

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THE GREEN PET SHOP ENTERPRISES, LLC,

Plaintiff,

v.

COMFORT REVOLUTION, LLC,

Defendant.

Civil Action No:

JURY DEMAND REQUESTED

COMPLAINT

The Green Pet Shop Enterprises, LLC (“Green Pet Shop”), by and through its attorneys, for its Complaint against Defendant Comfort Revolution LLC, states as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent No. 11,375,685 (the “’685 Patent”).

THE PARTIES

2. Plaintiff The Green Pet Shop Enterprises, LLC (“Green Pet Shop”) is an Illinois limited liability company having a place of business at 770 Lake-Cook Rd., Suite 120, Deerfield, Illinois 60015. Green Pet Shop manufactures and brings to market high quality, unique, and eco-friendly pet products.

3. On information and belief, Defendant Comfort Revolution (“Comfort Revolution”) is a Delaware limited liability company having a principal place of business located at 1000 Tempur Way, Lexington, Kentucky, 40511.

JURISDICTION

4. This action arises under the patent laws of the United States, e.g., 35 U.S.C. §§ 1 et seq., 271, 281, 283-285. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

VENUE

5. Venue is proper in this Court under 28 U.S.C. §1400(b) because Comfort Revolution is a Delaware limited liability company.

6. Defendant is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Defendant because it has engaged in continuous, systematic and substantial activities within this judicial district, including the incorporation of Defendant in the State of Delaware.

FACTUAL BACKGROUND

A. Patents In Suit

7. The '685 Patent is called "Pressure Activated Recharging Cooling Platform" and relates to cooling platforms for a variety of uses, including for pets. The inventor of the '685 Patent is Gerard Prendergast. The '685 Patent was filed on March 4, 2022. On July 5, 2022, the United States Patent and Trademark Office issued the '685 Patent.

8. A true and correct copy of the '685 Patent is attached hereto as Exhibit 1.

9. The application leading to the '685 Patent was assigned to Green Pet Shop on March 8, 2012. Green Pet Shop is the lawful owner by assignment of all rights, title and interest in and to the '685 Patent and possesses all rights of recovery under the '685 Patent, and has standing to sue for infringement of the Green Pet Shop Patent.

10. The '685 Patent is valid and enforceable.

B. Accused Product

11. Comfort Revolution makes, imports into the United States, offers for sale, sells, and/or uses in the United States products, including, without limitation, the Therapedic Cooling Gel & Memory Foam Pillow (“Accused Product”) [Ex. 2, pages 17-20]. Comfort Revolution’s infringement may include additional products, services, and technologies (to be determined in discovery).

12. The Accused Product is covered by at least claim 1 of the '685 Patent.

13. On information and belief, Comfort Revolution also offers other infringing products with cooling gel under its “Comfort Revolution” brand. Those products include the following: Hydraluxe Cooling Gel Pillow, Hydraluxe Gel Dual-Sided Cooling Pillow, Hydraluxe Air Down Alternative Cooling Pillow, Hydraluxe Cooling Gel Slim Memory Foam & Fiber Pillow, Ultraluxe 30 Comfort Gel Pillow, Hydraluxe Gel Cool Case, Hydraluxe Cooling Cubes Pillow, Made Memory Foam Gel Pillow, Hydraluxe Reversible Gusset Gel Pillow, and Hydraluxe Cooling Memory Foam Topper.

C. Notice of Infringement

14. On August 16, 2022, counsel for Green Pet Shop notified Comfort Revolution that it’s Accused Product infringed one or more claims of the '685 Patent. [Ex. 2]

15. Along with its letter, Green Pet Shop included a claim chart showing how the Accused Product was covered by the limitations in Claim 1 of the '685 Patent. [Ex. 2]

16. Comfort Revolution has continued to manufacture, import and offer for sale the Accused Product.

D. Green Pet Shop Commercial Embodiment

17. Green Pet Shop sells a product called “Cool Pet Pad.” The Cool Pet Pad is covered by the ‘685 Patent. Green Pet Shop began marking its Cool Pet Pad product with one or both of its patent numbers no later than 2014. Green Pet Shop has complied with 35 U.S.C. § 287.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 11,375,685

18. Green Pet Shop incorporates each of the preceding paragraphs as if fully set forth herein.

19. Comfort Revolution has been and is now infringing, literally and/or under the doctrine of equivalence, the ‘685 Patent in this District and elsewhere by making, using, offering for sale, importing, and/or selling products that fall within the scope of at least one claim of the ‘685 Patent without license or authorization. Such acts constitute infringement under at least 35 U.S.C. § 271 (a).

20. Upon information and belief, Comfort Revolution has been aware of the ‘685 Patent since at least approximately June 16, 2022, when the ‘685 Patent was first published by the United States Patent and Trademark Office, and again on August 16, 2022, when a notice of infringement was sent to Comfort Revolution on behalf of Green Pet Shop.

21. As a direct and proximate consequence of the infringement, Green Pet Shop has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 adequate to compensate for such infringement, but in no event less than a reasonable royalty.

22. Green Pet Shop is entitled to recover from Comfort Revolution the damages sustained by Green Pet Shop as a result of Comfort Revolution’s wrongful acts in an amount

subject to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Green Pet Shop asks this Court to enter judgment against Comfort Revolution and against its respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. An adjudication that Comfort Revolution has infringed one or more of the claims of the '685 Patent.
- B. The ascertainment of and award to Green Pet Shop of actual and treble damages from the infringement of one or more claims of the '685 Patent, together with prejudgment and post-judgment interest pursuant to 35 U.S.C. § 284.
- C. A finding that this case is exceptional and the award of reasonable attorneys' fees, costs, and expenses in this action to Green Pet Shop, pursuant to 35 U.S.C. § 285.
- D. The issuance of a preliminary and/or permanent injunction prohibiting further infringement and inducement of infringement of the Green Pet Shop Patent pursuant to 35 U.S.C. § 283.
- E. An order requiring that Comfort Revolution account for all gains, profits, and advantages derived by its infringement of the '685 Patent in violation of 35 U.S.C. § 271, and that Comfort Revolution pay to Green Pet Shop all damages suffered by Green Pet Shop.
- F. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

Green Pet Shop demands a trial by jury on all issues so triable.

Respectfully Submitted,

Dated: March 2, 2023

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