

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

DAKA RESEARCH INC.,

Plaintiff,

vs.

STARKISS INC.

Defendant.

—/

**COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF  
AND DEMAND FOR JURY TRIAL**

Plaintiff Daka Research Inc. (“Plaintiff”) hereby brings the present action against Starkiss Inc (“Defendant”). Defendant has willfully infringed one or more claims of U.S. Patent No. 7,437,825 B2 (“the ‘825’ Patent”), U.S. Patent No. 7,574,808 B2 (“the ‘808’ Patent”), U.S. Patent No. 7,596,874 B2 (“the ‘874’ Patent”), U.S. Patent No. D555,448 S (“the ‘448’ Patent”), U.S. Patent No. D555,998 S (“the ‘998’ Patent”) (or collectively “Plaintiff’s Patents”) by making, using, offering for sale, selling, distributing and/or importing into the United States for subsequent sale and use of unauthorized and unlicensed products, namely the Can Opener of Plaintiff’s Patents (“Infringing Products”). In support of its claims, Plaintiff alleges as follows:

**I. NATURE OF ACTION**

1. This action is for patent infringement arising under the patent law of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, 285, and 289.

2. Plaintiff has filed this action to combat e-commerce store operators who trade upon

Plaintiff's reputation and goodwill by making, using, offering for sale, selling and/or importing into the United States for subsequent sale or use unauthorized and unlicensed Infringing Products that infringe Plaintiff's Patents. Attached hereto as **Exhibit 1** is a true and correct copy of the '825' Patent, the '808' Patent, the '874' Patent, the '448' Patent and the '998' Patent for the Can Opener. Defendant creates e-commerce stores operating under one or more seller storefronts that are making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products to unknowing consumers. E-commerce stores operating under the seller storefronts share unique identifiers establishing a logical relationship between them, suggesting that Defendant's operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendant attempt to avoid and mitigate liability by operating under one or more seller storefronts to conceal both its identity and the full scope and interworking of their operation. Plaintiff has filed this action to combat Defendant's infringement of its patented Patents, as well as to protect unknowing consumers from purchasing Infringing Products over the Internet. Plaintiff has been and continues to be irreparably damaged from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing its patented Patent as a result of Defendant's actions and seeks injunctive and monetary relief.

## **II. JURISDICTION AND VENUE**

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Patent Act, 35 U.S.C. § 1, *et seq.*, 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331.
2. Defendant is subject to personal jurisdiction in this district because its direct business activities toward and conduct business with consumers throughout the United States, including within the State of Florida and this district through at least the Internet based e-commerce

stores and fully interactive commercial Internet website accessible in Florida and operating under its Seller Storefronts.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendant since the Defendant directly targets business activities toward consumers in the United States, including Florida, through at least the fully interactive e-commerce stores operating under the Defendant's seller storefronts. Specifically, Defendant has targeted sales to Florida residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Storefronts, offer shipping to the United States, including Florida, accept payment in U.S. dollars and, on information and belief, have sold products using infringing and counterfeit versions of Plaintiff's federally registered patent to residents of Florida. The Defendant is committing tortious acts in Florida, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Florida.

### **III. THE PARTIES**

#### **PLAINTIFF DAKA RESEARCH INC.**

4. Plaintiff is an entity in Tortolla, VG.

5. Plaintiff is the applicant and owner of the '825' Patent, the '808' Patent, the '874' Patent, the '448' Patent and the '998' Patent.

6. Plaintiff's products are distributed and sold to consumers throughout the United States, including consumers in Florida.

7. Plaintiff uses the distinctive patented Can Opener in connection with Plaintiff's products.

8. Plaintiff is the lawful owner of all right, title, and interest in and to the '825' Patent, the '808' Patent, the '874' Patent, the '448' Patent and the '998' Patent. The '825' Patent

for the Plaintiff was lawfully issued on October 21, 2008, the '808' Patent for the Plaintiff was lawfully issued on August 18, 2009, the '874' Patent for the Plaintiff was lawfully issued on October 6, 2009, the '448' Patent for the Plaintiff was lawfully issued on November 20, 2007, and the '998' Patent for the Plaintiff was lawfully issued on November 27, 2007. See **Exhibit 1**.

#### **DEFENDANT STARKISS INC**

9. Defendant is individual and business entity of unknown makeup who own and/or operate one or more of the e-commerce stores. The Defendant's Seller Storefronts is [https://www.amazon.com/sp?\\_encoding=UTF8&asin=&isAmazonFulfilled=1&isCBA=&marketplaceID=ATVPDKIKX0DER&orderID=&protocol=current&seller=A18HHKLN8MKZ2D&sshPath=](https://www.amazon.com/sp?_encoding=UTF8&asin=&isAmazonFulfilled=1&isCBA=&marketplaceID=ATVPDKIKX0DER&orderID=&protocol=current&seller=A18HHKLN8MKZ2D&sshPath=). Defendant's Amazon Seller ID is A18HHKLN8MKZ2D. On information and belief, Defendant resides and/or operates in the foreign jurisdictions with lax intellectual property enforcement systems or redistribute products from the same or similar sources in those locations. Defendant has the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

10. On information and belief, Defendant operates one or more e-commerce stores. Tactics used by Defendant to conceal its identity and the full scope of its operation make it virtually impossible for Plaintiff to learn Defendant's true identity and the exact interworking their network. If Defendant provides additional credible information regarding its identity, Plaintiff will take appropriate steps to amend the Complaint.

#### **IV. DEFENDANT'S UNLAWFUL CONDUCT**

11. In recent years, Plaintiff has identified numerous fully interactive, e-commerce stores, including those operating under the seller storefronts, which were offering for sale and/or selling Infringing Products to consumers in this Judicial District and throughout the United States. E-commerce sales, including through e-commerce stores like those of Defendant, have resulted in a

sharp increase in the shipment of unauthorized products into the United States. **Exhibit 2**, Excerpts from Fiscal Year 2018 U.S. Customs and Border Protection (“CBP”) Intellectual Property Seizure Statistics Report. Over 90% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id.* Over 85% of CBP seizures originated from mainland China and Hong Kong. *Id.* Legislation was recently introduced in the U.S. Senate that would allow CBP to seize articles that infringe Patent patents, thus closing a loophole currently exploited by infringers.<sup>1</sup> Infringing and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue.

12. Third party service providers like those used by Defendant do not adequately subject new sellers to verification and confirmation of their identities, allowing infringers to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” **Exhibit 3**, Daniel C.K. Chow, *Alibaba, Amazon, and Counterfeiting in the Age the Internet*, 40 NW. J. INT’L L. & BUS. 157, 186 (2020); see also, report on “Combating Trafficking in Counterfeit and Pirated Goods” prepared by the U.S. Department of Homeland Security’s Office of Strategy, Policy, and Plans (Jan. 24, 2020) attached as **Exhibit 4** and finding that on “at least some e-commerce platforms, little identifying information is necessary for [an infringer] to begin selling” and recommending that “[s]ignificantly enhanced vetting of third- party sellers” is necessary. Infringers hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual store-fronts. **Exhibit 4**

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<sup>1</sup> See Press Release, U.S. Senator Tom Tillis, *Tillis, Coons, Cassidy & Hirono Introduce Bipartisan Legislation to Seize Counterfeit Products and Protect American Consumers and Businesses* (Dec. 5, 2019), <https://www.tillis.senate.gov/2019/12/tillis-coons-cassidy-hirono-introduce-bipartisan-legislation-to-seize-counterfeit-products-and-protect-american-consumers-and-businesses>.

at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, infringers can have many different profiles that can appear unrelated even though they are commonly owned and operated. **Exhibit 4** at p. 39. Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of [infringement].” **Exhibit 3** at 186-187.

13. Defendant has targeted sales to Florida residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Storefronts, offer shipping to the United States, including Florida, accept payment in U.S. dollars and, on information and belief, have sold Infringing Products to residents of Florida.

14. Defendant concurrently employs and benefits from substantially similar advertising and marketing strategies. For example, Defendant facilitates sales by e-commerce stores operating under the seller storefronts so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores operating under the seller storefronts appear sophisticated and accept payment in U.S. dollars via credit cards, Amazon Pay, and/or PayPal. E-commerce stores operating under the seller storefronts often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer. Plaintiff has not licensed or authorized Defendant to use the Plaintiff’s Patents, and the Defendant is not authorized retailer of genuine Plaintiff’s Products.

15. On information and belief, Defendant has engaged in fraudulent conduct when registering the Seller Storefronts by providing false, misleading and/or incomplete information to e-commerce platforms. On information and belief, the Defendant has anonymously registered and maintained seller storefronts to prevent discovery of its true identity and the scope of its e-commerce operation.

16. On information and belief, Defendant regularly registers or acquires new seller storefronts for the purpose of offering for sale and selling Infringing Products. Such seller alias registration patterns are one of many common tactics used by the Defendant to conceal its identity and the full scope and interworking of its operation, and to avoid being shut down.

17. Even though Defendant operates under multiple fictitious Storefronts, the e-commerce stores operating under the Seller Storefronts often share unique identifiers, such as templates with common elements that intentionally omit any contact information or other information for identifying Defendant or other seller storefronts they operate or use. E-commerce stores operating under the Seller Storefronts include other notable common features, such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, illegitimate search engine optimization (SEO), advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. Additionally, Infringing Products for sale by the seller storefronts bear similar irregularities and indicia of being unauthorized to one another, suggesting that the Infringing Products were manufactured by and come from a common source and that Defendant is interrelated.

18. Infringers such as Defendant typically operate under multiple Seller Storefronts and payment accounts so that they can continue operation in spite of Plaintiff's enforcement efforts. On information and belief, Defendant maintains off-shore bank accounts and regularly move funds from its financial accounts to off-shore bank accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff. Indeed, analysis of financial account transaction logs from previous similar cases indicates that off-shore infringers regularly move funds from U.S.-based financial accounts to off-shore accounts outside the

jurisdiction of this Court.

19. Defendant's infringement of the Plaintiff's Patents in the making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use of the Infringing Products was willful.

20. Defendant's infringement of the Plaintiff's Patents in connection with the making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use of the Infringing Products, including the making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use of Infringing Products into Florida, is irreparably harming Plaintiff.

**COUNT I**  
**INFRINGEMENT OF UNITED STATES PATENT No. 7,437,825 B2**  
**(35 U.S.C. § 271)**

21. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

22. Defendant is making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the Can Opener claimed in the Plaintiff's Patents.

23. Defendant has infringed the Plaintiff's Patents through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

24. Based on Defendant's wrongful conduct, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies as provided by Patent Act, including damages that



Plaintiff has sustained and will sustain as a result of Defendant's illegal and infringing actions as alleged herein, Defendant's profits pursuant to 35 U.S.C. § 289, and any other damages as appropriate pursuant to 35 U.S.C. § 284.

**COUNT II**  
**INFRINGEMENT OF UNITED STATES PATENT 7,574,808 B2**  
**(35 U.S.C. § 271)**

25. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

26. Defendant is making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the Can Opener claimed in the Plaintiff's Patents.

27. Defendant has infringed the Plaintiff's Patents through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

28. Based on Defendant's wrongful conduct, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies as provided by Patent Act, including damages that Plaintiff has sustained and will sustain as a result of Defendant's illegal and infringing actions as alleged herein, Defendant's profits pursuant to 35 U.S.C. § 289, and any other damages as appropriate pursuant to 35 U.S.C. § 284.

**COUNT III**  
**INFRINGEMENT OF UNITED STATES PATENT No. 7,596,874 B2**  
**(35 U.S.C. § 271)**

29. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth

in the preceding paragraphs.

30. Defendant is making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the Can Opener claimed in the Plaintiff's Patents.

31. Defendant has infringed the Plaintiff's Patents through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

32. Based on Defendant's wrongful conduct, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies as provided by Patent Act, including damages that Plaintiff has sustained and will sustain as a result of Defendant's illegal and infringing actions as alleged herein, Defendant's profits pursuant to 35 U.S.C. § 289, and any other damages as appropriate pursuant to 35 U.S.C. § 284.

**COUNT IV**  
**INFRINGEMENT OF UNITED STATES PATENT No. D555,448 S**  
**(35 U.S.C. § 271)**

33. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

34. Defendant is making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the Can Opener claimed in the Plaintiff's Patents.

35. Defendant has infringed the Plaintiff's Patents through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff

to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

36. Based on Defendant's wrongful conduct, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies as provided by Patent Act, including damages that Plaintiff has sustained and will sustain as a result of Defendant's illegal and infringing actions as alleged herein, Defendant's profits pursuant to 35 U.S.C. § 289, and any other damages as appropriate pursuant to 35 U.S.C. § 284.

**COUNT V**  
**INFRINGEMENT OF UNITED STATES PATENT No. 555,998 S**  
**(35 U.S.C. § 271)**

37. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

38. Defendant is making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the Can Opener claimed in the Plaintiff's Patents.

39. Defendant has infringed the Plaintiff's Patents through the aforesaid acts and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

40. Based on Defendant's wrongful conduct, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies as provided by Patent Act, including damages that Plaintiff has sustained and will sustain as a result of Defendant's illegal and infringing actions as

alleged herein, Defendant's profits pursuant to 35 U.S.C. § 289, and any other damages as appropriate pursuant to 35 U.S.C. § 284.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

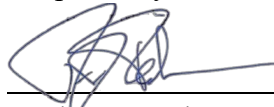
- 1) That Defendant, its affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:
  - a. making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use any products not authorized by Plaintiff and that include any reproduction, copy or colorable imitation of the Patent claimed in the Plaintiff's Patents;
  - b. aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon the Plaintiff's Patents; and
  - c. effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in Subparagraphs (a) and (b).
- 2) Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as Amazon (collectively, the "Third Party Provider") shall disable and cease displaying any advertisements used by or associated with Defendant in connection with the sale of goods that infringe Patent claimed in the Plaintiff's Patents;
- 3) That Plaintiff be awarded such damages as it shall prove at trial against Defendant that are adequate to compensate Plaintiff for Defendant's infringement of the Plaintiff's Patents, but in

no event less than a reasonable royalty for the use made of the invention by the Defendant, together with interest and costs, pursuant to 35 U.S.C. § 284;

- 4) That the amount of damages awarded to Plaintiff to compensate Plaintiff for infringement of the Plaintiff's Patents be increased by three times the amount thereof, as provided by 35 U.S.C. § 284.
- 5) In the alternative, that Plaintiff be awarded all profits realized by Defendant from Defendant's infringement of the Plaintiff's Patents, pursuant to 35 U.S.C. § 289;
- 6) That Plaintiff be awarded its reasonable attorneys' fees and costs; and
- 7) Award any and all other relief that this Court deems just and proper.

Dated this 28th day of January 2022.

Respectfully submitted,



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Andrew J. Palmer  
The Law Offices of Jared W. Gasman, P.A.  
5353 N. Federal Highway, Suite 402  
Fort Lauderdale, FL 33065  
Phone: 954-771-7050  
ajpalmer@gasmanlaw.com