrauding Plaintiff and the consuming public for Defendants' benefit. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiff ongoing irreparable harm. Accordingly, Plaintiff is seeking entry of a temporary restraining order prohibiting Defendants' further wrongful infringement.

23. Given Defendants' unauthorized use of Plaintiff's Copyrights, the Infringing Products are indistinguishable to consumers, both at the point of sale and post-sale, is causing and will continue to cause Plaintiff irreparable harm and damage.

24. The infringements of Plaintiff's IP de-values the Plaintiff's Aquapaw[®] brand dog bathing device by associating it with what appear to be inferior quality goods, and it undermines the value of the Plaintiff's IP by creating the impression that sales of unauthorized copies of Plaintiff's Product may be undertaken with impunity which threatens Plaintiff's ability to attract investors and markets for the Plaintiff's Products.

25. I have reviewed **Composite Exhibit 1** attached to the Declaration of Dee Odell and the pictured web listings and upon my information and belief, the Defendants identified in **Schedule "A"** of the Complaint, were and/or are currently manufacturing, importing, exporting,

advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling non genuine, knock-off versions of Plaintiff's Product using one or more copyrighted photos, with the non-genuine copies of Plaintiff's Product directed to U.S. consumers, including those consumers in Pennsylvania, through their e-commerce stores.

26. At all times relevant to this lawsuit, none of the identified Defendants are authorized re-sellers of genuine version of Plaintiff's Product. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell Plaintiff's Products or knock-offs. Further, at all times relevant to this lawsuit, Plaintiff never consented or granted permission to any of the identified Defendants to use Plaintiff's copyrighted photos or IP.

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

28. Defendants' intentional and illegal conduct, including offering for sale and selling knock-offs into the U.S. and the Commonwealth of Pennsylvania, and upon information and belief, has caused lost profits to Plaintiff and damaged the inherent value of Plaintiff's business, by diluting the brand and goodwill, damaging Plaintiff's reputation for providing high quality products, and interfering with Plaintiff's relationships with its customers and authorized resellers, as well as impeding Plaintiff's ability to attract new customers and business.

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

30. In addition to trying to stop the injuries and damages caused to Plaintiff's business, Plaintiff is also seeking in this lawsuit to protect pets from being exposed to and purchasing the substandard, faulty, and potentially dangerous infringing products.

31. Plaintiff has worked with Plaintiff's legal counsel in this case to assist them in identifying knock-off products being advertised, marketed, and sold, using unauthorized copies of photos or screenshots subject to Plaintiff's copyrights, and have provided them with various leads in order to find the various outlets for the infringing and knock-off products. If called upon by the Court, Plaintiff's legal counsel is able to explain additional differences between the genuine version of Plaintiff's Product and the knock-off products by the identified Defendants.

32. To be sure that none of the Defendants receive advance notice of the relief and remedies requested in Plaintiff's Complaint or the *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction in this case, neither I nor anybody else working for Plaintiff have publicized the filing of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 6, 2023

Seattle, Washington

/s/MICHAEL SCOTese
MICHAEL SCOTese