

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**RICHELL USA, INC.,**

*Plaintiff,*

v.

**PRIMETIME PETZ, LLC,**

*Defendant.*

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**Case No. 3:17-CV-684**

**ORIGINAL COMPLAINT**

Plaintiff Richell USA, Inc. (“Richell”) makes the following allegations against Defendant Primetime Petz, LLC (“Primetime”):

**PARTIES**

1. Richell is a Texas corporation with a principal place of business at 2214 Paddock Way Drive, Ste. 500, Grand Prairie, Texas 75050.
2. Primetime is a Texas limited liability company with a principal place of business at 505 E. Boydston Street, Ste. 8, Rockwall, Texas 75087.

**JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Primetime because Primetime’s principal place of business is located in this District and it has committed acts within this District giving rise to these claims, including by selling and offering to sell products that infringe the asserted patents and violate the Settlement Agreement between the parties.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), 1391(c), and 1400(b) because Primetime resides in this District, has an established place of business in this District, and has committed and is committing acts of infringement in this District.

### **BACKGROUND**

6. Founded in 2001, Richell is a leading distributor of quality home and pet products, including wooden pet gates designed to operate easily, confine pets safely, and blend well with home décor.

7. As part of its operations, Richell has sought and obtained patent protection for its pet gates. Thus, Richell is the owner by assignment of U.S. Patent Nos. 7,568,449, 7,739,983, and 8,230,816 (the “Patents”), all of which were duly and legally issued by the United States Patent & Trademark Office. True and correct copies of Richell’s patents, including any reexamination certificates, are attached as Exhibits A-C hereto.

8. Primetime is a competitor in the pet products market. Primetime’s President Brian Bouldin is a former Richell employee.

9. In 2012, Richell discovered that Primetime was selling pet gates that infringe Richell’s then-issued Patents (Nos. 7,568,449 and 7,739,983). Richell sent a letter to Primetime in May 2012 asking it to cease and desist those infringing sales. At the time, Richell also had a pending patent application that ultimately issued in July 2012 as U.S. Patent No. 8,230,816. The ’816 Patent was challenged via reexamination in the U.S. Patent & Trademark Office, so Richell put its patent enforcement activities on hold while that reexamination was ongoing.

10. Upon completion of the reexamination, in 2014, Richell again notified Primetime of all of its patents (including the ’816 Patent) and asked it to cease its infringing activities and pay Richell a royalty for that infringement. In January 2015, the parties ultimately reached a

Settlement Agreement (“Agreement”) which included a promise by Primetime that it agreed that, as of August 2, 2015, it would “no longer make, have made, use, sell, offer to sell or import the Medium and Large Wood Slide Gates and all other products that are covered by the Richell Patents.” Agreement at ¶4.1.

11. The Agreement defined the Richell Patents as the Patents listed above.

12. The Agreement defined the Medium Wood Slide Gate as then item No. 33210, pictured below. Currently, Primetime Petz is selling a “New Slide Gate Medium” as item No. 33215-G15 also pictured below. The “New Slide Gate Medium” is made of pine wood with a walnut finish.



Medium Wood Slide Gate (Item No. 33210)



New Slide Gate Medium (Item No. 33215-G15)

13. The Agreement defined the Large Wood Slide Gate as then item No. 33211, pictured below. Currently, Primetime Petz is selling a “New Slide Gate Large” as item No. 33216-G16 also pictured below. The “New Slide Gate Large” is made of pine wood with a walnut finish.



Large Wood Slide Gate (Item No. 33211)



New Slide Gate Large (Item No. 33216-G16)

14. Primetime has sold and/or is currently selling its infringing “New Slide Gate(s)” in the United States including to many brick-and-mortar and online retailers such as Bed Bath & Beyond, Amazon.com, Houzz, Hayneedle, Overstock.com, Wal-Mart, and Wayfair. Upon information and belief, such offers to sell and sales in the United States began at least as early as March 16, 2016 when the “New Slide Gate(s)” were publicly offered for sale at the global Pet Expo trade show in Orlando, Florida.

15. The “New Slide Gate(s)” are patentably indistinct from the Medium and Large Wood Slide Gates covered by the Agreement. As such, Primetime has known since it began offering the “New Slide Gate(s)” for sale that it was infringing Richell’s Patents by importing those products and making those sales offers and ultimate sales.

16. Richell believes that Primetime never intended to fulfill its promise, as set forth in the Agreement, not to offer to sell, sell, or import products that infringe Richell’s Patents as it took less than one year for Primetime to import its “New Slide Gate(s)” into the United States and offer them for sale. The extreme similarity between the “new” and old slide gates, with the only apparent difference being the cosmetic horizontal bar and the color of the finish, further demonstrates Primetime’s disregard for Richell’s patent rights and its obligation to fulfill its promise not to infringe them. There is simply no way that Primetime could have signed the Agreement and then designed and marketed its current gates if it ever had any intention of not infringing.

**COUNT ONE**  
**INFRINGEMENT OF U.S. PATENT NO. 7,568,449**

17. Richell realleges and incorporates the foregoing paragraphs as if fully set forth herein.

18. Richell is the owner by assignment of U.S. Patent No. 7,568,449 (“the ’449 Patent”), which was duly and legally issued by the U.S. Patent and Trademark Office on August 4, 2009. The ’449 Patent is valid and enforceable.

19. Primetime has imported, offered for sale, and/or sold in the United States products that infringe the ’449 Patent, including its New Slide Gate Medium and New Slide Gate Large.

20. Primetime has directly infringed and continues to infringe at least Claim 20 of the ’449 Patent because its New Slide Gate Medium and New Slide Gate Large contain each and every element of that claim, either literally or by equivalents, including: a first front barrier for blocking the path of a house pet that has a front side, back side, inner end and outer end; a second front barrier also for blocking the path of a house pet that has a front side, back side, inner end and outer end where the two barriers are configured to allow adjustment of the extent to which their inner ends overlap [to create an adjustable width for the pet gate]; first and second side barriers with two ends, one end of each of which is located beyond the back side of each of the first and second front barriers and one end of each of which is coupled to those barriers [i.e., the side barrier are coupled to the front barriers essentially perpendicularly]; a first and second leg each of which is coupled to one of the side barriers and extends from the front side of each barrier, and the legs are not configured to obtain the path of a house pet but the overall barrier configuration forms a self-supporting structure in use.

21. Primetime knew about the ’449 Patent prior to its first offer for sale, importation, or sale of both the New Slide Gate Medium and New Slide Gate Large and knew that those actions would infringe the ’449 Patent.

22. Primetime also has induced and continues to induce its customers to infringe at least Claim 20 of the ’449 Patent because it intends for its customers to resell the New Slide Gate

Medium and New Slide Gate Large with instructions on use and operation of the products in a normal and customary manner for a pet gate and has promoted those products with the intention that its customers would act in an infringing manner. Primetime's customers infringe at least Claim 20 of the '449 Patent when they resell the products with instructions to use them in their normal and customary manner. Primetime performed its inducing acts with full knowledge of the '449 Patent and knew that it would induce infringement, or was willfully blind to the likelihood that its acts would cause customers to infringe.

23. Primetime's actions constitute infringement under 35 U.S.C. § 271.

24. By its infringing actions and its inducement of customers' infringement, Primetime has injured Richell and is liable for monetary damages, interest and costs pursuant to 35 U.S.C. § 284 in an amount adequate to compensate Richell for Primetime's infringement, including but not limited to any lost profits.

25. Because Primetime knew about the '449 Patent and that its actions would constitute infringement prior to beginning those actions, Primetime is also liable for willful infringement. Richell therefore seeks no less than treble damages for Primetime's infringement.

26. Further, this is an exceptional case under 35 U.S.C. § 285 at least because Primetime has no defense to this infringement, previously paid for its infringement of these Patents for its sales of patentably-indistinct products, and began selling its new products with full knowledge that it would be infringing. As such, Richell also seeks its attorneys' fees.

27. Unless restrained by the court, Primetime's actions will cause ongoing harm to Richell for which it has no adequate remedy at law and for which it seeks injunctive relief under 35 U.S.C. § 283.

**COUNT TWO**  
**INFRINGEMENT OF U.S. PATENT NO. 7,739,983**

28. Richell realleges and incorporates the foregoing paragraphs as if fully set forth herein.

29. Richell is the owner by assignment of U.S. Patent No. 7,739,983 (“the ’983 Patent”), which was duly and legally issued by the U.S. Patent and Trademark Office on June 22, 2010. The ’983 Patent is valid and enforceable.

30. Primetime has imported, offered for sale, and/or sold in the United States products that infringe the ’983 Patent, including its New Slide Gate Medium and New Slide Gate Large.

31. Primetime has directly infringed and continues to infringe at least Claim 17 of the ’983 Patent because its New Slide Gate Medium and New Slide Gate Large contain each and every element of that claim, either literally or by equivalents, including: first and second front barriers each of which are comprised at least of two vertical flanking members and an open space interrupted by additional vertical members; first and second side barriers each of which are comprised of at least open space interrupted by vertical members with one side barrier being coupled to the first vertical flanking member of the first front barrier and the other side barrier being coupled to the third vertical flanking member of the second front barrier; where the second vertical flanking member of the first front barrier is coupled to the second front barrier and the fourth vertical flanking member of the second front barrier is coupled to the first front barrier such that the distance between the other two flanking members of the front barriers may be adjusted [i.e., to create an adjustable width for the pet gate]; and where all of the front and side barriers form an open configuration in use, stabilize the self-supporting structure without securing it to an external structure, and do not themselves enclose an area in the open



configuration [i.e., the structure must be placed next to walls but does not rely on those walls for support].

32. Primetime knew about the '983 Patent prior to its first offer for sale, importation, or sale of both the New Slide Gate Medium and New Slide Gate Large and knew that those actions would infringe the '983 Patent.

33. Primetime also has induced and continues to induce its customers to infringe at least Claim 17 of the '983 Patent because it intends for its customers to resell the New Slide Gate Medium and New Slide Gate Large with instructions on use and operation of the products in a normal and customary manner for a pet gate and has promoted those products with the intention that its customers would act in an infringing manner. Primetime's customers infringe at least Claim 17 of the '983 Patent when they resell the products with instructions to use them in their normal and customary manner. Primetime performed its inducing acts with full knowledge of the '983 Patent and knew that it would induce infringement, or was willfully blind to the likelihood that its acts would cause customers to infringe.

34. Primetime's actions constitute infringement under 35 U.S.C. § 271.

35. By its infringing actions and its inducement of customers' infringement, Primetime has injured Richell and is liable for monetary damages, interest and costs pursuant to 35 U.S.C. § 284 in an amount adequate to compensate Richell for Primetime's infringement, including but not limited to any lost profits.

36. Because Primetime knew about the '983 Patent and that its actions would constitute infringement prior to beginning those actions, Primetime is also liable for willful infringement. Richell therefore seeks no less than treble damages for Primetime's infringement.

37. Further, this is an exceptional case under 35 U.S.C. § 285 at least because Primetime has no defense to this infringement, previously paid for its infringement of these Patents for its sales of patentably-indistinct products, and began selling its new products with full knowledge that it would be infringing. As such, Richell also seeks its attorneys' fees.

38. Unless restrained by the court, Primetime's actions will cause ongoing harm to Richell for which it has no adequate remedy at law and for which it seeks injunctive relief under 35 U.S.C. § 283.

**COUNT THREE**  
**INFRINGEMENT OF U.S. PATENT NO. 8,230,816**

39. Richell realleges and incorporates the foregoing paragraphs as if fully set forth herein.

40. Richell is the owner by assignment of U.S. Patent No. 8,230,816 ("the '816 Patent"), which was duly and legally issued by the U.S. Patent and Trademark Office on July 31, 2012. The '816 Patent is valid and enforceable.

41. Primetime has imported, offered for sale, and/or sold in the United States products that infringe the '816 Patent, including its New Slide Gate Medium and New Slide Gate Large.

42. Primetime has directly infringed and continues to infringe at least Claim 1 of the '816 Patent because its New Slide Gate Medium and New Slide Gate Large contain each and every element of that claim, either literally or by equivalents, including: at least two front panels configured to be coupled to form a front barrier with a first and second side where the configuration allows adjustment of overlap of the panels such that the total width of the front barrier is adjustable; at least one leg coupled to the front barrier to assist with maintaining the barrier in a vertical position so that the entire structure is self-supporting in use and forms a non-enclosing figure from a plan view perspective [i.e., the structure must be placed next to walls in

order to enclose a space but does not rely on those walls for support]; and at least one side barrier configured to be coupled to the front barrier such that the side barrier extends beyond the front barrier on the first side of the front barrier and the leg extends beyond the front barrier on its second side.

43. Primetime knew about the '816 Patent prior to its first offer for sale, importation, or sale of both the New Slide Gate Medium and New Slide Gate Large and knew that those actions would infringe the '816 Patent.

44. Primetime also has induced and continues to induce its customers to infringe at least Claim 1 of the '816 Patent because it intends for its customers to resell the New Slide Gate Medium and New Slide Gate Large with instructions on use and operation of the products in a normal and customary manner for a pet gate and has promoted those products with the intention that its customers would act in an infringing manner. Primetime's customers infringe at least Claim 1 of the '816 Patent when they resell the products with instructions to use them in their normal and customary manner. Primetime performed its inducing acts with full knowledge of the '816 Patent and knew that it would induce infringement, or was willfully blind to the likelihood that its acts would cause customers to infringe.

45. Primetime's actions constitute infringement under 35 U.S.C. § 271.

46. By its infringing actions and its inducement of customers' infringement, Primetime has injured Richell and is liable for monetary damages, interest and costs pursuant to 35 U.S.C. § 284 in an amount adequate to compensate Richell for Primetime's infringement, including but not limited to any lost profits.

47. Because Primetime knew about the '816 Patent and that its actions would constitute infringement prior to beginning those actions, Primetime is also liable for willful infringement. Richell therefore seeks no less than treble damages for Primetime's infringement.

48. Further, this is an exceptional case under 35 U.S.C. § 285 at least because Primetime has no defense to this infringement, previously paid for its infringement of these Patents for its sales of patentably-indistinct products, and began selling its new products with full knowledge that it would be infringing. As such, Richell also seeks its attorneys' fees.

49. Unless restrained by the court, Primetime's actions will cause ongoing harm to Richell for which it has no adequate remedy at law and for which it seeks injunctive relief under 35 U.S.C. § 283.

#### **COUNT FOUR** **BREACH OF CONTRACT**

50. Richell realleges and incorporates the foregoing paragraphs as if fully set forth herein.

51. Richell and Primetime entered into a Settlement Agreement with an Effective Date of January 28, 2015 in which Primetime agreed that after August 1, 2015 it would "no longer make, have made, use, sell, offer to sell, or import...all other products that are covered by the Richell Patents."

52. At least by March 16, 2016, Primetime began importing, offering to sell and/or selling its New Slide Gate Medium and New Slide Gate Large in the United States. Such sales are an unexcused breach of the Settlement Agreement, because each of those products "are covered by the Richell Patents" including at least by the '449 Patent, the '983 Patent, and the '816 Patent.

53. Richell has fully performed its obligations under the Settlement Agreement.

54. Primetime's breach of the Settlement Agreement has damaged Richell in an amount to be determined at trial.

**COUNT FIVE**  
**FRAUD**

55. Richell realleges and incorporates the foregoing paragraphs as if fully set forth herein.

56. Richell and Primetime entered into a Settlement Agreement with an Effective Date of January 28, 2015 in which Primetime agreed that after August 1, 2015 it would "no longer make, have made, use, sell, offer to sell, or import...all other products that are covered by the Richell Patents."

57. At least by March 16, 2016, Primetime began importing, offering to sell and/or selling its New Slide Gate Medium and New Slide Gate Large in the United States. Such sales are an unexcused breach of the Settlement Agreement, because each of those products "are covered by the Richell Patents" including at least by the '449 Patent, the '983 Patent, and the '816 Patent.

58. Primetime made its representation that it would not sell products covered by the Richell Patents knowing that it never intended to keep that promise. The representation was therefore false when made and was material to Richell, as it would have not settled the dispute at that time or would have demanded different terms without that representation.

59. Primetime made its false representation with the intent that Richell would believe it and therefore settle the dispute on more favorable terms and/or settle it at that time and without filing a lawsuit, all of which resulted from Primetime's falsehood.

60. Primetime's false representation has injured Richell and caused it to suffer monetary damages for which Primetime is liable. Richell is also entitled to exemplary damages due to Primetime's fraud.

**JURY DEMAND**

61. Richell requests a trial by jury on all claims so triable.

**RELIEF REQUESTED**

62. Richell respectfully request that judgment be entered in its favor and against Primetime as follows:

- A. A judgment that Primetime has infringed, either literally or under the doctrine of equivalents, the '449 Patent, the '983 Patent, and the '816 Patent;
- B. A judgment and order that Primetime pay Richell its damages, costs, expenses, pre-judgment and post-judgment interest for its infringement of the '449 Patent, the '983 Patent, and the '816 Patent;
- C. A judgment and order finding that Primetime's infringement of the '449 Patent, the '983 Patent, and the '816 Patent has been willful and awarding Richell treble damages;
- D. A judgment and order finding that this is an exceptional case under 35 U.S.C. §285 and awarding Richell its reasonable attorneys' fees;
- E. A judgment and order that Primetime pay Richell its damages, costs, expenses, pre-judgment and post-judgment interest for Primetime's breach of the Settlement Agreement;

- F. A judgment and order that Primetime pay Richell its damages, exemplary damages, costs, expenses, attorneys' fees, pre-judgment and post-judgment interest for Primetime's fraud in entering into the Settlement Agreement;
- G. An order enjoining Primetime, its officers, agents, employees, contractors, affiliates, successors and assigns, and all those controlled by, acting on behalf of, in privity with, or acting in concert or active participation with Primetime from:
- a. Infringing the '449 Patent, the '983 Patent, and the '816 Patent, including but not limited to, by making, using, offering to sell, selling, or importing into the United States the New Slide Gate Medium and New Slide Gate Large; and
  - b. Inducing others to infringe the '449 Patent, the '983 Patent, and the '816 Patent, including but not limited to, by making, using, offering to sell, selling, or importing into the United States the New Slide Gate Medium and New Slide Gate Large;
- H. An order that Primetime destroy any New Slide Gate Medium and New Slide Gate Large products and any other products that infringe the '449 Patent, the '983 Patent, or the '816 Patent that it has in inventory and cancel all outstanding orders for any such products; and
- I. Any and all other relief that the Court deems appropriate.

Dated: March 9, 2017

/s/ Paul V. Storm

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