My name is Fred Ruckel. I am an inventor with three Utility Patents, 10,070,623 & 10,334,824 & 10,701,398, five registered trademarks 86613342, 86613368, 87933626, 87727388, 88392269 and US copyright TX 8-546-641.

We manufacture my patented invention in the United States providing employment for over 120 US workers at 10 companies across 6 states.

My comments, analogies and summaries below reflect true-life experiences battling to protect my invention from serial infringers.

Over the last 3 years we have spent in excess $400,000 defending our invention from serial infringers who utilize the legal system as a weapon. Our most recent case set Precedent in the 8th circuit US Federal Appeals Court in March 2020, (docket 18-3500), protecting inventors from legal fees for an infringer who depletes an inventors finances to the point of surrender.
Criminality:
The easiest way to curtail invention theft and fix the PTAB is to make intentional, willful, deliberate, or overt invention theft, a felony offense with criminal prosecution implications. It is important that we take the direction of criminality as it is the only way to stop willful infringement. Bad actors do not blink an eye at paying a 25 million dollar award in a lawsuit, however, if they knew they had a chance of going to jail for a single day, they would think twice and invention theft would stop nationwide.

Judge appointments:
Administrative PTAB judges are unconstitutionally appointed. The APJs are not vetted properly to ensure no conflicts or bias exists. An Administrative Patent Judge (APJ) applies for a job via classified ads, the same as if a person was looking to work at McDonalds. APJs should require senate approval like all other judges nationwide.

Patent Defense:
Director Iancu, Do you believe the Patent office has only the best examiners granting patents? Do you feel your examiners are highly qualified and perform rigorous investigations before granting a Patent? Do you feel an Administrative Judge is more qualified to assess a patent on its face without a proper investigation, such as the kind the USPTO Examiner performed?

Who do you stand by Director Iancu? Your trained patent examiners or a team of appointed administrative judges who undermine your examiners work? Pick one, you cannot have both.

USPTO to Pay to Defend Issued Patent:
As the Battle to save Patents is truly a battle between the USPTO and the PTAB division of the USPTO, I propose the USPTO must defend the work of its many, highly skilled examiners against IPRs from third parties in the PTAB. The USPTO examiners have done an excellent job scrutinizing prior art and obviousness of an invention during the patent process. The USPTO should stand up for its examiners by defending the issued patents at its own expense. All costs to defend an issued Patent by the USPTO should be borne by the USPTO. The onus should be on the USPTO to defend patents against invalidation as they issued them in the first place.

The Serial list:
The USPTO must keep a list of serial infringers and companies who use the IPR system as a legal tool to harm inventors. These serial infringers should be barred from filing IPRs or at the very least, they must prove beyond reasonable doubt that an IPR is warranted and not simply an attempt to undermine a successful invention.

We have discovery evidence which outlines the modus operandi of a group of serial infringers operating across the United States. We can provide this information to your office to help stop the rampant patent abuse.

The PTAB is a young division which was formed with the best of intentions, however has been taken over by infringers. The PTAB as it stands currently should be abolished as opposed to reformed, subtle changes can’t fix a broken system, the only option is a full replacement of the PTAB system.

IPRs filed to stay litigation:
Another tactic of the serial infringer is to file a petition to stay a pending court case. It is common when an inventor pursues their intellectual property rights via the proper court system that infringers file a PTAB petition. The concurrent filing of a petition to PTAB puts the district courts in a position where they stay the case. This tactic drains and inventor dry to the point of bankruptcy. It is our recommendation that the PTAB not initiate duplicative proceedings and should not accept a petition for a patent currently in litigation in the court system.

We would be happy to work with your team to help save the Patent system. The USPTO had asked me to speak at SXSW2020 on their panel called Investing in and Protecting Your IP. We know a great deal about protecting IP and are able to convey it to the masses in a way that helps them relate. We are here to help, not argue points, but find a common ground to protect America's inventors while keeping innovation in America.

Respectfully submitted,
Fred Ruckel

Attachments

Entrepreneur July2018
Many inventors think they’re powerless against bootleggers. Many roll over rather than fight. But Fred and Natasha Ruckel are not most people. When their product was knocked off, they took on a sophisticated, deep-pocketed counterfeiting operation. Now, for the first time, they can reveal exactly how these bad guys do their work.

by Michael Kaplan
On Valentine’s Day in 2015, Natasha Ruckel and her husband, Fred, were sitting in their living room in Gilboa, N.Y. Natasha was improvising on the piano, and Fred was listening while messing around with the couple’s cat, Yoda. Fred noticed a ripple in the living room rug, forming a half circle on one side. Again and again he tossed toys into the ripple and a delighted Yoda darted in and out. Natasha looked up from her playing. “That’s when we came up with the idea for the Ripple Rug,” she says.

The Ruckels, who had spent around 25 years earning their living in marketing and advertising for brands from PepsiCo to ESPN to Hasbro, were already in the midst of creating their first venture: an app that provided a way for amateur photographers to monetize online images. But they both agreed that the Ripple Rug was a better bet. A couple of days later, Natasha went to Home Depot and bought some cheap pieces of carpet, and they got to work on a prototype. When they had that, they launched a Kickstarter campaign in May 2015, pricing the American-made product at $39.95, to test the market. Within 30 days, they received $15,000 in backing. They had the products made in Georgia for $15 each, and filled the orders.

The Ruckels were weighing their next step when, that fall, the opportunity of a lifetime hit. QVC, in conjunction with the Today show, hosted an ongoing competition called the “Next Big Thing” for entrepreneurs with new retail products. Participants presented their offerings on the TV program, and the winning products received an order from QVC. Following an arduous vetting process—including proof of a multi-million-dollar insurance policy, a guarantee of having 1,500 items available for sale, and sample videos of the Ruckels in pitch mode—the Ripple Rug made the cut. “We drove into New York City, and at every exit, we practiced the pitch,” Fred remembers. “We were there by 5 a.m. and hardly slept the night before.”

They sold a few hundred units immediately. QVC bought 1,500 more and Ripple Rug became a top seller. “It was pretty damned amazing,” says Fred. “We were profitable out of the gate, which is virtually unheard of. It felt like a great moment.” It was, and it wasn’t. Over the next 14 months, the Ruckels learned that coming up with a truly original innovation attracts not only devoted customers but also the kind of highly organized, deep-pocketed bootleggers who rip off products and systematically grind their inventors into the ground—both financially and emotionally. “It creates so much discord that you are willing to give up the dream of entrepreneurship and go back to your day job,” says Fred.
The Ripple Rug may have been an upstart product, but Fred had a key advantage. He had spent years sidelinining as an I.T. forensics specialist for hire by attorneys. “I viewed this [theft] as no different from one of those jobs,” says Fred. “The plan was to investigate and put all the pieces together in order to show the crime that was perpetrated.” There was no simple way to do this, though, so the Ruckels would have to dig layer by layer, starting with what was in front of them.

First up: the website. The couple found the site selling the Purr N Play—at two for $19.99, plus shipping and handling. Using a friend’s name and credit card (so as not to speak the bootleggers’), the Ruckels placed an order. A confirmation was emailed to them, along with this strange note: “We are sorry, this product is on back order. We will notify you when stock is available. Your credit card will not be charged until the product is available and shipped.” The credit card wasn’t charged, but there was no way to cancel the order, either.

Next, employing Photoshop, they went frame by frame through the commercial—which ran online and on TV—and made a stunning discovery. In several of the shots of the cat toy, the Ruckels spotted…a Ripple Rug logo? “We assumed they had manufactured a copy of our Ripple Rug,” Fred says. “The timing struck Fred as curious, so he reached out to the rep. When the man called back, the caller ID read ‘Opfer Communications,’ according to a photo taken by Fred. The Ruckels looked up Opfer Communications, which makes infomercials, and found that the sets featured on the Bargain Show matched those used for the Purr N Play. Opfer’s lawyer, Bernie Rhodes, argues that the Bargain Show was merely running infomercials made by Opfer, but otherwise “had nothing to do with Opfer Communications.”

Fred connected with a manager at Opfer. “Point blank, I told him that he had ripped off our product,” he says. “The guy’s voice remained completely level. He didn’t get rattled. He said he would have to talk to some people and get back to us. But he never did.”

At this point, the end of February, Ripple Rug sales were in freefall. Fred and Natasha strategized about what to do with their suddenly deep inventory. They discussed liquidating their 401(k)s or taking out a home equity loan. They had a whole wall of their house covered in Purr N Play: making the videos, trying to get it online. They decided to liquidate their inventory, sending it to a company specializing in liquidating consumer goods. Then, all of a sudden, they turned a cold shoulder and had a lawyer reach out to us.”

Soon after, on a bunch, Fred began looking into people who, in recent months, had contacted him about doing discount deals related to the Ripple Rug. One was an operation called The Bargain Show; a low-rent online version of QVC. As Ripple Rug sales were tanking, a Bargain Show representative repeatedly inquired about working together. “We believe the Ripple Rug could be a great fit for our online shopping network,” he wrote. “Nothing beats cute animals on video!”

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As their sales tanked, the Ruckels were approached by an online program called The Bargain Show.

They noticed a curious connection: The show uses the same set the Purr N Play’s ad was shot on.

In the thick of battle, however, the Ruckels learned critical lessons:

- The importance of copyrighting assets before launching; the reality that people will steal everything from your marketing pitch to your advertising photos; the need to continually patrol for ripoffs and take action. They also got a darkly fascinating glimpse of how ruthless, well-funded, deeply sophisticated bootlegging operations work—and how, with tenacity, vigilance, a good lawyer, and the right strategy, they can be beaten.

THE 2016 HOLIDAY SEASON promised to be a beautiful one for Fred and Natasha. Sales had been rising month over month for most of the year. By October they had sold nearly half a million dollars’ worth of their product. They expected to sell 4,000 Ripple Rugs between Thanksgiving and New Year’s Day. They were so certain of it that they put $80,000 into producing fresh inventory.

So when only 2,000 units sold, Fred was confused. “I planned it right—advertising on social media, getting influencers talking, making best-of lists—and couldn’t understand what went wrong,” he says. He’d worked on hundreds of campaigns before, he knew how he was doing. But he couldn’t explain this. “Something weird was going on.”

The Ruckels searched for kitten casting calls and the cats featured in the commercial. She also looked for casting calls that sought women in their 40s who could provide casting testimony—the kind of thing a professional videography company would have posted before making this commercial. Bingo: Natasha uncovered a December 14 casting call requesting kittens on Facebook. It was for the Purr N Play commercial. That detail led her to the website of a cat fostering center that had provided the felines used in the videos. Fred contacted the foster center’s owner and explained what had happened. “She said her mind was blown,” he says. “She confirmed the production and where it was shot. Then, all of a sudden, she turned a cold shoulder and had a lawyer reach out to us.”

The Bargain Show commercial. Note the fireplace and tall vase in the background.

That Looks Familiar

As their sales tanked, the Ruckels were approached by an online program called The Bargain Show. They noticed a curious connection: The show uses the same set the Purr N Play’s ad was shot on.

A satisfied Purr N Play “customer” offers a testimonial on the same set.
newsletters, and the like. But they can make it harder while mass production. So “the original sample”—to compare their copied version to. Noted your comments as below, we are checking with the factory and will let you know their reply tomorrow.

Rutledge & Bapst

Factory coordinator

Thank you for the update. Please keep me informed.

After checking with the factory, they advise that the upper mat with holes from the original sample is too hard. Cat is not easy to go through around underneath. But they cannot make it softer without making it more difficult to create a “tunnel” for the cat.

I received the sample of the original today for comparison. Regarding your suggestion. In general, I think the material is too soft. The upper mat with the holes is not sturdy enough to maintain its shape when you VOC to it. I will order new mat 2. The velvet was not placed coming, making it more difficult to create a “tunnel” for the cat.

“Pulled that straight out of my…,” Opfer replied. “We can dump it.”

Michael Kaplan is a journalist in New York City. Additional reporting by Jason Feifer.

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