

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

WOODSTREAM CORPORATION
29 East King Street
Lancaster, Pennsylvania 17602

Plaintiff,

v.

NATURE’S WAY BIRD PRODUCTS, LLC,
9054 East Washington Street
Chagrin Falls, OH 44023

NATURE’S WAY BIRD PRODUCTS, LLC
c/o KF Statutory Service Corp.
1111 Superior Avenue, East, Suite 1360
Cleveland, OH 44114

Defendant.

Civil Action No.

COMPLAINT

(Jury demand endorsed hereon)

COMPLAINT

Plaintiff Woodstream Corporation, (“Plaintiff” or “Woodstream”), by and through its attorneys, for its Complaint against Defendant Nature’s Way Bird Products, LLC (“Defendant” or “NW”) alleges as follows:

Preliminary Statement

1. This is an action for patent infringement arising under the laws of the United States. Title 35, United States Code.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter under the provisions of 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b).

Parties

4. Woodstream is a Pennsylvania corporation, with a principal place of business at 29 E. King Street, Lancaster, PA 17602.

5. Upon information and belief, NW is an Ohio limited liability company with a principal place of business 9054 E. Washington St., Chagrin Falls, OH 44023.

Facts

6. Woodstream is a recognized world leader in the bird feeding industry, providing functional and innovative birdfeeders and accessories sold under its Perky-Pet® brand.

7. As a result of its innovations, Woodstream has been awarded a number of United States patents including but not limited to U.S. Patent 7,370,607 (the “’607 Patent”).

8. Woodstream is the owner of the entire right, title and interest, in and to the ‘607 Patent, a copy of which is attached hereto, made a part hereof, and marked Exhibit A.

9. Upon information and belief, NW has been making, using and or selling Squirrel Shield Seed Defender Feeder model number SPLAN2 (the “NW Feeder”).

10. Infringement analysis of the NW Feeder is attached in the claim chart of Exhibit B, incorporated herein by reference and showing where each and every element of the asserted claims is found in the NW Feeder.

11. This is the second suit for infringement filed by Woodstream against the NW in this Court.

12. Having noticed a pattern of copying and infringement of its patented designs by NW, Woodstream must resort to judicial process to abate the infringements.

COUNT I

Infringement of U.S. Patent No. 11,147,246

13. Paragraphs 1-12 are incorporated herein by reference.

14. Upon information and belief, NW has made, imported, used, offered to sell, sold and may now or in the future make, use and/or sell, in the United States and in Ohio, an invention described and claimed by the '607 Patent, with the manufacture and sale of at least its NW Feeder. The NW Feeder is shown in Exhibit B.

15. NW's activities in connection with the above-identified acts constitute infringement of Woodstream's '607 Patent pursuant to the provisions of 35 U.S.C. § 1, *et seq.*

16. NW has infringed the '607 Patent by, *inter alia*, making, importing, using, offering to sell and selling in the United States the invention described and claimed in the '607 Patent without the authority or approval of Woodstream.

17. NW is liable for direct infringement, contributory infringement and inducing infringement of Woodstream's '607 Patent pursuant to 35 U.S.C. § 271.

18. Upon information and belief, the infringing activities of NW have been deliberate, knowing, and willful.

19. Upon information and belief, NW will continue to infringe the '607 Patent to Woodstream's irreparable injury and other damage unless enjoined by the Court. Woodstream has no adequate remedy at law.

Prayer for Relief

Wherefore, Woodstream demands the following relief with respect to U.S. Patent No. 7,370,607.

- a. This Court enter a judgment that NW, has infringed U.S. Patent No. 7,370,607;
- b. That NW, their successors, privies and all through or under them and all those acting for them or on their behalf, be preliminarily and thereafter permanently enjoined from infringing U.S. Patent No. 7,370,607;

- c. That NW be required to account to Woodstream for all damages suffered by Woodstream resulting from the infringement of U.S. Patent No. 7,370,607, and that the recovered damages be trebled because of the willful nature of the infringement;
- d. That Woodstream be granted such other and further relief which this Court may seem just and proper, together with the costs and disbursements of this action, including attorney's fees.

Respectfully submitted,

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN

By: */s/ Jillian L. Dinehart*

KEITH HANSBROUGH (0072671)

JILLIAN L. DINEHART (0086993)

127 Public Square, Suite 3510

Cleveland, Ohio 44114

Phone: 216.912.3800 / Fax: 216.344.9006

Email: kkhansbrough@mdwcg.com

jldinehart@mdwcg.com

Attorneys for Plaintiff Woodstream, LLC

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial on all issues so triable.

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN

By: */s/ Keith Hansbrough*

KEITH HANSBROUGH (0072671)
JILLIAN L. DINEHART (0086993)
127 Public Square, Suite 3510
Cleveland, Ohio 44114
Phone: 216.912.3800 / Fax: 216.344.9006
Email: kkhansbrough@mdwcg.com
jldinehart@mdwcg.com
Attorneys for Plaintiff Woodstream, LLC