

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

SportPet Designs, Inc.
1501 Paramount Drive, No. 7
Waukesha, Wisconsin 53186,

Case No.: 2:17-CV-00554-WED

Plaintiff,

v.

Cat1st Corporation
c/o Normax Inc.
8275 Eastern Avenue, Suite 200
Las Vegas, Nevada 89123,

and

Jun Takeuchi
164-0012 Nakano-ku Honcho
1-31-6-301
Tokyo, Japan,

Defendants.

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff SportPet Designs, Inc., through its attorneys, hereby submits its First Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) and states as follows for its cause of action against Defendants Cat1st Corporation and Jun Takeuchi:

THE PARTIES

1. Plaintiff SportPet Designs, Inc. (“SportPet”) is a Wisconsin corporation organized under the laws of Wisconsin with its principal place of business located at 1501 Paramount Drive, No. 7, Waukesha, Wisconsin 53186.

2. Defendant Cat1st Corporation (“Cat1st”) is a Nevada corporation organized under the laws of Nevada with its Registered Agent located at Normax Inc., 8275 Eastern Avenue, Suite 200, Las Vegas, Nevada 89123.

3. Defendant Jun Takeuchi (“Jun”) is an adult resident of Tokyo, Japan, residing at 164-0012 Nakano-ku Honcho 1-31-6-301, Tokyo, Japan.

JURISDICTION

4. This lawsuit is, among other things, an action for patent, trademark, and copyright infringement arising under the patent, trademark, and copyright laws of the United States. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

5. The Defendants are subject to personal jurisdiction in this District by virtue of, *inter alia*, the fact that: (i) each has substantial and continuous contacts within the State of Wisconsin, including in this District; and/or (ii) the Defendants have committed acts of patent, trademark, and copyright violations in the State of Wisconsin, including in this District. The Defendants have purposefully availed themselves of the benefits of the laws of the State of Wisconsin.

VENUE

6. This lawsuit was filed on April 18, 2017. After this lawsuit was filed, on May 22, 2017, the United States Supreme Court issued its decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 581 U.S. ____ (2017). In *TC Heartland*, the Court held that the patent venue statute, 28 U.S.C. § 1400(b), and not the general venue statute, 28 U.S.C. § 1391, shall govern the analysis of whether venue for a patent infringement suit is proper.

7. The *TC Heartland* Court did not specifically address whether its holding would have retroactive application to claims for patent infringement, such as this one, filed before the decision was handed down.

8. It is the Plaintiff's position that *TC Heartland* should not be retroactively applied to the patent infringement alleged in this lawsuit, and that venue of all claims in this lawsuit is proper pursuant to section 1391. The Plaintiff's lawsuit is not limited to claims for patent infringement. Venue is proper within this District for all claims asserted in this lawsuit under 28 U.S.C. § 1391(b) and (c) because the Defendants transact business within this District and offer for sale in this District products that infringe the Plaintiff's patents, trademarks, and copyrights. Moreover, venue regarding all claims brought in this lawsuit, including the patent infringement claim, is proper because a substantial part of the events giving rise to the claims occurred in this District.

9. Even if the holding of *TC Heartland* were to be retroactively applied to the patent infringement claims brought in this lawsuit, venue remains proper in this District pursuant to section 1400(b).

10. 28 U.S.C. § 1400(b) provides that any "civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business."

11. Venue is proper in this District because the Defendants have committed acts of infringement here and have a regular and established place of business in this District.

12. The Defendants are based in Japan.

13. The Defendants manufactured the infringing products in China and imported the infringing products into the United States.

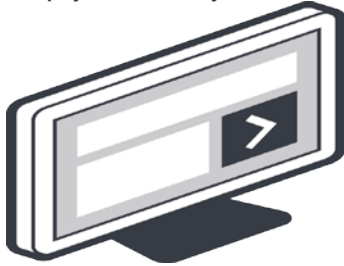
14. Defendant Cat1st is a corporation registered in Nevada, but does not have a "brick and mortar" store or business location in Nevada or anywhere in the United States. It and Jun import the infringing products and sell them online.

15. The Defendants sell the majority of the infringing products to the end user via the popular e-commerce site Amazon.com.

16. The Defendants' relationship with Amazon.com is characterized as "Fulfillment by Amazon" ("FBA"). A FBA relationship between a vendor and Amazon.com is explained on Amazon.com's website, reprinted below:

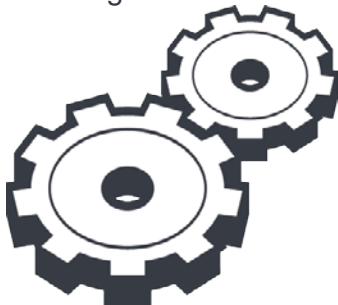
How it works

With these quick and simple steps, FBA can help eliminate your fulfillment headaches and help you scale your business.



1. Set up FBA.

If you already have a Selling on Amazon account, [Add FBA to your account](#). If you don't have a Selling on Amazon account, [Get started](#) today.



2. Create your product listings.

Add your products to the Amazon catalog one at a time, in bulk, or by integrating your inventory-management software with Amazon's API.



3. Prepare your products.

Make sure your products are "e-commerce ready," so they can be safely and securely transported all the way into a customer's hands. Need supplies? Get [Amazon preferred prep and shipping supplies](#) delivered to your door.



4. Ship your products to Amazon.

Create your shipping plans, engage [discounted partner carriers](#), and ship and track your shipments to Amazon fulfillment centers. Amazon's online seller tools can help you through the process.



5. Customers order your products, and Amazon picks, packs, and ships them.

Prime customers get fast, free shipping on your products, and all customers can qualify for FREE shipping on eligible orders. Amazon fills those orders quickly and efficiently using our advanced, web-to-warehouse, high-speed picking and sorting system. Customers receive tracking information from Amazon.



6. Amazon provides customer support on products you sell.

Our world-class customer-service team manages customer inquiries, refunds, and returns for orders on Amazon marketplaces, 24 hours a day, seven days a week.

17. Accordingly, via its FBA relationship with Amazon, the Defendants import the infringing products to the United States and ship the infringing products to Amazon fulfillment centers, where the infringing product is stored until it is purchased by an end user via Amazon.com, and Amazon fulfills the order.

18. Amazon maintains a large fulfillment center in this District, located in Kenosha, Wisconsin. It also maintains various courier and warehousing centers in this District.

19. Via their FBA relationship with Amazon.com, the Defendants regularly ship the infringing products to the Amazon fulfillment center located in this District. Amazon regularly stores the infringing products in this District until they are purchased and shipped to the end user.

20. The Defendants also regularly market the infringing products to customers in this district via advertising efforts such as mailing postcards.

21. As FBA vendors, the Defendants pay rent to Amazon to store their products at the fulfillment center in Kenosha, Wisconsin.

22. Accordingly, even if the venue standard of section 1400(b) is applied to the patent infringement claims in this case, venue is proper in this District for the patent infringement claims because the Defendants have committed acts of infringement here and have a regular and established place of business in this District where the infringing products are shipped, stored, and processed for shipment to the end user.

STATEMENT OF FACTS

Background

23. SportPet is a trail blazer in the pet products industry, specializing in making innovative and fun products for active pets. It was created in 2004 – at that time, SportPet built its own factory in China from the bottom up with an eye towards supplying pet products to big box retailers. After much labor and sweat equity, SportPet has two offices nationwide and one in China; a warehouse in the U.S. and one in China; it employs 35 individuals in the U.S. and 250 individuals worldwide; and last year it had over \$30 million in sales. SportPet attained what it set out to do and currently supplies pet products to major big box retailers.

24. SportPet earned its way into the highly competitive pet product industry by spending years building its brand. Before SportPet, specialty items such as cat furniture, trees, and scratching posts were sold only by specialty stores. Before SportPet, these items were bulky and made with plywood so the freight, weight, and merchandising space was far too large for a traditional mass market retailer to handle.

25. In 2004, SportPet became an innovator in the industry by changing the packaging for the specialty cat furniture and making it small and lightweight. SportPet spent years on this packaging, and countless hours and expense on its development, tooling, machines, and patents. It used plastic pipes, Pop Open spring wires, and sewn fabric to highly minimize the size of the product and allow the customer to assemble it at home. This development was revolutionary in the industry, as it allowed SportPet to offer cat furniture to mass retailers. SportPet had built a brand, and soon many mass retailers stocked its cat furniture products.

26. As fortunate as SportPet's innovation was in having its products appeal to mass retailers, it also led the Defendants to steal its products and make it easy for Cat1st to pack, load, and distribute the infringing products through Amazon.com. The Defendants stole SportPet's innovation without doing any of the work – it copied years of SportPet's hard work, brand building, marketing efforts, engineering, and trust with its consumer base – for free.

27. The Defendants are trying to short circuit SportPet's hard work and commitment to the industry by stealing SportPet's products and corporate existence. The Defendants have not even made an effort to change the product, brand, or advertisements. The only thing the Defendants have left for SportPet is potential liability that would arise from their poor product quality, service costs associated with the counterfeit brand, and brand confusion.

The Infringement

28. SportPet owns various patents, trademarks, and copyrights for its pet products, as discussed further herein.

29. Beginning in or about 2007, SportPet engaged Defendant Jun (via his company, D-Culture) as a distributor of SportPet products. Jun's territory included the country of Japan.

30. SportPet keeps its production closely held. Accordingly, in acting as a distributor of SportPet's product, Jun gained valuable insider information about SportPet's business, including its manufacturing processes and customer base.

31. Jun's insider information even extended to receiving significant training from SportPet on the nature and content of SportPet's patents. While a distributor of SportPet's products, Jun used advertisements of the marked SportPet products on D-Culture's website.

32. Jun then used the knowledge he gained regarding SportPet's patents in his capacity as the President of Cat1st to create the infringing products.

33. After working with SportPet for numerous years, upon information and belief, Jun decided to source SportPet's products on his own using Cat1st as a conduit, without the permission or knowledge of SportPet. Jun and Cat1st have worked with at least three Chinese manufacturers to create and sell products that are identical to SportPet's products.

34. Upon information and belief, Jun and Cat1st hire one manufacturer to create the infringing products, and then move to the next manufacturer to avoid manufacturing large quantities of products. In so doing, Jun and Cat1st leave behind inventory and manufacturing know-how that these manufacturers use to create further infringing products and market to SportPet's customers and at industry trade shows, thereby further damaging SportPet.

35. Jun is working with Cat1st to produce, sell, and import certain products that practice the inventions contained in SportPet's products and infringe on SportPet's patents, trademarks, and copyrights.

36. SportPet has registered two protectable trademarks relevant here: (1) Sport Pet Designs; and (2) Pop Open.

37. The Sport Pet Designs trademark bears Registration Number 3,204,404 and covers the standard characters for the word mark "Sport Pet Designs." SportPet incorporates the standard characters for the word mark "Sport Pet Designs" into its logo:



38. In some instances, Jun and Cat1st use the logo "SportPet Japan" when advertising, but without permission or consent of SportPet. This logo is virtually identical to SportPet's trademarked logo and runs the high risk of confusing the consumer:



39. SportPet previously had attempted to trademark the word mark "Sport Pet Japan." The United States Patent and Trademark Office advised SportPet that because it already had a trademark on the standard characters for the word mark "Sport Pet Designs," its protectable trademark already covered combining this term with the name of another country using a mark such as "Sport Pet Japan."

40. Neither Cat1st nor Jun have a protectable trademark in "Sport Pet Japan." SportPet's trademark "Sport Pet Designs" is registered for Class 20 and 28 trademark protection,

which covers all things pet accessories related, so even if Cat1st attempted to trademark “Sport Pet Japan,” it would not succeed.

41. The Pop Open trademark bears Registration Number 2276917, and it covers collapsible containers for household use. The Pop Open trademark was transferred to SportPet on May 2, 2017 following SportPet’s merger with Bajer Design and Marketing Inc.

42. SportPet provided Jun with significant training on the scope of the Pop Open trademark and the incorporation of this technology into SportPet’s products. Jun and Cat1st infringed on this trademark by using this technology in Cat1st’s infringing products.

43. As described above, Jun and Cat1st are selling the infringing products online on sites such as Amazon.com using postings for the infringing products that are virtually identical to SportPet’s postings for its products. Given that these postings are virtually identical in every way to SportPet’s postings, these postings run the high risk of confusing the consumer.

44. The sale of the infringing products creates liability concerns for SportPet. Believing in a great responsibility owed to the consumer and the pet, SportPet thoroughly tests its designs for safety and function, opting to perform quality and safety tests every day internally as well as working with third-party testers. For example, SportPet employs a specialized crimping method to ensure that the metal coils do not spring loose when a product pops open.

45. SportPet is concerned that Cat1st is not employing the same stringent safety measures. This is especially concerning because Cat1st is potentially exposing SportPet to liability for safety hazards on products that SportPet did not manufacture.

46. Additionally, certain of Cat1st’s products that copy SportPet’s products have received negative reviews on Amazon, thereby wrongfully leading the consumer to believe SportPet’s product is faulty.

47. SportPet also has been receiving calls to service Cat1st's products because Cat1st (1) has included with its product a customer service letter from SportPet; and (2) wrongfully has used SportPet's brand name on its products. This has caused SportPet to incur damages for servicing products that it did not manufacture.

48. Cat1st has imported the infringing products to the United States on at least six occasions, including July 25, 2016, May 20, 2016, October 28, 2015, September 12, 2015, and July 16, 2015, and December 14, 2014.

49. Cat 1st is a corporation registered in Nevada, but it imports the infringing products and sells them online in the United States. Beyond its relationship with Amazon establishing venue in this District, it has no other established place of business in the United States. SportPet, on the other hand, proudly is headquartered in the United States; in this District. SportPet has created jobs in the United States; Cat1st has not. SportPet has production and warehousing facilities in the United States; Cat1st does not.

50. Yet Cat1st pays rent to Amazon to hold its infringing product in Wisconsin and then service the thriving market where SportPet is headquartered, and where SportPet is successful. This is wrong on many levels. Cat1st does business in Wisconsin – but it has not registered to do business in Wisconsin. Moreover, upon information and belief, it is not paying the required state sales tax. Evading the state sales tax is yet another example of the pattern and practice of Cat1st utterly disregarding the laws of Wisconsin and the United States, wrongfully funneling profits from the United States to Japan, and exploiting the brand, hard work, and integrity of SportPet. Cat1st has utterly disregarded the difference between right and wrong, and the difference between lawful and unlawful, and it must be stopped.

The Infringing Products

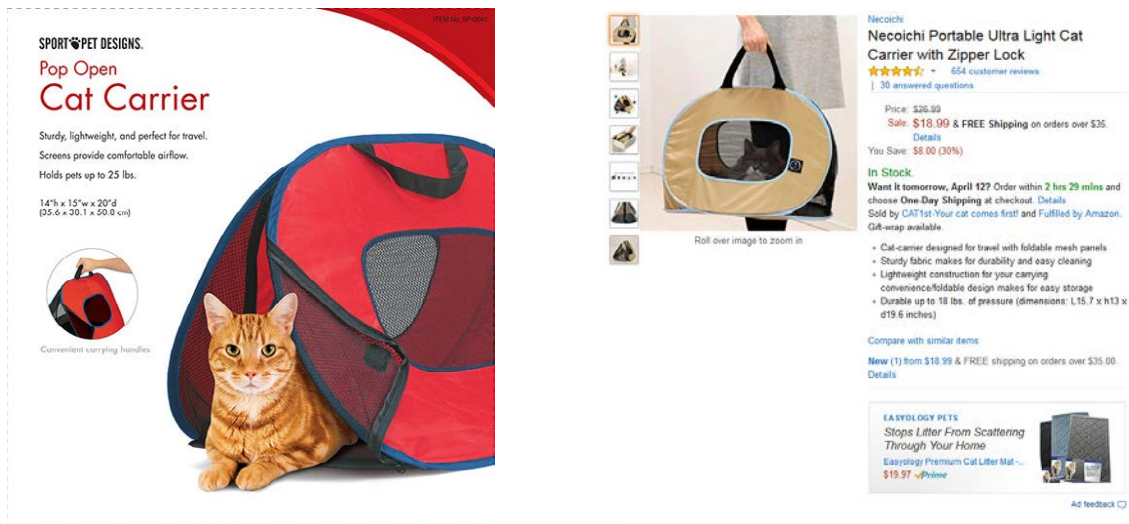
51. Cat1st and Jun have produced and imported the following products, each of which infringe on SportPet's patents, copyrights, and trademarks.

1. The Pop Open Cat Carrier

52. Until September of 2016, SportPet held the following patents on the Pop Open Cat Carrier (the "Cat Carrier Patents"): U.S. Patent Nos. 5,964,533, RE37,924E, 5,967,357, and other U.S. and foreign patents pending.

53. At all relevant times, hereto, SportPet marked its product with these patent numbers.

54. Cat1st sold a cat carrier on Amazon that practices the inventions claimed in the Cat Carrier Patents and therefore infringed on SportPet's patents. SportPet's Amazon listing is followed by a current listing on Amazon closely resembling Cat1st's listings that were slightly modified after it was notified of the infringement:



55. In selling this product using a logo similar to SportPet's logo and using and advertising the pop open design, Cat1st is violating SportPet's Sport Pet Designs and Pop Open trademarks. "Sport Pet Designs" is a protectable mark incorporated into SportPet's logo, and

Cat1st's use of an almost identical logo is likely to cause confusion among consumers. The "Pop Open" design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

56. Cat1st's sale of this product also violates SportPet's copyright on its packaging. SportPet's packaging and advertising states that this product is pop open, sturdy and lightweight, for travel, and convenient for carrying. Cat1st's packaging and advertising copies this language almost word for word.

2. The Pop Open Kennel

57. Until September of 2016, SportPet held the following patents on the Pop Open Kennel (the "Kennel Patents"): 5,964,533, RE37,924E, 5,967,357, and other U.S. and foreign patents pending.

58. At all relevant times, hereto, SportPet marked its product with these patent numbers.

59. Cat1st sold a pop open kennel on Amazon that practices the inventions claimed in the Kennel Patents and therefore infringed on SportPet's patents. SportPet's Amazon listing is followed by a current listing on Amazon closely resembling Cat1st's listings that were slightly modified after it was notified of the infringement:



60. In selling this product using a logo similar to SportPet’s logo and using and advertising the pop open design, Cat1st is violating SportPet’s Sport Pet Designs and Pop Open trademarks. “Sport Pet Designs” is a protectable mark incorporated into SportPet’s logo, and Cat1st’s use of an almost identical logo is likely to cause confusion among consumers. The “Pop Open” design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

61. Cat1st’s sale of this product also violates SportPet’s copyright on its packaging. SportPet’s packaging and advertising states that this product is pop open, portable, folds flat for travel, and has mesh panels for ventilation and visibility. Cat1st’s packaging copies this language almost word for word.

3. The Pop Open Cat Cubes

62. Until September of 2016, SportPet held the following patents on the Pop Open Cat Cubes (the “Cat Cube Patents”): 5,964,533, RE37,924E, 5,967,357, and other U.S. and foreign patents pending.

63. At all relevant times, hereto, SportPet marked its product with these patent numbers.

64. Cat1st sold cat cubes on Amazon that practices the inventions claimed in the Cat Cube Patents and therefore infringed on SportPet's patents. SportPet's Amazon listing is followed by a current listing on Amazon closely resembling Cat1st's listings that were slightly modified after it was notified of the infringement:



65. In selling this product using a logo similar to SportPet's logo and using and advertising the pop open design, Cat1st is violating SportPet's Sport Pet Designs and Pop Open trademarks. "Sport Pet Designs" is a protectable mark incorporated into SportPet's logo, and Cat1st's use of an almost identical logo is likely to cause confusion among consumers. The "Pop Open" design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

66. Cat1st's sale of this product also violates SportPet's copyright on its packaging. SportPet's packaging and advertising states that this product has a built-in flexi frame that pops open in seconds and that packs can be connected for a larger play area. Cat1st's packaging and advertising copies this language almost word for word.

4. The Pop Open Cat Cubes Two Pack

67. Until September of 2016, SportPet held the following patents on the Pop Open Cat Cubes Two Pack (the “Cat Cube Two Pack Patents”): 5,964,533, RE37,924E, 5,967,357, and other U.S. and foreign patents pending.

68. At all relevant times, hereto, SportPet marked its product with these patent numbers.

69. Cat1st sold cat cubes two pack on Amazon that practice the inventions claimed in the Cat Cube Two Pack Patents and therefore infringed on SportPet’s patents. SportPet’s Amazon listing is followed by a current listing on Amazon closely resembling Cat1st’s listings that were slightly modified after it was notified of the infringement:



70. In selling this product using a logo similar to SportPet’s logo and using and advertising the pop open design, Cat1st is violating SportPet’s Sport Pet Designs and Pop Open trademarks. “Sport Pet Designs” is a protectable mark incorporated into SportPet’s logo, and Cat1st’s use of an almost identical logo is likely to cause confusion among consumers. The “Pop Open” design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

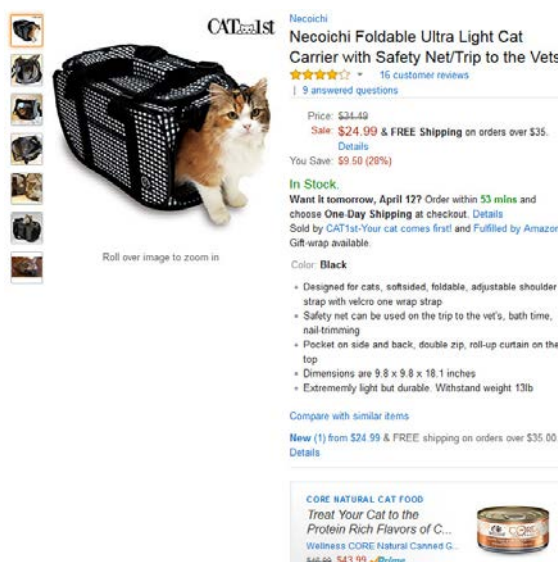
71. Cat1st's sale of this product also violates SportPet's copyright on its packaging. SportPet's packaging and advertising states that this product has a built-in flexi frame that pops open in seconds and that packs can be connected for a larger play area. Cat1st's packaging copies this language almost word for word.

5. The Pop Open Pet Carrier

72. Until September of 2016, SportPet held the following patents on the Pop Open Pet Carrier (the "Pet Carrier Patents"): 5,964,533, RE37,924E, 5,967,357, and other U.S. and foreign patents pending.

73. At all relevant times, hereto, SportPet marked its product with these patent numbers.

74. Cat1st sold a pet carrier on Amazon that practices the inventions claimed in the Pet Carrier Patents and therefore infringed on SportPet's patents. SportPet's Amazon listing is followed by a current listing on Amazon closely resembling Cat1st's listings that were slightly modified after it was notified of the infringement:



75. In selling this product using a logo similar to SportPet's logo and using and advertising the pop open design, Cat1st is violating SportPet's Sport Pet Designs and Pop Open trademarks. "Sport Pet Designs" is a protectable mark incorporated into SportPet's logo, and Cat1st's use of an almost identical logo is likely to cause confusion among consumers. The "Pop Open" design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

76. Cat1st's sale of this product also violates SportPet's copyright on its packaging. SportPet's packaging and advertising states that this product is pop open, has an adjustable shoulder strap, zippered entry, and is lightweight. Cat1st's packaging and advertising copies this language almost word for word.

6. The Pop Open Cat Tunnel

77. Until September of 2016, SportPet held the following patents on the Pop Open Cat Tunnel (the "Cat Tunnel Patents"): 5,964,533, RE37,924E, 5,967,357, and other U.S. and foreign patents pending.

78. At all relevant times, hereto, SportPet marked its product with these patent numbers.

79. Cat1st sold a cat tunnel on Amazon that practices the inventions claimed in the Cat Tunnel Patents and therefore infringed on SportPet's patents. SportPet's Amazon listing is followed by a current listing on Amazon closely resembling Cat1st's listings that were slightly modified after it was notified of the infringement:

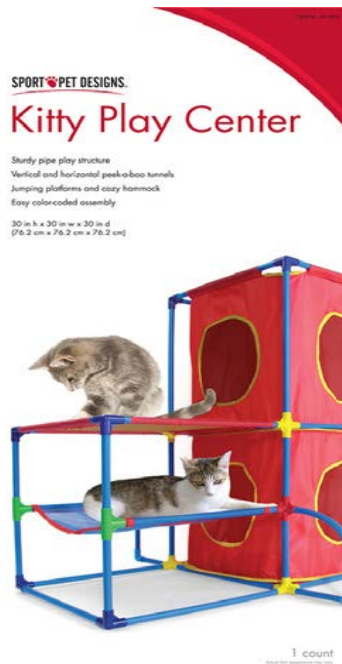


80. In selling this product using a logo similar to SportPet’s logo and using and advertising the pop open design, Cat1st is violating SportPet’s Sport Pet Designs and Pop Open trademarks. “Sport Pet Designs” is a protectable mark incorporated into SportPet’s logo, and Cat1st’s use of an almost identical logo is likely to cause confusion among consumers. The “Pop Open” design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

81. Cat1st’s sale of this product also violates SportPet’s copyright on its packaging. SportPet’s packaging and advertising states that this product is pop open, additional cubes can be connected, and provides peek-a-boo playtime. Cat1st’s packaging and advertising copies this language almost word for word.

7. The Cat Play Center

82. Cat1st has been selling a cat tunnel on Amazon that infringes on SportPet’s copyrights and trademarks. SportPet’s Amazon listing is followed by a current listing on Amazon closely resembling Cat1st’s listings that were slightly modified after it was notified of the infringement:



83. In selling this product using a logo similar to SportPet’s logo, Cat1st is violating SportPet’s Sport Pet Designs trademark. “Sport Pet Designs” is a protectable mark incorporated into SportPet’s logo, and Cat1st’s use of an almost identical logo is likely to cause confusion among consumers.

84. Cat1st’s sale of this product also violates SportPet’s copyright on its packaging. SportPet’s packaging and advertising states that this product has a pipe play structure, peek-a-boo tunnels, and easy assembly. Cat1st’s packaging and advertising copies this language almost word for word.

8. The Wheel of Fun

85. Cat1st has been selling a wheel of fun on Amazon that infringes on SportPet’s trademarks and copyrights. SportPet’s Amazon listing is followed by a current listing on Amazon closely resembling Cat1st’s listings that were slightly modified after it was notified of the infringement:



86. In selling this product using a logo similar to SportPet’s logo, Cat1st is violating SportPet’s Sport Pet Designs trademark. “Sport Pet Designs” is a protectable mark incorporated into SportPet’s logo, and Cat1st’s use of an almost identical logo is likely to cause confusion among consumers.

87. Cat1st’s sale of this product also violates SportPet’s copyright on its packaging. SportPet’s packaging and advertising states that this product has openings on all sides, three connected compartments, and an inviting design. Cat1st’s packaging and advertising copies this language almost word for word.

CAUSES OF ACTION

COUNT I – PATENT INFRINGEMENT

88. Plaintiff realleges and incorporates by reference the preceding allegations of this Complaint as if fully set forth herein.

89. Upon information and belief, in violation of 35 U.S.C. § 271(a), the Defendants are and have been directly infringing (1) the Cat Carrier Patents; (2) the Kennel Patents; (3) the Cat Cube Patents; (4) the Cat Cube Two Pack Patents; (5) the Pet Carrier Patents; and (6) the Cat Tunnel Patents by making, using, selling, and/or offering to sell in the United States, or importing into the United States, products or processes that practice the inventions claimed in these Patents and infringes these Patents.

90. Because of the Defendants' unlawful infringement of these Patents, the Plaintiff has suffered and will continue to suffer damage. The Plaintiff is entitled to recover from the Defendants the damages suffered by it because of their unlawful acts.

91. Upon information and belief, the Defendants intend to continue their unlawful infringing activity, and the Plaintiff continues to and will continue to suffer irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing activities unless this Court enjoins the Defendants from further infringing activities.

COUNT II – TRADEMARK INFRINGEMENT

92. Plaintiff realleges and incorporates by reference the preceding allegations of this Complaint as if fully set forth herein.

93. Section 32(1)(a) of the Lanham Act provides: “Any person who shall, without the consent of the registrant—(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive. . . . shall be liable in a civil action. . . .”

94. Plaintiff registered two trademarks relevant here: (1) Sport Pet Designs and (2) Pop Open.

95. The Defendants have used marks that have created a likelihood of confusion about the origin of the Defendants' goods or services.

96. In selling this product using a logo similar to SportPet's logo and using and advertising the pop open design, Cat1st is violating SportPet's Sport Pet Designs and Pop Open trademarks. "Sport Pet Designs" is a protectable mark incorporated into SportPet's logo, and Cat1st's use of an almost identical logo is likely to cause confusion among consumers. The "Pop Open" design is a protectable mark that Cat1st has incorporated into its products and advertisements and therefore is likely to cause confusion among consumers.

97. This renders it difficult for the consumer to know if the product is a Cat1st product or a SportPet product, as evidenced by the fact that SportPet receives service calls on Cat1st's products.

98. The Defendants are using confusingly similar marks in such a way that it creates a likelihood of confusion, mistake, and/or deception with the consuming public. The confusion created includes that the Defendants' products are the same as that of the Plaintiff, or that the Defendants are somehow associated, affiliated, connected, approved, authorized, or sponsored by Plaintiff.

99. The Plaintiff has been damaged as a result.

COUNT III – COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. § 101 et. seq.

100. Plaintiff realleges and incorporates by reference the preceding allegations of this Complaint as if fully set forth herein.

101. SportPet owns a valid copyright in the product information contained on its advertising and copying. It is engaging in the application process for registering its copyrights.

102. The Defendants have copied constituent elements of the work that are original. The Defendants engaged in actual copying of the Plaintiff's work, and such copying constitutes an improper appropriation of the Plaintiff's work. They did so by including almost identical language to SportPet's packaging and advertising in Cat1st's packaging and advertising.

103. The Plaintiff has been damaged as a result.

**COUNT IV – FRAUDULENT REPRESENTATIONS IN VIOLATION OF SECTION
100.18 OF THE WISCONSIN STATUTES**

104. Plaintiff realleges and incorporates by reference the preceding allegations of this Complaint as if fully set forth herein.

105. The Defendants, with intent to sell merchandise to the public, have published, disseminated, circulated, or placed before the public, or caused, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, an advertisement, statement, or representation to the public relating to such purchase, sale, or use of merchandise, which advertisement, announcement, statement or representation contains assertions, representations or statements of fact which is untrue, deceptive or misleading.

106. The Defendants have done so by misrepresenting to the public, such as potential customers viewing the products on Amazon.com, that they are selling SportPet's products, when they are selling Cat1st's products.

107. The Defendants also have made such misrepresentations to the Plaintiff. Jun and Cat1st misrepresented to the Plaintiff that they only sold the infringing products in Japan and not in the United States. Jun also misrepresented to the Plaintiff that he had no knowledge of Cat1st selling infringing product on Amazon.com.

108. The Plaintiff has been damaged as a result of the Defendants' misrepresentations to the public and to the Plaintiff. It is entitled to recover damages for its pecuniary loss, including,

but not limited to, loss of sales when customers intended to purchase SportPet's products but instead purchased Cat1st's products as a result of the misrepresentations, as well as reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SportPet Designs, Inc., prays for the following relief:

1. An entry of judgment that Defendants and all persons in active concert or participation with them be found to have infringed SportPet's patents, trademarks, and copyright;
2. That the Defendants and all those persons acting or attempting to act in active concert or in participation with them or acting on their behalf be immediately, preliminarily and permanently enjoined from further infringement of the patents, trademarks, and copyrights;
3. An award of damages adequate to compensate SportPet for Defendants' patent, trademark, and copyright infringement;
4. An award of treble damages for willful infringement of each Patent pursuant to 35 U.S.C. § 284;
5. A post-judgment equitable accounting of damages for the period of infringement following the period of damages established by SportPet at trial;
6. A judicial determination of the conditions of future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate;
7. An award of prejudgment interest, costs and disbursements, and attorneys' fees; and
8. Such other and further relief as the Court deems SportPet may be entitled to in law and equity.

JURY DEMAND

Plaintiff SportPet Designs, Inc. demands a trial by jury as to all issues so triable.

Dated this 29th day of June, 2017.

Respectfully submitted,

s/ **Melissa Blair Espin**

Wisconsin State Bar No. 1049874

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