

**IN THE UNITED STATES COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-0152

DINKUM SYSTEMS, INC., a Colorado corporation,

Plaintiff,

v.

WOODMAN LABS, INC., doing business as GoPro, a Delaware corporation,

Defendant.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff Dinkum Systems, Inc. (“Dinkum”), by and through its undersigned counsel, and for its Complaint and Jury Demand (the “Complaint”) against Defendant Woodman Labs d/b/a GoPro (“GoPro”), states and alleges as follows:

**I. PARTIES AND JURISDICTION**

1. This is an action for patent infringement. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

2. Plaintiff Dinkum is a Colorado corporation with its principal place of business located in Boulder, Colorado.

3. Upon information and belief, Defendant GoPro is a Delaware corporation with its principal place of business located in Half Moon Bay, California.

4. GoPro markets and sells its products, including the infringing GoPro Jaws: Flex Clamp product (the “Jaws Flex Clamp”), throughout the United States, including in the state of Colorado.

5. This Court has personal jurisdiction over GoPro because GoPro's wrongful and infringing conduct has and is occurring within the District of Colorado.

6. Upon information and belief, GoPro regularly conducts business in the state of Colorado and derives revenue from products offered for sale, sold and/or used within the state of Colorado.

7. GoPro expected or should have reasonably expected its wrongful conduct to have consequences in the state of Colorado.

8. Venue is proper before this Court under 28 U.S.C. §§ 1391(b) and 1400(b) because GoPro transacts business within this District and because GoPro's wrongful and infringing conduct has occurred and is occurring within the District of Colorado.

### **GENERAL ALLEGATIONS**

9. Dinkum incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

10. Dinkum is a small Boulder-based company that, among other things, develops and markets high-quality accessories for cameras, including shades and clamping mounts.

11. Dinkum was founded in 2011 by John Mans ("Mans"), a professional photographer and videographer known for his work on various documentaries and other works.

12. Dinkum sells products that Mans created both prior to and after founding Dinkum. Mans utilized his extensive experience and expertise in the photography industry in developing each of the products marketed and sold by Dinkum.

13. Mans and Dinkum have taken steps to protect the intellectual property related to products invented by Mans and marketed and sold by Dinkum.

### **The '662 Patent**

14. The United States Government duly and legally issued United States Patent No. 8,602,662 B1 entitled "Camera and Accessories Clamping Mount" (the "'662 Patent") on December 10, 2013.

15. A true and correct copy of the '662 Patent is attached hereto as **Exhibit 1** to this Complaint and by this reference incorporated herein.

16. The '662 Patent is valid and enforceable.

17. The '662 Patent was assigned to Dinkum by inventor John Mans. Dinkum owns all right, title and interest in, has standing to sue for infringement of, and has the right to sue and to recover for any and all infringements of the '662 Patent.

18. On or about October 17, 2013, Dinkum put GoPro on notice of Dinkum's intellectual property rights, including rights that were protected by the pending issuance of the '662 Patent. No later than the date of the filing and service of this Complaint, GoPro is notified of its infringement of the '662 Patent.

### **The ActionPod® Products**

19. Dinkum's best-selling line of products are its clamping monopod mounts, the ActionPod® and ActionPod®PRO products (together, the "ActionPod® Products").

20. The ActionPod® Products are proprietary camera accessories that allow a photographer to mount a camera to accessible structures or objects in numerous adjustable positions while still providing a stable base for taking pictures.

21. A true and correct screenshot of the ActionPod® Products as offered on Dinkum's website (last visited January 18, 2014) is attached as **Exhibit 2**.

22. Mans developed the ActionPod® Products in part based on his experience taking pictures in remote locations with little or no assistance. Mans also relied on his extensive knowledge of photography and his hard-earned understanding of the requirements for mounting and shooting in less than ideal situations.

23. Dinkum has taken steps to protect all of the intellectual property related to the ActionPod® Products. The ActionPod® Products are one embodiment of the inventions disclosed in the '662 Patent.

24. Dinkum also has applied for pending trade dress rights of the camera mounting system currently offered by Dinkum under the ActionPod® trademark, secured under Trademark Application No. 86092632.

#### **Dinkum's Relationship with GoPro**

25. Dinkum and GoPro both recognized that the mobility, versatility, and stability provided by the ActionPod® Products would appeal to GoPro's core customer base and they entered into a co-promotional relationship in 2012.

26. Pursuant to this relationship, GoPro invited Dinkum representatives to attend industry events and trade shows and to display the ActionPod® Products at GoPro's booths.

27. GoPro representatives also began to promote the ActionPod® Products for use with GoPro's camera products.

28. GoPro staff even purchased ActionPod® Products for GoPro employees to use and display.

29. As a direct result of its relationship with Dinkum, GoPro became intimately aware of the ActionPod® Products, including product components and the manufacturing process, and Dinkum's desire to grow its business through sales of these products.

### **The GoPro Jaws: Flex Clamp**

30. In October 2013, GoPro released the Jaws Flex Clamp, a clamping monopod mount as an accessory to its camera line that is substantially similar to the ActionPod® Products.

31. A true and correct screenshot of the Jaws Flex Clamp as offered on GoPro's website (last visited December 30, 2013) is attached as **Exhibit 3**.

32. Upon information and belief, GoPro developed the Jaws Flex Clamp at the same time it was promoting the ActionPod® Products.

33. Upon information and belief, GoPro intentionally kept secret from Dinkum its development of the Jaws Flex Clamp.

34. GoPro offers the Jaws Flex Clamp to the same consumer market as Dinkum offers its ActionPod® Products.

35. Upon information and belief, GoPro copied the ActionPod® Products to create the Jaws Flex Clamp, including nonfunctional aspects such as color, look and feel, which have acquired secondary meaning such that they operate as a designation of source associated with Dinkum and/or Mans.

36. By copying the ActionPod® Products to create the Jaws Flex Clamp, GoPro misappropriated the skill and labor of Dinkum and its founder, professional photographer Mans, as well as the industry goodwill associated with the ActionPod® Products, Dinkum, and Mans.

37. Actual confusion exists in the market regarding the relationship between the Jaws Flex Clamp, Dinkum, Mans, and/or the ActionPod® Products.

38. As a result of the substantial similarities between the Jaws Flex Clamp and the ActionPod® Products and/or the prior relationship between Dinkum and GoPro, the public is likely to be deceived or confused because of the difficulties in distinguishing between Dinkum's and GoPro's products.

**FIRST CLAIM FOR RELIEF**  
**(Direct Infringement of the '662 Patent)**

39. Dinkum incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

40. Upon information and belief, GoPro has directly infringed and is still directly infringing the '662 Patent under 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing a product, the Jaws Flex Clamp, that embodies the '662 Patent.

41. Upon information and belief, the Jaws Flex Clamp directly infringes at least claim 1 of the '662 Patent and one or more claims depending therefrom.

42. Upon information and belief, GoPro is willfully infringing the '662 Patent as it was on notice of its pending issuance at least as early as October, 2013 and has not changed the operation of any of its products, including the Jaws Flex Clamp.

**SECOND CLAIM FOR RELIEF**  
**(Unfair Competition, Colorado Common Law)**

43. Dinkum incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

44. GoPro engaged in the tort of unfair competition under Colorado law when it copied Dinkum's products, including without limitation, nonfunctional aspects of Dinkum's ActionPod® Products, which have acquired secondary meaning such that they operate as a designation of source.

45. GoPro also unfairly misappropriated and exploited Dinkum's business values, including without limitation, the skill and labor of Dinkum related to creation and promotion of its ActionPod® Products.

46. GoPro's conduct is likely to deceive or confuse the public because of the difficulties in distinguishing between Dinkum's ActionPod® Products and GoPro's Jaws Flex Clamp.

47. GoPro's tortious conduct has caused Dinkum injury in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF**  
**(Unfair or Deceptive Trade Practice, C.R.S. § 6-1-113)**

48. Dinkum incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

49. GoPro engaged in an unfair or deceptive trade practice within the scope of the Colorado Consumer Protection Act (CCPA), § 6-1-105, including without limitation, knowingly copying Dinkum's ActionPod® Products to pass off its Jaws Flex Clamp as that of another.

50. GoPro copied the ActionPod® Products to create the Jaws Flex Clamp, including nonfunctional aspects such as color, look and feel, which have acquired secondary meaning such that they operate as a designation of source associated with Dinkum and/or Mans.

51. The unfair or deceptive trade practice engaged in by GoPro occurred in the course of GoPro's business, vocation, or occupation.

52. GoPro's unfair or deceptive trade practice significantly impacts the public as actual or potential consumers of products of Dinkum and/or GoPro.

53. Consumers are directly affected by GoPro's offering of the Jaws Flex Clamp to the market in general.

54. Consumers affected by the challenged practice generally lack relative sophistication and bargaining power.

55. GoPro's unfair or deceptive trade practice has impacted consumers to date and has the significant potential to do so in the future.

56. GoPro's unfair or deceptive trade practice has caused Dinkum injury in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF**  
**(Unjust Enrichment)**

57. Dinkum incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

58. By copying the ActionPod® Products to create the Jaws Flex Clamp and misappropriating the skill and labor of Dinkum and Mans, as well as the industry goodwill associated with the ActionPod® Products, Dinkum, and Mans, GoPro has unjustly gained benefit from Dinkum's development and promotion of the ActionPod® Products.

59. GoPro's enjoyment of lower costs and increased visibility and revenues from the Jaws Flex Clamp has been at Dinkum's expense because, among other ways, Dinkum invested time and resources in developing the proprietary components of the ActionPod® Products and



promoting its ActionPod® Products to the same market to which GoPro has offered the Jaws Flex Clamp.

60. It would be unjust to allow GoPro to benefit from Dinkum's investment of time and resources without compensating Dinkum.

61. As a direct and proximate cause of GoPro's unjust enrichment, Dinkum has been damaged in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Dinkum Systems, Inc. prays for judgment against Defendant Woodman Labs, Inc. d/b/a GoPro as follows:

1. That GoPro has willfully infringed the '662 Patent;
2. That an accounting be had for the damages caused Dinkum by the infringing activities of GoPro, and that such damages include damages for lost profits and/or a reasonable royalty, which sums should be trebled pursuant to 35 U.S.C. § 284, with interest thereon, be awarded to Dinkum;
3. That Dinkum be granted permanent injunctive relief restraining and enjoining GoPro and its officers, agents, servants, employees, and those persons in active concert or participation with them, from infringing the '662 Patent, including without limitation, restraining and enjoining the advertising, marketing, selling and/or offering for sale of the infringing Jaws Flex Clamp product within the United States;
4. That Dinkum be granted further injunctive relief directing GoPro to recall all infringing Jaws Flex Clamp products which it has sold within the United States which infringe the '662 Patent to the extent possible and also to provide Dinkum with names

and contact information for all entities, including distributors and resellers, through which GoPro sells the infringing Jaws Flex Clamp product;

5. That Dinkum be awarded money damages in an amount to be proven at trial and pre and post judgment interest on such damages;
6. That Dinkum be awarded statutory penalties,
7. That Dinkum be awarded its attorneys' fees, costs and expenses in this action; and
8. That Dinkum be awarded such relief as the Court may deem equitable and just.

**JURY DEMAND**

Plaintiff Dinkum Systems, Inc. demands a jury trial on all issues so triable.

Respectfully submitted this 21st day of January, 2014.

KUTAK ROCK LLP

*s/ Chad T. Nitta*

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