

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

AQUAPAW BRANDS LLC,

Plaintiff,

v.

PUSIFICA, *et al.*,

Defendants.

Civil Action No. 23-538

(Judge Wiegand)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR ENTRY OF AMENDED DEFAULT JUDGMENT AND
PERMANENT INJUNCTION AGAINST DEFENDANTS IN APPENDIX “A”**

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 Plaintiff in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiff’s Motion for Entry of Amended Default Judgment and Permanent Injunction (hereinafter “Motion for Amended Default Judgment”) against those Defendants in Appendix “A”.

5. Concurrently 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. 10,834,894 (“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 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.

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.

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

Not one of the Defendants has responded to the Requests for Admission. Thus, each Request for Admission 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. Negotiations with the Defendants in Appendix A ultimately failed to yield a settlement, no request for extension of time to answer or respond was made, and a clerk's entry of default was entered against each of them.

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 11th day of November, 2024, at Pittsburgh, Pennsylvania.

/s/Brian Samuel Malkin
Brian Samuel Malkin