

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE GREEN PET SHOP ENTERPRISES, LLC,

Plaintiff

Case No.: 1:17-cv-6236

v.

UNIQUE PETZ, INC.,

Defendant.

COMPLAINT

Plaintiff The Green Pet Shop Enterprises, LLC complains against Unique Petz, Inc. as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent Nos. 8,720,218 (the “218 Patent”) and 9,226,474 (the “474 Patent”) (collectively, the “Green Pet Shop Patents”).

THE PARTIES

2. Plaintiff The Green Pet Shop Enterprises, LLC (“Green Pet Shop”) is an Illinois limited liability company having a place of business at 770 Lake-Cook Rd., Suite 120, Deerfield, Illinois 60015. Green Pet Shop manufactures and

brings to market high quality, unique, and eco-friendly pet products.

3. On information and belief, Defendant Unique Petz, Inc. (“Unique Petz”) is a New York business corporation having a principal place of business located at 10 West 33rd Street, Suite 220, New York, NY 10001.

JURISDICTION

4. This action arises under the patent laws of the United States, e.g., 35 U.S.C. §§ 1 et seq., 271, 281, 283-285. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

VENUE

5. Venue is proper in this Court under 28 U.S.C. §1400(b) because Unique Petz is incorporated in the State of New York.

FACTUAL BACKGROUND

A. Patents In Suit

6. The ‘218 Patent is called “Pressure Activated Recharging Cooling Platform” and relates to cooling platforms for a variety of uses, including for pets. The inventor of the ‘218 Patent is Gerard E. Prendergast. The ‘218 Patent was filed on April 14, 2010. On May 13, 2014, the United States Patent and Trademark Office issued the ‘218 Patent.

7. The application leading to the ‘218 Patent was assigned to Green

Pet Shop on February 9, 2012. Green Pet Shop is the lawful owner by assignment of all rights, title and interest in and to the '218 Patent and possesses all rights of recovery under the '218 Patent, and has standing to sue for infringement of the '218 Patent. A true and correct copy of the '218 Patent is attached hereto as Exhibit 1.

8. The '218 Patent is valid and enforceable.

9. The '474 Patent is called "Pressure Activated Recharging Cooling Platform" and relates to cooling platforms for a variety of uses, including for pets. The inventor of the '474 Patent is Gerard E. Prendergast. The '474 Patent is a continuation of the '218 Patent and was filed on March 26, 2014. On January 5, 2016, the United States Patent and Trademark Office issued the '474 Patent.

10. The application leading to the '474 Patent was assigned to Green Pet Shop on February 9, 2012. Green Pet Shop is the lawful owner by assignment of all rights, title and interest in and to the '474 Patent and possesses all rights of recovery under the '474 Patent, and has standing to sue for infringement of the '474 Patent. A true and correct copy of the '474 Patent is attached hereto as Exhibit 2.

11. The '474 Patent is valid and enforceable.

B. Accused Products

12. Unique Petz makes, imports into the United States, offers for sale,

sells, and/or uses in the United States pet products, including, without limitation, a pet bed such as the Coleman Pet Cooling Mat and SHEP Cooling Mat (“Accused Products”). See Exhibit 3. Unique Petz’s infringement may include additional products, services and technologies (to be determined in discovery).

13. The Accused Products infringe at least claims 15 and 16 of the ‘218 Patent and claims 1, 4, 5, 11, and 16-21 of the ‘474 Patent.

C. Notice of Infringement

14. On June 15, 2017, counsel for Green Pet Shop notified Unique Petz that its Accused Products infringed one or more claims of the ‘218 and ‘474 Patents.

15. Unique Petz has continued to manufacture, import and offer for sale the Accused Products.

D. Green Pet Shop Commercial Embodiment

16. Green Pet Shop sells a product called “Cool Pet Pad.” The Cool Pet Pad is covered by the ‘218 and ‘474 Patents. Green Pet Shop began marking its Cool Pet Pad product with one or both of its patent numbers no later than 2014.

E. Prior Litigation

17. Green Pet Shop has already litigated to judgment a patent infringement lawsuit against a seller of cooling pads for pets called Maze Innovations, Inc. (Case

No. 15-cv-1138) in the Northern District of Illinois.

18. During that lawsuit, Maze petitioned for an inter partes review based on the allegation that the Green Pet Shop Patents were invalid. The United States Patent and Trademark office rejected that petition and refused to institute a review of the Green Pet Shop Patents.

19. Also during that lawsuit, Maze argued for a construction of certain claims of the '218 and '474 Patents that it believed would allow it to avoid a finding of infringement. The judge presiding over that case issued a claim construction decision that rejected Maze's attempted construction and adopted Green Pet Shop's proposed construction.

20. After the rejection of its inter partes review petition and its proposed claim constructions, Maze settled that lawsuit and admitted that the Green Shop Patents were valid and infringed.

21. Before it filed this Complaint, Green Pet Shop informed Unique Petz about the Maze lawsuit, including the information set forth in Paragraphs 17-20 above.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,720,218

22. Green Pet Shop incorporates each of the preceding paragraphs as if fully set forth herein.

23. Unique Petz has been and is now infringing, directly and indirectly

by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalence, the '218 Patent in this District and elsewhere by making, using, offering for sale, importing, and/or selling products that fall within the scope of at least one claim of the '218 Patent without license or authorization. Such acts constitute infringement under at least 35 U.S.C. § 271 (a), (b) and (c).

24. Upon information and belief, Unique Petz has been aware of the '218 Patent since at least approximately July 17, 2012, when the '218 Patent was first published by the United States Patent and Trademark Office. Unique Petz has been aware of the '218 Patent since June 15, 2017, when a notice of infringement was sent to Unique Petz on behalf of Green Pet Shop. Unique Petz denied infringement without a plausible basis for that denial. Unique Petz's infringement has therefore been reckless, without objective basis, and willful.

25. Upon information and belief, Unique Petz has also knowingly and intentionally actively aided, abetted and induced others to infringe (such as its customers and/or business partners in this judicial district and throughout the United States). Unique Petz has also knowingly contributed to infringement, within the meaning of 35 U.S.C. § 271(c), by among other things providing pet products that are not a staple article of commerce capable of substantial non-infringing use.

26. As a direct and proximate consequence of the infringement, Green

Pet Shop has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 adequate to compensate for such infringement, but in no event less than a reasonable royalty.

27. Green Pet Shop is entitled to recover from Unique Petz the damages sustained by Green Pet Shop as a result of Unique Petz's wrongful acts in an amount subject to proof at trial.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 9,226,474

28. Green Pet Shop incorporates each of the preceding paragraphs as if fully set forth herein.

29. Unique Petz has been and is now infringing, directly and indirectly by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalence, the '474 Patent in this District and elsewhere by making, using, offering for sale, importing, and/or selling products that fall within the scope of at least one claim of the '474 Patent without license or authorization. Such acts constitute infringement under at least 35 U.S.C. § 271 (a), (b) and (c).

30. Upon information and belief, Unique Petz has been aware of the '474 Patent since at least approximately January 5, 2016, when the '474 Patent was first

published by the United States Patent and Trademark Office. Unique Petz has been aware of the '474 Patent since June 15, 2017, when a notice of infringement was sent to Unique Petz on behalf of Green Pet Shop. Unique Petz denied infringement without a plausible basis for that denial. Unique Petz's infringement has therefore been reckless, without objective basis, and willful.

31. Upon information and belief, Unique Petz has also knowingly and intentionally actively aided, abetted and induced others (such as its customers and/or business partners in this judicial district and throughout the United States) to infringe the '474 Patent. Unique Petz has also knowingly contributed to infringement, within the meaning of 35 U.S.C. § 271(c), by among other things providing pet products, which are not a staple article of commerce capable of substantial non-infringing use.

32. As a direct and proximate consequence of the infringement, Green Pet Shop has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 adequate to compensate for such infringement, but in no event less than a reasonable royalty.

33. Green Pet Shop is entitled to recover from Unique Petz the damages sustained by Green Pet Shop as a result of Unique Petz's wrongful acts in an

amount subject to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Green Pet Shop asks this Court to enter judgment against Unique Petz and against its respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. An adjudication that Unique Petz has infringed one or more of the claims of the '218 and '474 Patents.
- B. The ascertainment of and award to Green Pet Shop of actual and treble damages from the infringement of one or more claims of the '218 and '474 Patents, together with prejudgment and post-judgment interest pursuant to 35 U.S.C. § 284.
- C. A finding that this case is exceptional and the award of reasonable attorneys' fees, costs, and expenses in this action to Green Pet Shop, pursuant to 35 U.S.C. § 285.
- D. The issuance of a preliminary and/or permanent injunction prohibiting further infringement, inducement and contributory infringement of the Green Pet Shop Patents pursuant to 35 U.S.C. § 283.
- E. An order requiring that Unique Petz account for all gains, profits, and advantages derived by its infringement of the '218 and '474 Patents in violation of 35 U.S.C. § 271, and that Unique Petz pay to Green Pet Shop all damages suffered by Green Pet Shop.
- F. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

Green Pet Shop demands a trial by jury on all issues so triable.

Dated: August 17, 2017

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