

IN THE 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

(Judge Hornak)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND PERMANENT 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 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 490 Broad Street, Pittsburgh, Pennsylvania 15143.

3. I am an attorney for the Plaintiffs Peter Dertsakyan and Doggie Dental, Inc. in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiffs' Motion for Default Judgment and Permanent Injunction (hereinafter "Motion for Default Judgment") against those Defendants for whom the Clerk has entered Default (the "Defendants").

5. As of June 25, 2019, Plaintiff served all of the Defendants, with Requests for Admission, which included, *inter alia*, the following:

At all times relevant hereto, Plaintiffs owned the common law trade dress rights for its BRISTLY™ dog toothbrush, which is characterized by ornamental features shown and described in Plaintiffs' design patent application and variations thereof (the "BRISTLY Trade Dress") and Defendant knew that Plaintiffs had the exclusive right to use and license their intellectual property and the goodwill associated therewith.

At all times relevant hereto, Plaintiffs owned the common law trademark BRISTLY ("BRISTLY Mark") and Defendant knew that Plaintiffs had the exclusive right to use and license their intellectual property and the goodwill associated therewith.

At all times relevant hereto, Plaintiffs owned the U.S. Copyright Reg. No. VA-2-122-455 entitled "Photos of In Use Pet/Dog Toy for Oral Hygiene" for photographs and 2-D artwork directed to photographs related to the BRISTLY™ dog toothbrush ("BRISTLY Works") and Defendant knew that Plaintiff had the exclusive right to use and license its intellectual property and the goodwill associated therewith.

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 knock-off and or infringing goods featuring, displaying, and/or using Plaintiffs' BRISTLY Works and or Plaintiffs' BRISTLY Mark and/or using Plaintiff's BRISTLY trade dress without authorization under your Seller ID or Seller IDs.

At all times relevant hereto, you have been engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and/or sale of goods that are knock-offs, infringements, and/or substandard copies of Plaintiffs' genuine BRISTLY™ dog toothbrush.

You intentionally make, use, offer to sell, or import into the United States infringing, knock-off and substandard copies of Plaintiffs' genuine BRISTLY™ dog toothbrush with English language packaging and instructions.

Not one of the Defendants has responded to the Requests for Admission. Thus, each Request for Admission is deemed admitted.

6. **Exhibit 1** hereto is a summary of evidence I prepared for calculating damages against the identified defendants based upon their infringing use of Plaintiff's copyrighted images.

7. 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.

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 12th day of May, 2020, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2020, the foregoing document is being filed via the Case Management/Electronic Case Filing (CM/ECF) system; I also certify that on the same day, a true copy of the foregoing is being served in accordance with the Order Authorizing Alternate Service.

/s/ Stanley D. Ference III
Stanley D. Ference III