FILED

JUN 12 2019

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

ANYWILL, *et al.*,

Defendants.

CIVIL ACTION NO. 19-682

FILED UNDER SEAL

DECLARATION OF PETER DERTSAKYAN IN SUPPORT OF PLAINTIFFS' *EX PARTE* APPLICATION FOR ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, PETER DERTSAKYAN, 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. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am a named Plaintiff, and the President and majority owner of Co-Plaintiff, DOGGIE DENTAL INC ("Doggie Dental"), a corporation organized and existing under the laws of the State of California.

3. I make this declaration in support of Plaintiffs' *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. The Defendants use the interactive commercial Internet websites and Internet based e-commerce stores ("Online Marketplace Platforms", hereafter "OMPs") using the seller identities and store names set forth on **Schedule "A"** to the Complaint.

5. I am the inventor of the BRISTLY™ dog toothbrush and the owner of the intellectual property related thereto; Doggie Dental, Inc. is the exclusive licensee of such intellectual property. We are the named Plaintiffs in this lawsuit.

6. I developed and now, with Doggie Dental, sell a unique and revolutionary product under the common law trademark BRISTLY ("Bristly Mark") that safely and easily permits dogs to brush their own teeth removing plaque and tarter ("BRISTLY™ Product"). We identified the need for this product and created the market for this product.

7. In 2016, I developed the idea behind the BRISTLY™ dog toothbrush. June 2017 saw the launch of the BRISTLY™ dog toothbrush for beta testing. Over 50,000 dog owners experienced effortless daily tooth brushing of their dogs with BRISTLY™. In early 2018, development and testing of a new version of the BRISTLY™ dog toothbrush occurred.

8. In June 2018 a crowdfunding campaign was launched on kickstarter.com. In less than two months, $466,000 was raised with the assistance of nearly 11,000 backers and reached its funding goal in one day; the campaign was featured on the homepage of kickstarter.com as one of its successful campaigns. The crowdfunding campaign was continued on indiegogo.com where an additional $534,000 was raised with the assistance of 11,466 additional backers. The crowdfunding campaign for the BRISTLY™ dog toothbrush is the campaign with the highest number of backers and the highest amount raised of any pet campaigns.

9. The new version of the BRISTLY™ dog toothbrush went on sale in October 2018. Plaintiffs' BRISTLY™ dog toothbrush is sold through the bristly.com website; the amazon.com Internet marketplace by the official seller – Brandish; and various retail stores across the United States. Authentic BRISTLY™ dog toothbrushes are not sold on eBay by authorized sellers.

10. Plaintiffs' BRISTLY™ Product has been featured in videos or articles by numerous media outlets, including MSN (https://www.msn.com/en-sg/lifestyle/lifestylegeneral/a-new-chew-toy-will-help-your-dog-brush-its-own-teeth/ar-AAA8pvh) , Pet Lover Geek (https://www.facebook.com/petlovergeek/videos/613996128985404), Askmen (https://www.askmen.com/entertainment/guy_gear/best-new-kickstarters-for-june-28-2018.html), Interesting Engineering (https://interestingengineering.com/this-chew-stick-for-dogs-helps-them-achieve-good-oral-health), Awesome Stuff 365 (https://awesomestuff365.com/bristly-toothbrush-for-dogs/), star2.com (https://www.star2.com/living/2018/07/28/toothbrushing-stick-dogs-clean-teeth/), Dude (http://www.dudeiwantthat.com/household/pets/bristly-toothbrush-for-dogs.asp), Gaget flow (https://thegadgetflow.com/blog/bristly-is-the-chew-toy-that-cleans-your-dogs-teeth/ and https://thegadgetflow.com/portfolio/dog-tooth-brushing-stick/), The Gadgeteer (https://the-gadgeteer.com/2018/07/20/micro-veggie-growing-tray-tiny-edc-pen-a-toothbrush-for-dogs-and-more-notable-crowdfunding-campaigns/), Steemit (https://steemit.com/steemhunt/@adarshagni/bristly-chew-stick-for-dogs), New Atlas (https://newatlas.com/bristly-dog-toothbrush/55401/), TheThings.com (https://www.thethings.com/chew-toy-helps-dogs-brush-teeth), slashpets

(https://www.slashpets.com/bristly-toothbrush/), Cool Business Ideas (https://www.coolbusinessideas.com/archives/toothbrush-for-your-doggy/), Cool Hunting (https://coolhunting.com/design/bristly-dog-toothbrush/), MNN (https://www.mnn.com/family/pets/stories/answer-dog-toothbrushing-struggle), Gismo Review (https://www.gismoreview.com/bristly-the-toothbrush-for-dog/), Product Watch (https://productwatch.co/hate-brushing-your-dogs-teeth-meet-bristly-and-forget-your-troubles/), Mental Floss (http://mentalfloss.com/article/551054/new-chew-toy-will-help-your-dog-brush-its-own-teeth), and Trend Hunter (https://www.trendhunter.com/trends/bristly).

11. Genuine goods bearing the Bristly Mark and Bristly Trade Dress are widely legitimately advertised and promoted by Plaintiffs, their 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 increasing important to Plaintiffs' overall marketing.

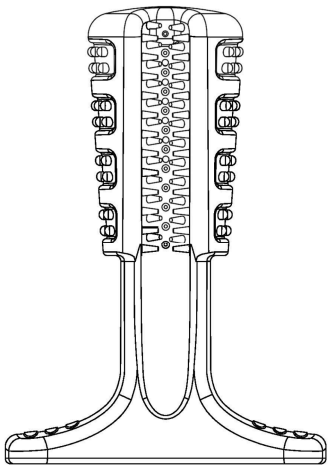
12. Thus, Plaintiffs and their authorized distributors expend significant monetary resources on Internet marketing, including search engine optimization ("SEO") strategies. Those strategies allow Plaintiffs and their authorized retailers to fairly and legitimately educate consumers about the value associated with Plaintiffs' brand and the goods sold thereunder. Similarly, Defendants' individual seller stores are indexed on search engines and compete directly with Plaintiffs for space in the search results.

13. Plaintiffs have taken numerous steps to protect the BRISTLY™ dog toothbrush. I am the owner of U.S. copyright registration VA 2-122-455 directed to various photographs related to the BRISTLY™ dog toothbrush (the "Bristly Works"). A copy of my copyright registration certificate, together with copies of the deposit materials, is attached to the Complaint

as **Exhibit 1**. I am also the owner of unregistered copyrights related to the BRISTLY™ dog toothbrush.

14. In addition to my common law trademark rights in BRISTLY, I am also the owner of various pending trademark applications, including U.S. Application Serial No. 88/177,120 for BRISTLY on the Principal Register for goods which include "non-edible dental chews for pets;" examination of this application has concluded and the application was recently published for opposition by the U.S. Patent and Trademark Office. A copy of the Notice of Publication dated March 6, 2019, is attached to the Complaint as **Exhibit 2**. The opposition period closed on April 25, 2019, without any oppositions being filed and it is anticipated the trademark registration certificate will be issued in 2019. The Bristly Mark is inherently distinctive, as recognized by the U.S. Patent and Trademark Office in stating the Bristly Mark "appears to be entitled to registration" on the Principal Register.

15. I am also the owner of various design patent applications directed to the BRISTLY™ dog toothbrush, including an issued European Registered Community Design (005818606-0001), a pending U.S. design patent application, and a pending Chinese design patent application. A copy of my Registered Community Design is attached to the Complaint as **Exhibit 3**. All of the design patent applications have common figures, and one of the figures is set forth below:



…….

16. I am also the owner of U.S. Patent Application No. 15/472,206 for "Pet chew toy for dental self-cleaning by domestic pets," which was filed March 28, 2017, and is currently pending. A copy of Plaintiffs' U.S. Patent Application Publication No. 2018/0295811 is attached to the Complaint as **Exhibit 4**. This utility patent application is currently undergoing examination at the U.S. Patent Office.

17. BRISTLY™ Products have a unique and distinctive trade dress, which is characterized by the ornamental features shown and described in Plaintiffs' design patent applications and variations thereof (the "BRISTLY™ Trade Dress"). The arrangement and combination of these features are arbitrary, non-functional, and fanciful and constitute legally protectable trade dress. The BRISTLY™ Trade Dress has acquired secondary meaning identifying Plaintiffs as the source of products bearing it. This secondary meaning was acquired prior to use of the BRISTLY™ Trade Dress by Defendant.

18. Plaintiffs' Bristly Mark and Bristly Trade Dress have been used in interstate commerce to identify and distinguish Plaintiffs' goods. Plaintiffs' Bristly Mark and Bristly Trade Dress have been used by Plaintiffs prior in time to Defendants' use of this mark and trade

dress. The Bristly Mark and Bristly Trade Dress has never been assigned or licensed to any of the Defendants in this matter. The Bristly Mark and Bristly Trade Dress is a symbol of Plaintiffs' quality, reputation, and goodwill and have never been abandoned.

19. Due to the success of BRISTLY™ Product, Plaintiffs have become the target of multiple counterfeiters seeking to profit off the goodwill and reputation and fame enjoyed by BRISTLY™ and its BRISTLY™ Product. Plaintiffs have been forced to police the various Internet marketplaces to identify and seek takedowns of unlawful listings for the Infringing Products[1] since allowing the unlawful listings to continue is causing damage to Plaintiffs' reputation and bottom line. Some Defendants sell their fake BRISTLY™ dog toothbrushes at a fraction of the controlled retail price, going as low as $3.00 or $4.00. 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. The genuine BRISTLY™ dog toothbrush is ignored. Plaintiffs have 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. Another major problem with the Internet marketplaces is that there is a direct and convenient connection between various Chinese and other unidentified manufactures to the Infringing Products. In essence, a counterfeiter in Vietnam or Russia, for example, may order a crate of Infringing Products from a Chinese manufacturer, have them drop shipped to a fulfillment center in the United States, and then sell the Infringing Products to a US consumer through a Third Party Service Provider. The ease of this system encourages knock-offs to flourish.

[1] As set forth in the Complaint, Defendants have offered for sale, sold, and distributed knock-off versions of the BRISTLY™ dog toothbrush (the "Infringing Product") which closely mimic the appearance of Plaintiffs' product and infringe upon Plaintiffs' common law trade dress rights.

20. For these reasons, Plaintiffs 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. These manufacturers were supplying many of the other identified Defendants with infringing products flooding the Internet marketplaces and damaging Plaintiffs' business. This damage to Plaintiffs' business will continue unless Plaintiffs receive the sought after restraining order and injunctive relief.

21. Defendants' sale, distribution, and advertising of the Infringing Product are highly likely to cause consumers to believe that Defendants are offering genuine BRISTLY™ dog toothbrushes when in fact they are not. To illustrate, below are several examples which vividly show that the Infringing Product itself and the manner in which it is marketed is designed to confuse and mislead consumers into believing that they are purchasing Plaintiffs' BRISTLY™ Product or that the Infringing Product is otherwise approved by or sourced from Plaintiffs:

Plaintiffs' Copyrighted Image

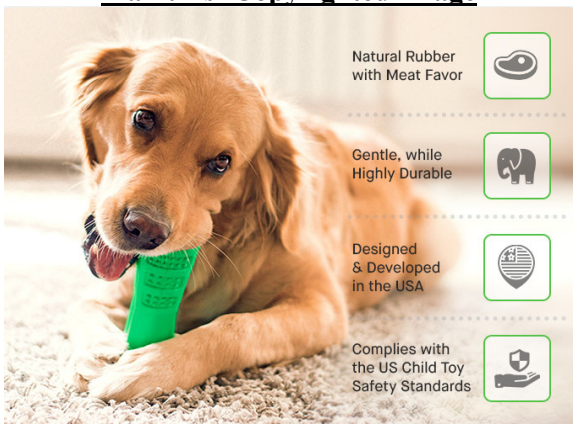
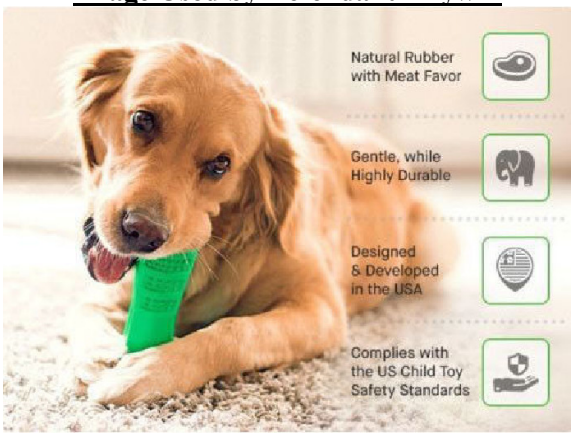


Image Used by Defendant Anywill



Plaintiffs' Copyrighted Image

Image Used by Defendant Extechnico

Plaintiffs' Copyrighted Image

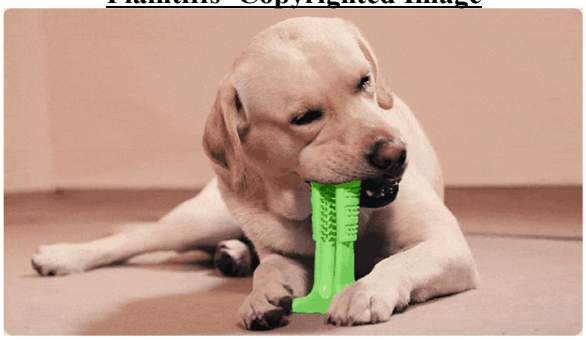


Image Used by Defendant u Xingchen

22. Defendants' actions have resulted in actual confusion in the marketplace between Defendants' Infringing Product and genuine BRISTLY™ dog toothbrushes. Numerous purchasers of Defendants' Infringing Product have contacted Plaintiffs to complain about the performance of the Infringing Product believing same to be a genuine BRISTLY™ dog toothbrush. Examples of such complaints include "my dog destroyed your teeth cleaning thing in 10 seconds" and "I was so worried my dog may have eaten parts of it that I had to check him over at the vet." Such complaints and negative comments are not just made directly to Plaintiffs,

but are also posted by buyers of the Infringing Products on various websites and social media sites for all the world to see.

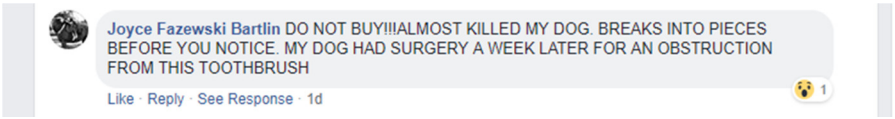
23. Defendants' Infringing Products are substantially inferior to the genuine product. Plaintiffs' genuine BRISTLY™ dog toothbrush is made of natural rubber. Defendants' Infringing Products are made with silicone or other materials. As poorly designed and manufactured products, Defendants' Infringing Products threaten to destroy the reputation of high quality that Plaintiffs' BRISTLY™ products have earned.

24. As poorly designed and manufactured products, Defendants' Infringing Products create serious risk of harm to animals. Concern about the health and safety of dogs who might be injured by the unauthorized, illegal, and dangerous knock offs of the authentic BRISTLY™ dog toothbrush is warranted. An illustration of the dangerous situation was brought to my attention by a pet owner who believed that Doggie Dental sold a faulty and defective product when in actuality the pet owner purchased a knock off masquerading as an authentic BRISTLY™ dog toothbrush. (The seller of the knock off is not a current defendant in this lawsuit because the product was not sold into this judicial district.) Specifically, the pet owner contacted me complaining that her dog had chewed apart the fake product, swallowed a portion, and underwent corrective surgery to remove the piece. The pet owner provided the photographs below.

Bristly Knock Off Chewed by Dog

Injured Dog After Surgery

The pet owner wanted Doggie Dental to pay for the damages caused by the fake product. Additionally, the pet owner has previously publicized this post on Doggie Dental's publicly available Facebook page:



This pet owner's experience and posting highlight both the actual confusion between the knock offs and the genuine BRISTLY™ dog toothbrush and the immediate and irreparable injury being incurred by the Plaintiffs.

25. Defendants do not have, nor have they ever had, the right or authority to use Plaintiffs' BRISTLY Trade Dress, Bristly Mark, and/or BRISTLY Works for any purpose. Defendants' unlawful activities have deprived and continue to deprive Plaintiffs of their rights to fair competition. By their activities, Defendants are defrauding Plaintiffs and the consuming public for Defendants' benefit. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiffs ongoing irreparable harm. Accordingly, Plaintiffs are seeking entry of a temporary restraining order prohibiting Defendants' further wrongful unfair competition and infringement of Plaintiffs' federally registered copyrights.

26. Given Defendants' copying and use of Plaintiffs' BRISTLY Trade Dress, Bristly Mark, and/or BRISTLY Works, the Infringing Products are indistinguishable to consumers, both at the point of sale and post-sale. By using Plaintiffs' intellectual property, Defendants have created a false association between their Infringing Products, their Internet e-commerce stores, and Plaintiffs. Such false association is in violation of 15 US.C. § 1125(a) and is causing and will continue to cause Plaintiffs' irreparable harm and damage. The infringements deprive Plaintiffs of the ability to control the creative content protected by the copyright, it devalues the BRISTLY brand by associating it with inferior quality goods, and it undermines the value of the copyright by creating the impression that infringement may be undertaken with impunity which threatens Plaintiffs' ability to attract investors and markets for the BRISTLY Products.

27. I have reviewed **Composite Exhibit 1** and the pictured web listings and upon my information and belief, the Defendants identified in **Schedule "A**" of the Complaint, were and/are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling non genuine versions of Plaintiffs' BRISTLY product and copying and using Plaintiffs' BRISTLY Trade Dress, Bristly Mark, and/or BRISTLY Works with the non-genuine versions of Plaintiff's BRISTLY product directed to U.S. consumers, including those consumers in Pennsylvania, through their e-commerce stores.

28. None of the identified Defendants are authorized re-sellers of genuine BRISTLY product. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell any BRISTLY product. Further, Plaintiffs never consented or granted permission to any of the identified Defendants to use Plaintiffs' BRISTLY Trade Dress, Bristly Marks, and/or BRISTLY Works.

29. I have confirmed that all of the identified products in **Composite Exhibit 1** are knock-offs of the genuine BRISTLY product. Through visual inspection of Defendants' listings for Infringing Products, it was confirmed that each Defendant is featuring, displaying, and/or using the BRISTLY Trade Dress, Bristly Mark, and/or BRISTLY Works without authorization and that the products that each Defendant is offering for sale, using virtually identical copies of Plaintiff's BRISTLY Trade Dress, Bristly Mark, and/or BRISTLY Works are, in fact, not genuine products. The checkout pages or order forms for the Infringing Products confirm that each Defendant was and/or is still currently offering for sale and/or selling Infringing Products through their respective Merchant Storefronts and User Accounts and that each Defendant provides shipping and/or has actually shipped Infringing products to the United States, including to customers located in Pennsylvania. At checkout, a shipping address located in the Pittsburgh area ("the Pennsylvania Address") in the Western District of Pennsylvania verified that each Defendant provides shipping to the Pennsylvania Address. I inspected the detailed web listings describing the Infringing Products Defendants are offering for sale through the Internet based e-commerce stores operating under each of their respective Seller IDs, and determined the products were not genuine versions of Plaintiff's BRISTLY Products.

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

31. Defendants' intentional and illegal conduct, including offering for sale and selling inferior knock-offs into the U.S. and the Commonwealth of Pennsylvania has caused lost profits

to Plaintiffs and damaged the inherent value of Plaintiffs' business and the Bristly Mark, and, by diluting the brand and goodwill, damaging Plaintiffs' reputation for providing high quality products, and interfering with Plaintiffs' relationships with its customers and authorized resellers, as well as impeding Plaintiffs' ability to attract new customers and business.

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

33. In addition to trying to stop the injuries and damages caused to Plaintiffs' business, Plaintiffs are also seeking in this lawsuit to protect consumers and their pets from being exposed to and purchasing the substandard, faulty, and potentially dangerous knock-offs that wrongly indicate their origin as being from Plaintiffs or wrongfully use Plaintiff's BRISTLY Trade Dress, Bristly Mark, and/or BRISTLY Works.

34. I have worked with Plaintiffs' legal counsel in this case to assist them in identifying knock-off products and have provided them with various leads in order to find the various outlets for the knock-off products. If called upon by the Court, Plaintiff's legal counsel is able to explain additional differences between the genuine BRISTLY product and the knock-off products offered by the identified Defendants.

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

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

Dated: June 12, 2019

Burbank, California

/Peter Dertsakyan/
PETER DERTSAKYAN