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Discretion to Institute Trials Before the Patent Trial and Appeal Board

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Comment from Fred Ruckel

Submitter Information

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General Comment

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 cant 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 Americas inventors while keeping innovation in America.

Respectfully submitted,
Fred Ruckel

Attachments

Entrepreneur July2018

Cat Fight



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

PHOTOGRAPH COURTESY OF FRED RUCKEL



→ **THEY BITE BACK**
Yoda, the cat that started it all. (Opposite page)
Natasha and Fred Ruckel with their pets.



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—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.



INSIDE INVENTOR
Fred Ruckel in his garage, which has become a Ripple Rug workshop.



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 product 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 what he was doing. But he couldn't explain this. "Something weird was going on."

In February 2017, a friend told the Ruckels that his accountant had seen their commercial on TV, but he wondered why the product being advertised had a different name. The Ruckels told him they hadn't aired a TV commercial. Suddenly feeling nauseated, Fred had his friend place a call to the accountant. "She told me that she saw a commercial for something called the Purr N Play, which was just like the Ripple Rug," Fred says. "She thought it could have been ours, but it wasn't."

The Ripple Rug may have been an upstart product, but Fred had a key advantage. He had spent years sidelining 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 to not spook 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 rug and sold a ton of them," says Fred; hence, the back order. "But it wasn't a knockoff. It was *our* product!" The mystery had deepened.

The Ruckels then uncovered the source code on the Purr N Play's website, which led them to the site's developer. They did a search for other sites made by that company and found that many were simple sites, like the Purr N Play's, built to sell bootlegged products. Fred placed a call to the web company and told them the product had been hijacked, that it belonged to him. "I told them that the site needs to

come down," Fred says. The site builder agreed to comply, but this wasn't the company that knocked off the Ripple Rug. It was just doing work for hire.

The next step was to figure out who made the commercial. It depicted three cats playing with the toy, and two middle-aged women giving testimonials, all set in a house. That was a clue. "We looked online for people who owned commercial locations that matched those used in the videos," says Fred. "We also hunted for notices from people seeking locations that would match those used in the ads: full living rooms where cats would be welcome."

Natasha 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 product 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."

Soon after, on a hunch, 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!"

The timing struck Fred as curious, so he reached out to the rep. When the man called back, the caller ID read "Opfer Communica," 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, by the end of February, Ripple Rug sales were in free-fall. 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 Post-it Notes, trying to connect the dots on this bootlegging operation.

And then, a break. After several calls to the web design company, they managed to connect with its CEO. "He gave up the man who had hired him," says Fred. It was, Fred was told, a guy named Ronald Steblea, head of a Connecticut company called Rutledge & Bapst. Much later, from a letter sent to the Federal Trade Commission from a staff attorney with Connecticut's Department of Consumer Protection, the Ruckels would gain some insight into Steblea: A previous company for which he served as president had already weathered a \$7.5 million judgment against it for deceptive business practices. That attorney described Rutledge & Bapst as appearing to be an "enterprise whose overall business model is marketing bootleg products while using the images and goodwill of bona fide products like Ripple Rug."

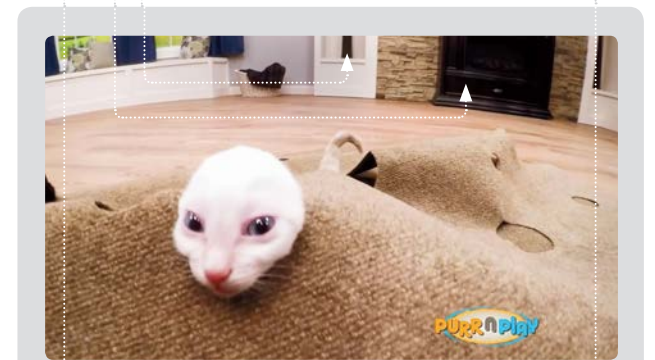
At the end of March 2017, Fred and Natasha Ruckel launched a lawsuit. And over the course of the next year, the Ruckels used the legal discovery process to lift the rock under which Steblea operates, gaining

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 scene from *The Bargain Show*.



The Purr N Play commercial. Note the fireplace and tall vase in the background.



A satisfied Purr N Play "customer" offers a testimonial on the same set.

SCREEN GRABS COURTESY OF SNUGLYCAT

a rare look into how an operation like his works.

Most inventors, Fred says, “figure that their products failed because the products were no good. Not because somebody stole the idea, made it cheaper, out-marketed them, and undersold the originals.” The scam companies, he discovered, are often rich enough to put \$200,000 into marketing a knocked-off product. “Imagine having that kind of money when the guy who made the real invention operates on a shoestring.”

The Ruckels’ lawyer, Paula Brillson Phillips, a managing partner at Phillips and Pfau, who has worked on more than 50 of these instances, sums up the stakes more simply. “Independent inventors,” she says, “are lambs to the slaughter.”

WHEN MOST CONSUMERS think of counterfeits, they likely think of big-brand knockoffs: fake Nikes, Rolexes, or luxury handbags, which flood out of places like China and onto street corners around the world, contributing to an estimated \$500 billion in global counterfeit sales per year. There’s a reason for that, says Joseph Gioconda, attorney at New York-based Gioconda Law Group, which specializes in brand protection. “The counterfeiter is looking to do the least amount of work for the biggest amount of money without any regard for law or morality,” he says. Big brands have a built-in marketplace. They’re as close to a guaranteed sale as a counterfeiter can get.

But in certain circumstances, small brands can appear to offer the same guaranteed reward—if, for example, like the Ripple Rug, they appear on television shows or rise through the ranks of Amazon best-sellers. In these cases, Gioconda says, the threat is often more homegrown: People who knock off small American products may be based in America themselves, he says, and they build sophisticated operations to help them move fast. They often retain intellectual property lawyers of their own, who make small tweaks to an existing product that gets the counterfeiter around whatever patent the inventor is holding. Or, if the inventor doesn’t hold a patent, they move faster than intellectual property law can—knocking off a product and getting it to market before an inventor can protect their idea.

Based on documentation that the Ruckels received from Rutledge & Bapst over the course of the lawsuit, this appears to be how the Ripple Rug landed on Rutledge & Bapst’s radar. Internal emails show Rutledge & Bapst employees treating it like a matter of course, as if they’re just any product-based company testing a new concept. “Please see attached and below for a new item we’re testing called Purr N Play,” one writes on January 20, 2017. “I will review this and get things rolling on it!” another replies.

Here, based on an analysis of hundreds of pages of that documentation, is what appears to have unfolded as Rutledge & Bapst allegedly attempted to counterfeit the Ripple Rug.

When the Ripple Rug came to Rutledge & Bapst’s attention, it likely checked all the boxes: catchy product, independent inventors, patent pending. They hired the aforementioned web design firm to create a simple website for what had been dubbed the Purr N Play, which mimicked the language, color scheme, and photography of the Ripple Rug’s site—even using an image of Yoda, the Ruckels’ own cat. An email blast was then sent out to just less than a million people, as a way to test the toy’s market potential. The results were good. Purr N Play had customers waiting.

What comes next is the matter of some dispute. In early 2016, as documents show, Rutledge & Bapst reached out to Opfer Communications to propose working together on the Purr N Play. Scott Opfer, head of the firm, then emailed an underling: “This is a product sent to me from Ron. He owns the product and has asked us if we want to partner with him. We do the spot for nothing and he buys the test media. If it works, we...split the profits.” (Rhodes,

Inside the Cloning Factory

What does it look like when someone is copying a product? According to internal Rutledge & Bapst documents acquired by the Ruckels during their lawsuit, it looks...well, like business as usual. Below is a real email exchange, edited only for length and clarity, between a Rutledge & Bapst employee and someone working with a factory in China.

Factory coordinator

We cannot send the sample yet, as I feel the upper [mat] with holes is too soft. I am talking with factory to see how to improve it. I'll keep you posted on tomorrow.

Rutledge & Bapst

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 can make it harder while mass production. So do you want us send you the sample right now?

Yes, please send the sample.

TWO WEEKS LATER

Sorry for the delay in responding but I decided to order the original sample* to compare and there was a delay in getting the product. My initial evaluation is that [the sample from China] may be too small, but again I will comment in detail once I receive the original.

A COUPLE OF DAYS LATER

I received the sample of the original today for comparison. Regarding your sample: 1. 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 Velcro it to the lower mat. 2. The Velcro was not placed correctly, making it more difficult to create a “tunnel” for the cat.

Noted your comments as below, we are checking with factory and will let you know their reply tomorrow.

The best way to describe the material is that it needs to be stiffer.

Factory said that they cannot make it stiff same as the original sample, as they don't find that kind of material, but they will try to make it harder than the current sample while mass production. Regarding the Velcro position, they can improve it while mass production.

*This appears to mean they ordered a Ripple Rug—the original sample—to compare their copied version to.

Opfer’s lawyer, tells *Entrepreneur* that the two companies are regular collaborators, but that Opfer never suspected the product was a bootleg, and that their involvement didn’t go any further than making the ad. Though he concedes, “They may have had some alternative fee arrangement.”)

Next, on August 26, 2016, Opfer sent Rutledge & Bapst a contract to create an infomercial for Purr N Play. “Thanks, Ron,” wrote the Opfer employee emailing the agreement to Steblea. “Thrilled to continue to work with you and your team to do fun things.” Opfer got to work on the infomercial. A script was circulated, containing a claim about how the Purr N Play was made of “veterinary grade material.” “It looks great,” a Rutledge & Bapst employee wrote to Scott Opfer in January 2017. “Just one question about the veterinary grade material—is this actually a thing? Or was this a term you created? From a claims standpoint, I just want to make sure we are OK.”

“Pulled that straight out of my...,” Opfer replied. “We can dump it.” It appears that the bogus line didn’t make it into the final video. (Rhodes claims it is standard practice in the infomercial business for the producer to make claims in a script, and then have the client strike them if they’re false.)

A rough of the ad was produced, and a Rutledge & Bapst staff member emailed it to another for feedback. The latter employee was elated. “Hi, Ron sent it to me last night. I think it is awesome. The part where the 3 kitten heads pop out is adorable and made me laugh. Love it!!” She then added, “Just hope if it works we’ll be able to manufacture it.”

Read that sentence again. Fred had initially worried the Purr N Play was back-ordered because his antagonist had sold so many of them. But in reality, Rutledge & Bapst *didn’t have any product to sell*. As it turns out, even before Rutledge & Bapst was preparing to advertise the product, the company was struggling to manufacture it.

Rutledge & Bapst had purchased the original Ripple Rug legitimately and had it shipped directly to a representative in China, who was working to arrange production. This is common, Brillson Phillips says. “China is where the bulk of counterfeit manufacturing takes place,” she says. “There’s usually somebody on the ground orchestrating things, and somebody in the United States directing the operation.” In this case, however, multiple Chinese factories were unable to re-create the product. The Ruckels’ lawsuit turned up a running email exchange between a Rutledge & Bapst employee and a representative in China. The representative says they’re struggling to replicate the label “on the original product”; a Rutledge & Bapst employee replies, “No problem, we don’t need the label.” The rep says two of the factories said the Ripple Rug’s “raw material is quite expensive”; the employee says to try “a cheaper material”; the rep sends an estimated cost per unit; Rutledge & Bapst pushes to get that number below \$4, even if it means making the rug smaller. The rep alerts Rutledge & Bapst that a cat they are using to test the knockoff prototype is struggling to get around and beneath the top layer, which was apparently too soft to ripple properly.

These delays appear to be what saved Fred and Natasha’s business. The Purr N Play ad campaign may have been going well—Rutledge & Bapst spent more than \$8,000 to run the ad during reruns of Hallmark *Murders & Mysteries* shows and other programs that would attract older consumers—but before a Chinese manufacturer had figured out how to make it, the Ruckels had alerted the U.S. government to the problem. The couple hoped that shipments of the knockoffs would be stopped when they were trying to enter the country.

Had the products made it into the States, they might have even made it onto retail shelves, says Gioconda, the brand protection lawyer. That’s because “As Seen on TV” sections are often something of the Wild West of retail. The phrase sounds like it connotes some authority, but it’s actually generic; no one entity owns the phrase, and it can be applied

to just about anything. Oftentimes, a questionable marketing company will buy shelf space in retailers across the country, mark that space “As Seen on TV,” and then stock the shelves with bootlegged products. “I’ve seen that happen at least several dozen times,” Gioconda says.

But in the Ruckels’ case, they sued before the Purr N Play was ever made. On February 23, 2017, an attorney for Rutledge & Bapst responded that they have “discontinued all efforts to manufacture, market, and otherwise promote its Purr N Play product and all use of its direct response television commercial advertising that product.” On March 1, Opfer also agreed to cease marketing it. The lawsuit went on, but the Purr N Play, a nonexistent product that caused no end of havoc, was, at long last, no more.

But the Ruckels didn’t just want these companies to stop; they wanted compensation for the lost Ripple Rug sales. The case ground on for months. Finally, in August 2017, nearly five months after the suit had been initiated, the two sides agreed to talk about a settlement. The Ruckels and Ron Steblea sat down in a judge’s chambers at the Federal Courthouse in Bridgeport, Conn. Across a conference-room-style table, the couple and their lawyers tensely confronted their adversary and his lawyers. Fred remembers Steblea sitting with a smirk.

Fred asked Steblea what he was smiling about.

He recalls Steblea responding coolly: “It’s nothing personal.”

“It never is with thieves,” said Fred.

IN THE END, the Ruckels won. On January 31 of this year, Steblea backed down and agreed to settle. And on February 20, the parties signed the agreement. The Ruckels say they received money in the settlement but, as part of the terms of the agreement, cannot say how much. The Ruckels still have pending claims against some of the other parties involved in the counterfeit. Steblea did not respond to multiple requests for comment.

Gioconda, who reviewed the Ruckels’ lawsuit at *Entrepreneur’s* request, says the couple did three things right that all other entrepreneurs should do, too: They filed for intellectual property protection very early, including trademarks and provisional design and patent applications; they hired good and aggressive lawyers; and, in telling their story in a venue like this, they’re getting the word out that they strike back against bootleggers. “Counterfeiters pick their targets based on ROI, and they don’t want to get sued or hassled,” Gioconda says. It’s just easier to go after people who give up quickly.

How much the attempted bootlegging cost the Ruckels is difficult to estimate, but today, the Ripple Rug lives on. “We’re getting new colors in, and things are going really well,” says Fred. “We’re in with the best-sellers on Amazon.”

The Ruckels decided to put some of the lawsuit money toward creating an organization devoted to helping other product inventors who find themselves victimized by poachers. They named it the Randy Cooper Foundation, after a late inventor whose health failed partly over the stress of his product design being stolen repeatedly. Bootleggers “work in the dark corners of the internet,” Fred says. “And I am right there, watching them.”

Clearly, he needs to. In May, three months after the Ruckels settled their lawsuit, Fred spotted something disturbing on Amazon—a product called Vpets Cat Activity Play Mat that looked exactly like the Ripple Rug. “They copied our information word for word, even where it says ‘Ripple Rug’ in the descriptive text,” Fred wrote in an email. But he had notched one victory in this arena already. There was room for more.

“Today,” he wrote, “shall be a long day of digging in.” **E**

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