

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NITE GLOW INDUSTRIES, INC,)
)
 Plaintiff,)
 CASE NO.:)
)
 v.)
)
 WPP ACQUISITION, LLC,)
)
 Defendant.)

COMPLAINT AND DEMAND FOR JURY TRIAL
(PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF SOUGHT)

Plaintiff, Nite Glow Industries, Inc. (“Nite Glow”), I Did It, Inc., sues Defendant, WPP Acquisition, LLC (Westminster), Westminster Pet Products, for infringement of Nite Glow’s United States Patent No. 6,925,965 B1 (the “’965 Patent”) and alleges the following:

JURISDICTION AND VENUE

1. This is an action for preliminary and permanent injunctive relief, equitable relief, damages, costs, and expert fees resulting from Defendant’s infringement of Nite Glow’s rights granted under the patent laws of the United States, Title 35, United States Code.

2. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.

3. Defendant is subject to jurisdiction in the State of Florida because it has, through retail distributors, distributed and is currently distributing, offered for sale and is currently offering for sale, and sold and is selling, goods in the State of Florida which infringe Nite Glow's '965 patent, and because Defendant has engaged in business in the State of Florida. Defendant places infringing products into the stream of commerce with the knowledge and understanding that such products are sold in the State of Florida, including in this judicial district.

4. In particular, Defendant's infringing products are sold through retail stores in the State of Florida, specifically Pet Supermarket, located within the Tampa Division of this judicial district.

5. Additionally, upon information and belief, Defendant derives substantial revenue from the sale of infringing products within this District, expects its actions to have consequences within this judicial district, and derives substantial revenue from interstate commerce.

6. Defendant's infringing products are also sold through retail websites including, www.Petsupermarket.com, www.Amazon.com, and www.Walmart.com, among others, through where customers where may buy the

infringing product and which Florida residents, including those within the Tampa Division of this judicial district, may access.

7. Defendant is also subject to jurisdiction in the State of Florida because it has committed tortious acts in this state and has caused, and continues to cause, injury Nite Glow in this judicial district.

8. Venue is proper in this judicial district and in this division under 28 U.S.C. §§1391 and 1400 for the reasons set forth in paragraphs 3 through 7 above.

THE PARTIES

9. Nite Glow is a New Jersey corporation, with its principal place of business located in Largo, Florida, which is within the geographical jurisdiction of the Tampa Division of this Court.

10. Westminster is a Delaware limited liability company, with its principal place of business located in Cumberland, Rhode Island.

THE '965 PATENT AND DISCLOSURE OF THE INVENTION

11. On September 8, 2004, Marni Markell caused to be filed a patent application for her omnidirectional reflective pet leash invention.

12. On August 9, 2005, the '965 Patent, entitled "Omnidirectional Reflective Pet Leash" issued to Ms. Markell. A copy of the '965 Patent is attached hereto as Exhibit "A." The '965 Patent contains eleven (11) claims covering a

braided pet leash with reflective tape adhered to the braided strands of the leash that reflect an incoming light beam back in the direction it was emanated.

13. Ms. Markell assigned all rights, title, and interest in the '965 Patent to Nite Glow, which is the lawful owner of right, title, and interest in and to the '965 Patent.

14. In 2005, Ms. Markell's Omnidirectional Reflective Pet Leash product detailed in the '965 patent debuted at the Global Pet Expo in Orlando, FL which is "the pet industry's premier event featuring the newest, most innovative pet products on the market today" (<https://www.globalpetexpo.org/show-info>). "With nearly 1,000 entries, the Global Pet Expo is the largest new products showcase at any pet product industry trade show in the world. The New Products Showcase "Best in Show" awards are the most coveted awards given in the industry." At the show, Ms. Markell's Omnidirectional Reflective Pet Leash product won Best of Show, First Place in the Dog Products category. A photo of the award is below.



15. On September 1, 2005 Nite Glow granted United Pet Group Inc. (“UPG”) a license to make, have made, use, sell, offer to sell, import and export products patented in the ‘965 Patent.

16. UPG proceeded to make and sell the Omnidirectional Reflective Pet Leash product detailed in the ‘965 patent under the product name “Night Glow”, with necessary Patent Marking under 35 U.S.C. § 287(a). A photograph of the label for the Night Glow product is attached as Exhibit B and reproduced below:



17. All conditions precedent to the maintenance of this action have occurred, have been performed, or have been excused or waived.

COUNT I
INFRINGEMENT OF THE '965 PATENT

18. Nite Glow realleges and incorporates by reference the allegations contained within paragraphs 1 through 17 above, as if set forth fully herein.

19. Upon information and belief, Defendant has advertised, marketed, offered for sale, and/or sold the "Infringing Product" identified by the name Ruffin' It™ brand at wholesaler retail locations and online. A photograph of the Infringing Product is attached as Exhibit C and reproduced below:



20. The Infringing Product consists of a braided pet leash with reflective strips adhered to the braided strands of the leash.

21. Defendant has been and continues directly infringing claims 1, 5, 10 and 11, literally and under the doctrine of equivalents, of the ‘965 Patent by importing, offering to sell, and selling the Infringing Product in violation of under 35 U.S.C. § 271 (a).

22. Defendant’s Infringing Product, like the invention claimed in Nite Glow’s ‘965 Patent, is described as a “With 360° of high visibility reflective material, the Braided Reflective Safety Leash from RUFFIN’ IT™ offers a dramatic improvement in nighttime walking safety for you and your dog. Durable construction with a soft, sturdy handle.” See https://cdn.shopify.com/s/files/1/0652/7670/7071/files/WPP_RuffinItCatalog_2023_combined.pdf?v=1679929140

23. As shown in the in photo below, the Infringing Product includes a generally a braided rope comprising a braided sleeve with of 4 narrow strips

braided at a shallow cylindrical angle, surrounding a green and red braided rope core:



24. The reflective material in the Infringing Product utilizes 0.25-inch retroreflective strips bonded to the four braided strips to provide the reflective effect.

25. The photo below of the Infringing Product shows proximal end formed into a braided handle and distal end formed into a loop and attached to metal clip. The metal clip is operable with the core and sleeve to form a pet collar.



26. As demonstrated by paragraphs 23 through 30 above, Defendant's Infringing Product contains all the limitations of claims 1 and 2 of Nite Glow's '965 Patent.

27. Defendant's infringement of Nite Glow's '965 Patent has caused, and is causing, Nite Glow to suffer injury and economic damages, including depriving Nite Glow of its statutory right to exclusively control the importing, manufacture, offering for sale, sale, and use of products practicing the inventions claimed in the Nite Glow's '965 Patent and to enjoy the market position attendant to that right.

28. Upon information and belief, Defendant's infringement of the '965 Patent will continue unless enjoined by this Court.

29. Defendant's infringement of Nite Glow's '965 Patent is causing and will continue to cause Nite Glow irreparable harm unless Defendant's infringing activities are enjoined by this Court and Nite Glow lack an adequate remedy at law to prevent injuries it is suffering from Defendant's infringement.

30. Given Defendant's clear and direct infringement of Nite Glow's patent rights, Nite Glow is substantially likely to prevail upon the merits of this action.

31. The balance of hardships and the public interest requires that Defendant immediately cease its infringing activities.

WHEREFORE, Nite Glow respectfully requests this Court to

- (A) enter judgment in favor of Nite Glow and against Westminster;
- (B) grant Nite Glow preliminary and permanent injunctive relief barring the activities of Westminster that infringe upon Nite Glow's patent rights in Nite Glow's '965 Patent;
- (C) award Nite Glow damages equal to Westminster's profits and all damages sustained by Nite Glow as a result of Westminster's wrongful acts;
- (D) award Nite Glow prejudgment interest, post-judgment interest, costs, and expert fees; and
- (E) grant to Nite Glow all other relief this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Nite Glow hereby demands a jury trial on all issues so triable.

Dated: November 2, 2023

Respectfully submitted:

/s/ Justin Luby

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