

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

DOGGIE DENTAL INC, *et al.*,

Plaintiffs,

v.

AHUI, *et al.*,

Defendants.

Civil Action No.

19-1627

(Judge Hornak)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

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 Declaration and such statements are true and correct.

2. I am an attorney with the law firm of Ference & Associates LLC, which is located at 490 Broad Street, Pittsburgh, Pennsylvania 15143.

3. I am an attorney for the Plaintiffs in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiffs' Motion for Preliminary Injunction against the Defendants on Schedule "A" of the Proposed Order.

5. On January 17, 2020, 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. 10,477,838 B2 (“the ‘838 Patent”), issued November 19, 2019, for “PET CHEW TOY FOR DENTAL SELF-CLEANING BY DOMESTIC PETS” and which covers Plaintiffs’ Product.

You have intentionally infringed and continue to infringe at least one claim of the ‘838 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, namely the pet toothbrushes that are nearly identical to Plaintiffs’ genuine BRISTLY[®] dog toothbrush.

Admit that you are selling the infringing product on multiple online platforms including the online platform identified in this lawsuit.

Despite having the knowledge that you had no license or legal authority to do so, you engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and/or distributing Infringing Products under your Seller ID or Seller IDs.

You intentionally copied, counterfeited, and sold Plaintiffs’ goods in order to benefit from the Plaintiffs’ fame, reputation, and goodwill to divert Plaintiffs’ profits into your business.

You cooperated, coordinated, and communicated with the other Defendants in order to take control of the “Buy” Box within the Amazon.com search results for BRISTLY and or BRISTLY BRUSHING STICK or other confusingly similar terms calculated to cause the Amazon.com search engine to return your listing of Infringing Products instead of Plaintiffs’ genuine BRISTLY[®] dog toothbrush.

You have been named as a defendant in past counterfeiting, infringing and/or knock-off cases.

Your sales of substandard infringing and/or counterfeit products have undermined and damaged Plaintiffs’ reputation and goodwill associated with its BRISTLY[®] products requiring Plaintiffs’ to expend \$15,000.00 in corrective advertising costs.

You view the cost of defending this lawsuit and any damages that the Plaintiffs might recover as a cost of running your counterfeiting, infringing and/or knock-off selling business.

6. Pursuant to the Court’s Order authorizing expedited discovery (ECF No. 17), the responses to the Requests for Admissions were due within fourteen (14) days of service. None of the defendants have responded to the Requests for Admissions. Thus, each request is deemed admitted.

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 10th day of February, 2020, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin