

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

<p>K9 SPORT SACK, LLC., a Utah limited liability company,</p> <p>Plaintiff</p> <p>v.</p> <p>LITTLE CHONK COMPANY., a Delaware corporation,</p> <p>Defendant.</p>	<p>C.A. No. 2:22-CV-05120</p> <p>JURY TRIAL DEMANDED</p>
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COMPLAINT

Plaintiff K9 Sport Sack (hereinafter “Plaintiff” or “K9”), by and through its counsel, hereby files this Complaint with Jury Demand against Defendant Little Chonk Company (“Defendant” or “Chonk”). Plaintiff complains and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. K9 is a Utah limited liability company doing business at 163 North State Street, Suite A, Lehi, Utah.
2. Upon information and belief, Defendant is a Delaware corporation with its principal place of business at 2500 83rd Street #12, North Bergen, NJ 07047, and its registered agent in Delaware as The Corporation Trust Company.
3. Plaintiff brings this action under U.S. patent laws, 35 U.S.C. §§ 1 et seq.
4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, 1338 and 1367.
5. This Court has supplemental jurisdiction over any state law, or statutory and common law claims pursuant to 28 U.S.C. § 1367.

6. Upon information and belief, this Court has specific personal jurisdiction over Defendant because Defendant resides in the state of New Jersey.

7. Upon information and belief, Defendant maintains substantial, continuous contacts with the state of New Jersey. Accordingly, this Court has general personal jurisdiction over the Defendant.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400 at least because Defendant resides in this jurisdiction, and because, upon information and belief, Defendant conducts business in this district directly related to the patent at issue in this case, is subject to the court's personal jurisdiction in this case, and a substantial part of the infringing activity giving rise to the Plaintiff's causes of action occurred in this judicial district.

BACKGROUND

9. K9 is an industry leader and innovator in pet carrying products, among other pet care products.

10. K9 has introduced a number of pet carrying and pet related products under a variety of different brands. Many of those different products and brands can be viewed at <https://www.k9sportsack.com/collections/all-products>.

11. K9 developed its pet carrying products to solve problems associated with pet comfort and safety, giving both pets and pet owners greater flexibility, safety, and comfort while transporting a pet in day to day activities with the pet owner.

K9's Intellectual Property

12. K9 has been awarded and is the owner of many patents relating to and covering its pet carrying products. Among the patents that K9 has been awarded and that it owns is U.S. Patent No. 11,272,685 (the "'685 Patent") (the "Patent-in-Suit"), attached as Exhibit 1 hereto.

13. The '685 Patent claims priority to U.S. provisional patent application nos. 62/427,688 filed on November 29, 2016 and 62/426,137 filed on November 23, 2016.

14. As discussed more fully herein, the claims of the Patent-In-Suit are directed to, among other things, a novel pet carrying backpack.

Chonk's Unlawful Activity and Infringement of K9's Intellectual Property

15. Prior to May 14, 2017, K9 was in contact with the co-founder of Chonk, Mr. Bryan Reisberg, with respect to K9's products.

16. On or about May 14, 2017, Mr. Reisberg posted a picture of himself on Instagram carrying his pet corgi, Maxine, in a K9 Sport Sack product. See, e.g., https://www.instagram.com/p/BUEzJ_iA_LD/.

17. After that time, Mr. Reisberg posted numerous photos of himself carrying his pet corgi, Maxine, on social media in various locations throughout Manhattan and other locations.

18. Prior to May 2018, Mr. Joseph Watson, the founder of K9, was invited to appear on Good Morning America in New York City to promote K9's products.

19. Mr. Watson invited Mr. Reisberg to accompany him at Good Morning America to show fans and consumers how K9's products were used.

20. On or about May 17, 2018, Mr. Watson appeared on Good Morning America with Mr. Reisberg promoting K9's products.

21. After that appearance, K9 provided Mr. Reisberg with numerous different pet carrying backpacks for free which Mr. Reisberg used in his social media posts related to his corgi, Maxine.

22. Upon information and belief, from 2018 to the first quarter of 2019, Mr. Reisberg amassed a significant number of followers through his various social media accounts.

23. On or about April 15, 2019, K9 received an email from Margaux Galitz from “The Dogagency.com.” Galitz indicated that Mr. Reisberg had previously accepted free product from K9 but wanted cash payment in exchange for social media posts that featured the K9 product.

24. K9 declined the request from Galitz and removed reference to Mr. Reisberg’s images from K9 marketing and promotional materials.

25. After that time, Mr. Reisberg continued to post K9 Sport Sack product on his social media account altering the images to remove K9’s brand indicia.

26. On or about November 6, 2021, Mr. Reisberg posted a video to his social media account stating his was coming out with his own pet carrying backpack. See, e.g., <https://www.instagram.com/p/CV8qon-jTIT/>

27. Mr. Reisberg, by and through Chonk, is now in the business of making, using, selling, offering for sale, and/or importing into the United States a pet carrying backpack.

28. Upon information and belief, Chonk markets and sells a pet carrying backpack referred to as The Maxine One (hereinafter “Accused Product”).

29. Upon information and belief, Chonk had knowledge of the Patent-in-Suit prior to the filing of this Complaint, and has also had knowledge that the Accused Product infringes the Patent-in-Suit.

30. The following statement has been made on the Chonk website:

For the past 6 years, I’ve been carrying my fluffy corgi Maxine with me everywhere: to and from work on the NYC subway, on vacation, on boats, planes, trains and through every kind of situation imaginable. So when we set out to build THE MAXINE ONE, we knew exactly what we had to do.

31. Upon information and belief, Mr. Riesberg used the K9 back pack to carry “his fluffy corgi Maxine” everywhere and copied the K9 pet carrying back pack when he “set out to build the MAXINE ONE.”

32. Chonk has not obtained permission from K9 to use any of the rights attendant to the Patent-in-Suit in connection with the Accused Product.

33. By reason of Chonk’s infringing acts, K9 has suffered damage in an amount to be proven at trial. The harm to K9 from Chonk’s infringing activities is not fully compensable by monetary damages, and K9 will continue to suffer irreparable harm unless Chonk’s infringing conduct is enjoined.

34. Upon information and belief, Chonk acted in an objectively reckless manner with respect to K9’s patent rights. Upon information and belief, Chonk has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely that its acts would infringe the Patents-in-Suit. As a result, Chonk has engaged in willful infringement of the Patents-in-Suit, and K9 is therefore entitled to treble damages, interest, costs, and attorney’s fees in accordance with 35 U.S.C. §§ 284 and 285.

**FIRST CAUSE OF ACTION
(Infringement of the ’685 Patent)**

35. Plaintiff hereby incorporates and realleges paragraphs 1-34 of this Complaint.

36. Upon information and belief, the Accused Product infringes at least one claim of the ’685 Patent.

37. Upon information and belief, by making, using, selling, offering for sale, and/or importing into the United States the Accused Product, Chonk has in the past, does now, and continues to directly infringe, contributorily infringe, and/or induce others to infringe the claims

of the '685 Patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

38. Claim 19 of the '685 Patent recites:

19. A pet carrying backpack comprising:

a backpack body comprising an interior compartment configured to support a pet therein;

a collar forming a first opening in a top portion of the backpack body, the collar being configured to allow a head of the pet supported in the interior compartment to protrude therethrough;

shoulder straps disposed on and extending from the backpack body;

at least one second opening in the backpack body to accommodate a paw or leg of the pet, the at least one second opening being disposed above the shoulder straps and below the collar; and

one or more contouring straps disposed on the backpack body that are configured to shape the interior compartment of the backpack.

39. Upon information and belief, Chonk and its customers and others have used and are using the Accused Product, which includes each and every element of at least Claim 19 of the '685 Patent, and at no time has K9 granted Chonk or its customers and other users of the Accused Product permission to practice the claims of the '685 Patent. Chonk has used and is still using the Accused Product in its internal testing and operation of the Accused Product, as well as at its the facilities of its customers and users. Attached hereto (and incorporated herein) as Exhibit 2 is a chart further describing Chonk's infringement of the '685 Patent and the direct infringement by Chonk's customers and users of the Accused Product.

40. Accordingly, Chonk and/or its customers and users of the Accused Product have infringed and are directly infringing the '685 Patent.

41. Upon information and belief, Chonk knew about the '685 Patent at least because of the prior business relationship Chonk's owner, Mr. Reisberg, had with K9.

42. Upon information and belief, the marketing material and literature for Chonk's Accused Product, instruct Chonk's customers and other users on how to use the Accused Product in a way that infringes the claims of the '685 Patent.

43. Upon information and belief, Chonk has induced and is inducing its customers and other users of the Accused Product to infringe claims of the '685 Patent.

44. Furthermore, upon information and belief, the Accused Product, and the features provided by the Accused Product, are material to practicing the '685 Patent and are used by Chonk, Chonk's customers, and users of the Accused Product to practice at least claim 19 of the '685 Patent. Chonk provides the Accused Product to its customers and users of the Accused Product knowing that the Accused Product is especially made for use in a manner that infringes at least claim 19 of the '685 Patent. The Accused Product does not have a substantial non-infringing use.

45. Accordingly, Chonk has contributed and is contributing to the infringement of the '685 Patent.

46. By reason of Chonk's infringement of the claims of the '685 Patent alleged herein, K9 has suffered damage in an amount to be proven at trial. The harm to K9 from Chonk's infringing activities are not fully compensable by monetary damages, and K9 will continue to suffer irreparable harm unless Chonk's infringing conduct is enjoined.

47. Upon information and belief, Chonk acted in an objectively reckless manner with respect to K9's patent rights. Upon information and belief, Chonk has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely

that its acts would infringe the '685 Patent, and continued to do so even after receiving a demand letter from Plaintiff to cease and desist the manufacture, use and sale of the Accused Product. As a result, Chonk has engaged in willful infringement of the '685 Patent, and K9 is therefore entitled to treble damages, interest, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285.

48. By reason of Chonk's infringement of the claims of the '685 Patent alleged herein, K9 has suffered damage in an amount to be proven at trial. The harm to K9 from Chonk's infringing activities are not fully compensable by monetary damages, and K9 will continue to suffer irreparable harm unless Chonk's infringing conduct is enjoined.

49. Upon information and belief, Chonk acted in an objectively reckless manner with respect to K9's patent rights. Upon information and belief, Chonk has made, sold, offered to sell, and/or imported into the United States the Accused Product knowing that it was highly likely that its acts would infringe the '685 Patent. As a result, Chonk has engaged in willful infringement of the '685 Patent, and K9 is therefore entitled to treble damages, interest, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and award Plaintiff relief as follows:

A. A judgment that Defendant is liable to Plaintiff for infringing the claims of the Patent-in-Suit either directly and/or by the doctrine of equivalents;

B. A judgment that Defendant is liable to Plaintiff for contributory infringement and induced infringement of the Patent-in-Suit;

C. Preliminary and permanent injunctions against Defendant, its officers, agents, servants, employees, successors, assigns and all other persons in active concert or participation with any of them, enjoining them from directly or indirectly infringing in any manner the claims of the Patent-in-Suit;

D. A judgment granting Plaintiff damages adequate to compensate it for Defendant's infringement of the Patent-in-Suit, including an award of Plaintiff's damages under 35 U.S.C. § 284 due to the infringement, in amounts to be proven at trial;

E. An order finding that Defendant willfully infringed the Patent-in-Suit and that this is an exceptional case, and an award of Plaintiff's enhanced damages, costs, and attorney's fees in accordance with 35 U.S.C. § 285 or other applicable law;

F. Such other and further relief as shall seem just and proper to the Court under the circumstances.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this Complaint be tried to a jury to the fullest extent possible under the United States and New Jersey Constitutions.

CERTIFICATION

Pursuant to Local Civil Rule 11.2, Plaintiff, through its undersigned counsel, hereby certifies that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any such action or proceeding presently contemplated to the best of my knowledge and belief.

Dated: August 19, 2022

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