

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
PETEDGE, INC.,)	Civil Action No. _____
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
UNIQUE PETZ, LLC., and)	
THE COLEMAN COMPANY, INC.)	
)	
Defendants.)	
)	
_____)	

COMPLAINT

Plaintiff PetEdge, Inc., complains against Unique Petz, LLC, and The Coleman Company, Inc., as follows:

PARTIES

1. PetEdge is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 100 Cummings Center, Beverly, Massachusetts, 01915.

2. PetEdge is in the business of designing, sourcing, manufacturing, and distributing pet-related merchandise.

3. PetEdge’s employees invented a folding pet ramp and steps combination apparatus (“pet ramp/steps”), and PetEdge owns the resulting patent directed to various embodiments of this apparatus, namely U.S. Patent No. 7,621,236 (“the ‘236 Patent”). A copy of the ‘236 Patent is attached as Exhibit A. PetEdge manufactures and sells pet ramp/steps embodying inventions claimed in this ‘236 Patent and marks those products with the ‘236 Patent.

4. Among the pet ramp/steps that PetEdge sells is its “Renew Rampsteps” (SKU ZA6044), which PetEdge markets and sells under its PET STUDIO[®] brand. PetEdge also sells a version of the pet ramp/steps under the GUARDIAN GEAR[®] brand.

5. On information and belief, The Coleman Company, Inc., is a Delaware corporation headquartered at 3600 N. Hydraulic, Wichita, KS 67230.

6. On information and belief, Unique Petz is a New York limited liability company headquartered at 10 West 33rd Street, Suite 220, New York, NY 10001.

7. Coleman manufactures, uses, offers to sell, and sells an array of outdoor gear and other consumer products. Among the products that Coleman sells is the COLEMAN[®] Pet Stairs/Ramp (also known as the “COLEMAN[®] Convertible Pet Stairs & Ramp”). Unique Petz manufactures, supplies, and distributes the COLEMAN[®] Pet Stairs/Ramp (“Accused Product”) for Coleman, under license from Coleman.

8. The Accused Product is sold through a number of third-party retailers (both on-line and brick and mortar stores), including, for example, Amazon.com, The Christmas Tree Shops, Sears, and Choxi.com. Attached as Exhibit B are excerpts from these retailers’ websites promoting sale of the Accused Product.

9. Coleman’s and Unique Petz’s activities in manufacturing, offering for sale, and selling the Accused Product have been without express or implied license from PetEdge.

10. These Accused Products compete directly with PetEdge’s pet ramp/steps products, such as PetEdge’s PET STUDIO[®] pet ramp/steps. PetEdge’s patented PET STUDIO[®] “Renew Rampsteps” and the Accused Product are shown below.

PetEdge PET STUDIO® “Renew Rampsteps”	COLEMAN® Pet Stairs/Ramp
	



11. PetEdge’s pet ramp/steps are finely crafted, using sturdy, high quality and attractive materials. They are sold at premium prices, reflecting their craftsmanship, sturdy construction, and patented innovation. The Accused Product, on the other hand, is offered at far lower prices and appear to be constructed from cheaper, lower quality materials. As such, Coleman’s and Unique Petz’s marketing and sales of the Accused Product is damaging PetEdge’s reputation as a retailer of high-quality pet-related merchandise and its standing in the

marketplace. In addition, the lower price point of the Accused Products is causing PetEdge to suffer lost profits and price erosion.

JURISDICTION AND VENUE

12. This is an action for patent infringement arising under the Patent Laws of United States, Title 35, United States Code. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1332 (diversity) and 1338 (patent actions).

13. Venue is proper under 28 U.S.C. § 1391(b) and (c) and § 1400(b). Defendant have committed and/or threatened to commit acts of infringement in this District, and this action arises from those acts. Defendants have regularly engaged in business in this Commonwealth and District and purposefully availed themselves of the privilege of conducting business in this District, for example, by offering for sale and selling the Accused Product in this District.

14. For example, Defendants advertise, offer for sale, and sell the Accused Product through various retailers, such as Amazon.com, Choxi.com, the Christmas Tree Shops, and Sears. The Christmas Tree Shops and Sears operate brick and mortar stores here in Massachusetts. The Accused Product is made available to any person to buy, including to Massachusetts residents. Indeed, a PetEdge employee was able to buy one of the Accused Products from the Christmas Tree Shops on-line store and have it shipped to her home in Massachusetts. There were no geographic restrictions placed on sales of the Accused Product. They are made available to any Massachusetts customers.

THE PATENT INFRINGED

15. On November 24, 2009, the United States Patent and Trademark Office (“USPTO”) issued United States Patent No. 7,621,236, entitled “Folding Pet Ramp and Steps” (“the ‘236 Patent”).

16. The '236 Patent was assigned to PetEdge, which owns the full rights, title, and interest in it.

17. The '236 Patent has not expired and is in full force and effect.

18. Pursuant to 35 U.S.C. § 282, the '236 Patent and each of its claims are presumed valid.

19. PetEdge marks its pet ramp/steps with the '236 Patent.

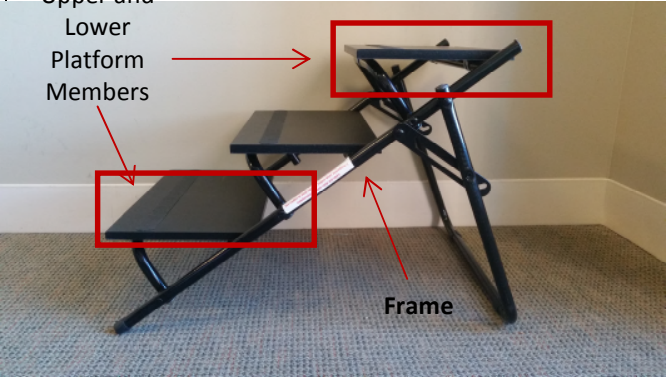
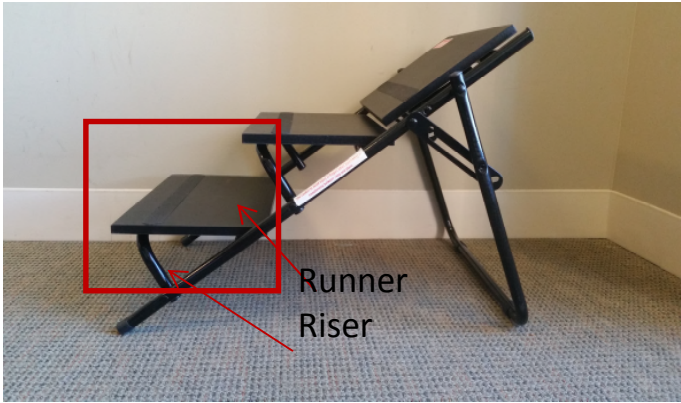
THE ALLEGED PATENT INFRINGEMENT

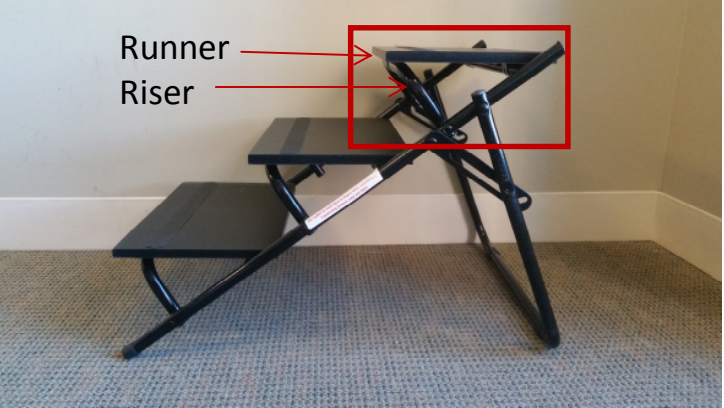


20. Defendants, acting jointly or severally, manufacture, import, distribute, offer to sell, and sell an infringing pet ramp/steps product, including at least the COLEMAN® Pet Stairs/Ramp (“Accused Product”).


21. As alleged herein, Defendants have engaged in actions that directly and indirectly infringe the '236 Patent.

22. An exemplary claim chart showing infringement by the Accused Product of the first independent claim of the '236 Patent is shown below. This claim chart is based on preliminary analysis and may be amended or supplemented after further investigation and discovery in this action. The claim chart is for notice purposes under Fed. R. Civ. P. 8 and 12.

Claim Element	Infringing Feature of Accused Product
1. An apparatus comprising:	The Accused Product is an apparatus.
a frame supporting an upper platform member and a lower platform member;	The Accused Product comprises a frame supporting an upper platform member and a lower platform member. The photo below shows the Accused Product with the frame, upper platform member, and lower platform member labeled.

Claim Element	Infringing Feature of Accused Product
	 <p>Upper and Lower Platform Members</p> <p>Frame</p>
<p>the lower platform member having a lower riser and a lower runner; and</p>	<p>The Accused Product comprises a lower platform member having a lower riser and a lower runner. The lower platform member can be seen in the photo below, highlighted in the red box. The riser and runner are labeled below. The riser supports the runner in the steps alignment.</p>  <p>Runner Riser</p>
<p>the upper platform member having an upper riser and an upper runner which are movable between a ramp mode and a step mode, the upper riser:</p>	<p>The Accused Product comprises an upper platform member having an upper riser and an upper runner. In the photo below, the upper platform member appears highlighted in the red box. The runner and riser are labeled.</p>

Claim Element	Infringing Feature of Accused Product
	 <p data-bbox="727 743 1398 848">The above photo shows the Accused Product in step mode. The photo below shows the Accused Product moved to a ramp mode.</p> 
<p data-bbox="191 1318 683 1423">(i) fixedly supporting the upper runner against the frame when in the step mode, and</p>	<p data-bbox="727 1318 1414 1493">The Accused Product comprises an upper riser: (i) fixedly supporting the upper runner against the frame when in the step mode. The photo below shows the upper riser fixedly supporting the upper runner in step mode.</p> 

Claim Element	Infringing Feature of Accused Product
<p>(ii) being moveable from the fixedly supported position to permit the upper runner to move to the ramp mode.</p>	<p>The Accused Product comprises an upper riser: . . . (ii) being moveable from the fixedly supported position to permit the upper runner to move to the ramp mode. The photos below shows the apparatus after the upper runner has been moved to ramp mode and then the other runners have been moved to ramp mode:</p> 

COUNT I
INFRINGEMENT OF THE '236 PATENT

23. PetEdge realleges and incorporates by reference paragraphs 1-22 above as though fully set out herein.

24. In violation of 35 U.S.C. § 271, Defendants, jointly and/or severally, has been and still are infringing the '236 Patent by manufacturing, using, offering to sell, and/or selling within

the United States the Accused Products, such as those depicted in the claim chart above and in Exhibit B, that are covered by one or more claims of the '236 Patent.

25. Defendants had at least constructive notice of the '236 Patent pursuant to 35 U.S.C. § 287(a) because PetEdge marks its pet ramp/steps products with the '236 Patent.

26. Defendants have profited and continue to profit from their manufacture, use, offers to sell, and sale of the Accused Products.

27. On information and belief, Defendants' infringement of the '236 Patent has been and continues to be willful, wanton, and deliberate.

28. PetEdge has been and continues to be damaged and irreparably harmed by Defendants' infringement of the '236 patent.

WHEREFORE, PetEdge respectfully asks this Court to enter judgment for PetEdge and against Defendants and to grant PetEdge the following relief:

A. A judgment under 35 U.S.C. § 271 finding that Defendants, jointly and severally, infringe the '236 Patent;

B. An order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from infringing the '236 Patent;

C. An award of damages under 35 U.S.C. § 284 adequate to compensate PetEdge for Defendants' infringement of the '236 Patent and an accounting to determine the proper amount of such damages;

D. A three-fold increase in damages as a result of Defendants' willful, wanton, and deliberate acts of infringement;

E. An award pursuant to 35 U.S.C. § 284 of costs and prejudgment and post judgment interest on PetEdge's compensatory damages;

F. An award pursuant to 35 U.S.C. § 285 of PetEdge's attorney's fees incurred in this action;

G. An order directing the recall and destruction of any and all existing folding pet ramps and step systems manufactured, used, offered for sale, or sold by either Coleman or Unique Petzthat infringe the '236 Patent; and

H. Such further relief as this Court deems just and proper.

JURY DEMAND

PetEdge demands a trial by jury on all issues so triable.

PETEDGE, INC.
By its Attorneys,

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