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DISTRICT COURT  
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DISTRICT OF UTAH  
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Attorneys for Plaintiff Seirus Innovative  
Accessories, Inc.

**IN UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

SEIRUS INNOVATIVE  
ACCESSORIES, INC., a Utah corporation,

Plaintiff,

BULA AMERICA, INC., a Delaware  
corporation,

Defendant.

**COMPLAINT**

Judge J. Thomas Greene  
DECK TYPE: Civil  
DATE STAMP: 06/05/2003 @ 16:02:49  
CASE NUMBER: 2:03CV00526 JTG

For causes of action against Defendant BULA AMERICA, INC. ("Bula"), Plaintiff  
SEIRUS INNOVATIVE ACCESSORIES, INC. ("SEIRUS") hereby alleges as follows:

1. This is an action for patent infringement under the patent laws of the United  
States, 35 U.S.C. §271 *et seq.*, for palming off, passing off and misrepresenting the source of  
goods, all in violation 15 U.S.C. § 1125 (a) of the Lanham Act, for dilution in violation of 15  
U.S.C. § 1125 (c) and for common law unfair competition.

### **PARTIES**

2. SEIRUS is a Utah corporation having a place of business at 2200 West Alexander Street, Salt Lake City, Utah 84119.

3. Upon information and belief, BULA is a Delaware corporation with a principal office at 200 Spruce Street, Suite 201, Denver, CO 80230, a registered office at 5501 S. Berry Lane, Greenwood Village, Colorado 80111 and a principal place of business at 707 E. Anemone Trail #1, Dillion, Colorado 80435.

### **JURISDICTION AND VENUE**

4. This civil action for patent infringement arises under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.* This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

5. This civil action for unfair competition, palming off and passing off and dilution under the 15 U.S.C. § 1125 (a) and (c). The court also has jurisdiction under 15 U.S.C. §1121(a) and 28 U.S.C. § 1338 (a) and (b).

6. This civil action for unfair competition arises under the common law of the State of Utah and for violation of the Utah Truth In Advertising statute, UCA § 13-11a-1 *et seq.* This court therefore has jurisdiction under 28 U.S.C. § 1338 (b).

7. Upon information and belief, BULA is offering for sale and selling in Utah and elsewhere throughout the United States the *OU NECK* and the *OU LINE* face mask products each of which infringe one or more claims of United States Letters Patent 5,214,804; and upon information and belief, BULA is offering for sale and selling in Utah and elsewhere throughout the United States the *OU LINE* face mask products which infringe one or more claims of United States Letters Patent 6,272,690. Therefore, BULA is committing acts of unlawful

patent infringement within the state of Utah and elsewhere throughout the United States. In addition, BULA is palming off, passing off and misrepresenting the source of the *OU GUAR*, the *OU NECK* and the *OU LINE* face mask products and is otherwise unfairly competing with SEIRUS and diluting the famous mark of SEIRUS; and, upon further information and belief, is so acting in the state of Utah, so that BULA is transacting business within the State of Utah, is committing acts of patent infringement within the State of Utah, and is causing harm to SEIRUS in the State of Utah. Therefore, this court has personal jurisdiction over BULA under Utah's long arm statute, Utah Code Annotated §78-27-24 (1) and (3)

8. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b) because, upon information and belief, the alleged acts of unlawful patent infringement are taking place in this judicial district and BULA is subject to personal jurisdiction in this district.

### **BACKGROUND**

9. SEIRUS is the owner of United States Letters Patent No. 5,214,804 (the "'804 Patent") which issued on June 1, 1993 and is titled "PROTECTIVE MASK WITH SCARF". A copy of the '804 Patent is attached as Exhibit A.

10. SEIRUS is the owner of United States Letters Patent No. 6,272,690 (the "'690 Patent") which issued on August 14, 2001 and is titled "HEAD COVERING". A copy of the '690 Patent is attached as Exhibit B.

11. BULA offers for sale and sells the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector, all of which are illustrated and described in part on Exhibit C.

12. Upon information and belief, the *OU NECK* and the *OU LINE* products each fall within the scope of one or more claims of the '804 Patent.

13. Upon information and belief, the *OU LINE* head, face and neck protector falls within the scope of one or more claims of the '690 Patent.

14. SEIRUS manufactures and sells, *inter alia*, a line of face protection products including the *MASQUE*™ face protector and the *COMFORT MASQUE*™ face protector, both as shown on Exhibit D attached hereto. The SEIRUS line of face protection products also includes the *NEOFLEECE COMBO SCARF*® face and neck protector, the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector as shown on Exhibit E attached hereto.

15. SEIRUS and its predecessors have been selling the *MASQUE* product and the *COMFORT MASQUE*™ product for many years and, in turn, have sold many hundreds of thousands of such products. The form, shape and appearance of the *COMFORT MASQUE*™ and the *MASQUE*™ products as well as the arrangement and presentation of the *COMFORT MASQUE*™ and the *MASQUE*™ products in printed media and in packaging all have become famous trademarks of SEIRUS and are associated with SEIRUS and reflect the originator to be SEIRUS.

16. By virtue of the extensive use, sale and advertising by SEIRUS, the shape, form and appearance of the *COMFORT MASQUE*™ and the *MASQUE*™ face and the packing thereof are inherently distinctive and have acquired distinctiveness, secondary meaning and fame signifying SEIRUS as the manufacturer and originator.

17. SEIRUS has been selling the *NEOFLEECE COMBO SCARF*® face and neck protector for many years and in turn has sold many thousands of such products. The form, shape and appearance of the *NEOFLEECE COMBO SCARF* product as well as the arrangement and presentation of the *NEOFLEECE COMBO SCARF* product in printed media

all have become famous trademarks of SEIRUS and are associated with SEIRUS and reflect the originator to be SEIRUS.

18. By virtue of the extensive use, sale and advertising by SEIRUS, the shape, form and appearance of the *NEOFLEECE COMBO SCARF* product are inherently distinctive and have acquired distinctiveness, secondary meaning and fame signifying SEIRUS as the manufacturer and originator.

19. SEIRUS has sold the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector for years and in turn has sold many thousands of such products. The form, shape and appearance of the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector as well as the arrangement and presentation of the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector in printed media all have become famous trademarks of SEIRUS and are associated with SEIRUS and reflect the originator to be SEIRUS.

20. By virtue of the extensive, use, sale and advertising by SEIRUS, the shape, form and appearance of the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector are inherently distinctive and have acquired distinctiveness, secondary meaning and fame signifying SEIRUS as the manufacturer and originator.

21. By virtue of the extensive promotion, use, sale and advertising by SEIRUS of the *MASQUE*™ face protector, the *COMFORT MASQUE*™ face protector, the *NEOFLEECE COMBO SCARF*® face and neck protector, the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector, as a family of face

protection products, have separately, together and collectively become the famous trademarks of SEIRUS and have inherent distinctiveness and have acquired distinctiveness, secondary meaning and fame signifying SEIRUS as the manufacturer and originator.

22. The *OU GUAR* face product has a shape virtually identical to the *MASQUE* and *COMFORT MASQUE* products of SEIRUS, and, upon information and belief, is fabricated to be of the same form, shape and appearance as the *MASQUE* and *COMFORT MASQUE* products, and upon further information and belief, is made or to be made of substantially similar materials so that it will be virtually identical and be regarded by a user as the *MASQUE* and *COMFORT MASQUE* products of SEIRUS.

23. The *OU NECK* face and neck product has a shape virtually identical to the *NEOFLEECE COMBO SCARF* product of SEIRUS, and, upon information and belief, is fabricated to be of the same form, shape and appearance as the *NEOFLEECE COMBO SCARF* product; and, upon further information and belief, is made or to be made of substantially similar materials so that it will be virtually identical and be regarded by a user as the *NEOFLEECE COMBO SCARF* product.

24. The *OU LINE* head, face and neck product has a shape virtually identical to the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA* ® head, face and neck protector of SEIRUS, and, upon information and belief, is fabricated to be of the same form, shape and appearance as the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA* ® head, face and neck protector; and, upon further information and belief, is made or to be made of substantially similar materials so that it is or will be virtually identical and be regarded by a user to be the *COMBO CLAVA*® head, face and neck protector or the *ULTRA CLAVA*® head, face and neck protector.

**COUNT ONE**  
**('804 PATENT INFRINGEMENT)**  
**(U.S. Patent 5,214,804)**

25. The allegations of paragraphs 1-9, 11-12 and 14-15 are incorporated by this reference the as if each were fully set forth herein.

26. Upon information and belief, BULA has been and is now unlawfully infringing, literally or under the doctrine of equivalents, one or more claims of the '804 Patent by at least using, offering to sell, advertising for sale and selling the *OU NECK* face and neck protector and the *OU LINE* head, face and neck protector in the state of Utah and throughout the United States.

27. SEIRUS is marking as required by 35 U.S.C. § 287; and BULA has otherwise had knowledge and notice of the '804 Patent and that its activities constitute unlawful patent infringement.

28. Upon information and belief, SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful infringement of the '804 Patent by BULA. Under 35 U.S.C. § 284, SEIRUS is entitled to damages to be established at trial or upon an accounting adequate to compensate for the infringement, including lost profits, but not less than a reasonable royalty.

29. On information and belief, BULA's infringement of the '804 patent is willful and wanton and with an intent to harm SEIRUS. Therefore, this is an exceptional case, and SEIRUS is therefore entitled to enhanced and increased damages under 35 U.S.C. § 284.

30. This is an exceptional case under 35 U.S.C. § 285 entitling SEIRUS to its reasonable attorneys' fees.

31. SEIRUS has been and continues to be damaged by the unlawful infringing

activities of EULA and will be irreparably harmed unless the unlawful infringing activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. § 283.

**COUNT TWO**  
**('690 PATENT INFRINGEMENT)**  
**(U.S. Patent 6,272,690)**

32. The allegations of paragraphs 1-8, 10-11 and 13-15 are incorporated by this reference the same as if each were fully set forth herein.

33. Upon information and belief, BULA has been and is now unlawfully infringing, literally or under the doctrine of equivalents, one or more claims of the '690 Patent by at least using, offering to sell, advertising for sale and selling the *OU Line* head, face and neck protector in the state of Utah and throughout the United States.

34. SEIRUS is marking as required by 35 U.S.C. § 287; and BULA has otherwise had knowledge and notice of the '690 Patent and that its activities constitute unlawful patent infringement.

35. Upon information and belief, SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful infringement of the '690 Patent by BULA. Under 35 U.S.C. § 284, SEIRUS is entitled to damages to be established at trial or upon an accounting adequate to compensate for the infringement, including lost profits, but not less than a reasonable royalty.

36. On information and belief, BULA's infringement of the '690 Patent is willful and wanton and with an intent to harm SEIRUS. Therefore, this is an exceptional case; and SEIRUS is in turn entitled to enhanced damages under 35 U.S.C. § 284.

37. This is an exceptional case under 35 U.S.C. § 285 entitling SEIRUS to its reasonable attorneys' fees.



38. SEIRUS has been and continues to be damaged by the unlawful infringing activities of BULA and will be irreparably harmed unless the unlawful infringing activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. § 283.

**COUNT THREE**  
**(STATUTORY UNFAIR COMPETITION)**  
**(Lanham Act)**

39. The allegations of paragraphs 1-8, 11 and 14-24 are incorporated by this reference the same as if each were fully set forth herein.

40. Upon information and belief, BULA has slavishly copied, imitated and otherwise created a collection of products known as the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector all of which emulate, imitate, palm off as, pass off as and copy the form, shape and appearance of one *MASQUE™* face protector, the *COMFORT MASQUE™* face protector, the *NEOFLEECE COMBO SCARF®* face and neck protector, the *COMBO CLAVA®* head, face and neck protector and the *ULTRA CLAVA®* head, face and neck protector and have thereby emulate, imitate, palm off as, pass off as and copy the family of face protector products of SEIRUS.

41. The *MASQUE™* face protector, the *COMFORT MASQUE™* face protector, the *NEOFLEECE COMBO SCARF®* face and neck protector, the *COMBO CLAVA®* head, face and neck protector and the *ULTRA CLAVA®* head, face and neck protector, each separately and all together as a family of face protection products, have a shape form and appearance which is inherently distinctive and which have developed or acquired distinctiveness and secondary meaning indicative of SEIRUS as the source of such products.

The activities of BULA in advertising, selling and offering to sell each of the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector

will, separately and together, cause confusion, mistake and deception as to the source and origin thereof so that purchasers thereof and others will likely be confused and believe the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector are the products of SEIRUS.

42. The activities of BULA in advertising for sale, offering for sale and selling the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector constitute unfair competition, palming off and passing off, and misrepresentation as to the source of goods in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a)(1).

43. SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful and unfair competition of BULA. Under 15 U.S.C. § 1117, SEIRUS is entitled to damages including lost profits and the costs of this action to be shown at trial or upon an accounting.

44. On information and belief, BULA's unfair competition in violation of 15 U.S.C. § 1125 (a) (1) is willful and wanton and with an intent to harm SEIRUS such that SEIRUS is entitled to triple damages under 15 U.S.C. § 1117(b).

45. Under 15 U.S.C. § 1117(b), SEIRUS is entitled to recover its attorneys fees.

46. SEIRUS has been and continues to be damaged by the unlawful unfair competition of BULA and will be irreparably harmed unless the unlawful infringing activities are permanently enjoined by this Court under the provisions of 15 U.S.C. § 1116.

#### **COUNT FOUR** **(DILUTION)**

47. The allegations of paragraphs 1-8, 11, 14-24 and 40-43 are incorporated by this

reference the same as if each were fully set forth herein.

48. Upon information and belief, BULA has slavishly copied, imitated and otherwise created a collection of products known as the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector all of which emulate, imitate, palm off as, pass off as and copy the form, shape and appearance of one *MASQUE*<sup>TM</sup> face protector, the *COMFORT MASQUE*<sup>TM</sup> face protector, the *NEOFLEECE COMBO SCARF*® face and neck protector, the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector and have thereby emulate, imitate, palm off as, pass off as and copy the family of face protector products of SEIRUS.

49. The *MASQUE*<sup>TM</sup> face protector, the *COMFORT MASQUE*<sup>TM</sup> face protector, the *NEOFLEECE COMBO SCARF*® face and neck protector, the *COMBO CLAVA*® head, face and neck protector and the *ULTRA CLAVA*® head, face and neck protector, each separately and all together as a family of face protection products, have developed a distinctiveness and secondary meaning indicative of SEIRUS as the source of such products.

50. The activities of BULA in advertising, selling, and offering to sell each of the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector will, separately and together, cause confusion, mistake and deception as to the source and origin thereof so that purchasers thereof and others will likely be confused and believe the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector are the products of SEIRUS.

51. The activities of BULA in advertising for sale, offering for sale and selling the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector constitute unfair competition, palming off and passing off and

misrepresentation as to the source of goods in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a)(1)

52. SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful and unfair competition of BULA. Under 15 U.S.C. § 1117, SEIRUS is entitled to damages including lost profits, and the costs of this action to be shown at trial or upon an accounting.

53. On information and belief, BULA's unfair competition in violation of 15 U.S.C. § 1125 (a) (1) is willful and wanton and with an intent to harm SEIRUS such that SEIRUS is in turn entitled to triple damages under 15 U.S.C. § 1117(b).

54. Under 15 U.S.C. § 1117(b), SEIRUS is entitled to recover its attorneys fees.

55. SEIRUS has been and continues to be damaged by the unlawful unfair competition of BULA and will be irreparably harmed unless the unlawful infringing activities are permanently enjoined by this Court under the provisions of 15 U.S.C. § 1116.

**COUNT FIVE**  
**(COMMON LAW UNFAIR COMPETITION)**

56. The allegations of paragraphs 1-8, 11,14-24 and 40-42 are incorporated by this reference the same as if each were fully set forth herein.

57. The activities of BULA in advertising, selling and offering to sell each of the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector, separately and together, are likely to cause confusion, mistake and deception as to the source and origin thereof so that purchasers thereof and others will be confused and will likely be confused and believe the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector are the products of SEIRUS.

58. The activities of BULA in advertising for sale, offering for sale and selling constitute unfair competition and passing off in violation of the common law of the state of Utah.

59. SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful and unfair competition of BULA. SEIRUS is thereby entitled to damages including lost profits to be shown at trial.

60. On information and belief, BULA's unfair competition in violation of the common law of the state of Utah is willful and wanton and with an intent to harm SEIRUS. SEIRUS is thus entitled to punitive and exemplary damages in the amount of no less than \$200,000.00.

61. In view of the willful and wanton behavior of BULA, SEIRUS is entitled to recover its attorneys' fees.

62. SEIRUS has been and continues to be damaged by the unlawful unfair competition of BULA and will be irreparably harmed unless the unlawful infringing activities are permanently enjoined by this Court.

**COUNT SIX**  
**(VIOLATION OF TRUTH IN ADVERTISING ACT,**  
**UTAH CODE ANN. § § 13-11a-3 (a) and (b))**

63. The allegations of paragraphs 1-8, 11,14-24 and 40-42 are incorporated by this reference the same as if each were fully set forth herein.

64. Upon information and belief, BULA has slavishly copied, imitated and otherwise created a collection of products known as the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector all of which emulate, imitate, palm off as, pass off as and copy the form, shape and appearance of at least one of the

*MASQUE™* face protector, the *COMFORT MASQUE™* face protector, the *NEOFLEECE COMBO SCARF®* face and neck protector, the *COMBO CLAVA®* head, face and neck protector and the *ULTRA CLAVA®* head, face and neck protector and BULA has thereby emulated, imitated, palmed off as, passed off as and copied the family of face protector products of SEIRUS and each of the *MASQUE™* face protector, the *COMFORT MASQUE™* face protector, the *NEOFLEECE COMBO SCARF®* face and neck protector, the *COMBO CLAVA®* head, face and neck protector and the *ULTRA CLAVA®* head, face and neck protector.

65. The *MASQUE™* face protector, the *COMFORT MASQUE™* face protector, the *NEOFLEECE COMBO SCARF®* face and neck protector, the *COMBO CLAVA®* head, face and neck protector and the *ULTRA CLAVA®* head, face and neck protector, each separately and all together as a family of face protection products, have a shape form and appearance which is inherently distinctive and which have developed or acquired distinctiveness and secondary meaning indicative of SEIRUS as the source of such products.

66. The activities of BULA in advertising, selling and offering to sell each of the *OU GUAR* face mask, the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector will, separately and together, cause confusion, mistake and deception as to the source and origin thereof so that purchasers thereof and others will likely be confused and believe the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector are the products of SEIRUS.

67. The activities of BULA in advertising for sale, offering for sale and selling the *OU GUAR* face mask, the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector constitute unlawful deceptive trade practices including unlawful passing off

of the goods of BULA as the goods of SEIRUS and causing a likelihood of confusion between the goods of SEIRUS and the goods of BULA all as proscribed by Utah Code Ann. § 13-11a-3 (a) and (b).

68. SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful acts of BULA. Under Utah Code Ann. § 13-11a-4, SEIRUS is entitled to: a) damages as a result of BULA's actions; b) preliminary and permanent injunctive relief requiring BULA to stop violating Utah's Truth in Advertising Act; c) corrective advertising to remedy the wrongs BULA has committed; and d) costs and attorneys' fees.

69. BULA has acted with an intent to harm SEIRUS through its willful and wanton violation of Utah's Truth in Advertising Act, and therefore SEIRUS is entitled to punitive damages in an amount of at least \$200,000.

#### **JURY DEMAND**

70. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, SEIRUS requests a jury trial of all issues that may be tried to a jury in this action.

#### **REQUESTED RELIEF**

SEIRUS respectfully requests that this Court enter a judgment in favor of SEIRUS and against BULA as follows:

##### **A. Jurisdiction**

1. The Court has jurisdiction over the causes set forth herein and the parties hereto.
2. SEIRUS is the owner of the '804 Patent and the '690 Patent and has the right to sue to recover damages for infringement of each.
3. Venue is in this court.

##### **B. '804 Patent Infringement**

1. The '804 Patent is not invalid in law and is enforceable.
2. The '690 Patent is not invalid in law and is enforceable.
3. BULA has infringed at least one claim of the '804 Patent.
4. BULA has infringed at least one claim of the '690 Patent.
5. SEIRUS is entitled to recover damages under 35 U.S.C. § 284 in an amount to be determined at trial or by accounting for the lost profits but no less than a reasonable royalty on all sales of each of the *OU NECK* face and neck protector and the *OU LINE* head, neck and face protector plus pre judgment interest and post judgment interest.
6. The damages awarded pursuant to paragraph 7 next preceding shall be increased to three times the amount awarded because this is an exceptional case under 35 U.S.C. § 284.
7. SEIRUS be awarded all the attorneys fees in connection with this matter under 35 USC § 285.
8. Defendants, their officers, agents, servants, employees and those persons in active concert or participation with any of them, be permanently enjoined from further acts of infringement for the remaining life of the '804 Patent and the '690 Patent under 35 U.S.C. §283.

**C. '690 Patent Infringement**

1. The '690 Patent is not invalid in law and is enforceable.
2. BULA has infringed at least one claim of the '690 Patent.
3. SEIRUS is entitled to recover damages under 35 U.S.C. § 284 in an amount to be determined at trial or by accounting for the lost profits but no less than a reasonable royalty on all sales of each of the *OU NECK* face and neck protector, and the *OU LINE* head, neck and face protector plus pre judgment interest and post judgment interest.



4. The damages be awarded pursuant to paragraph C.4 next preceding shall be increased to three times the amount awarded because this is an exceptional case under 35 U.S.C. § 284.

5 SEIRUS be awarded all its actual attorneys fees in connection with this matter under 35 USC § 285.

6. BULA, its officers, agents, servants, employees and those persons in active concert or participation with any of them, be permanently enjoined from further acts of infringement for the remaining life of the '804 Patent and the '690 Patent under 35 U.S.C. §283.

**D. Lanham Act**

1. SEIRUS be awarded damages under 15 U.S.C. § 1117, SEIRUS for all of its lost profits, and the costs of this action.

2. The damages awarded under the preceding paragraph are to be increased to three times the amount awarded under 15 U.S.C. § 1117(b).

3. Under 15 U.S.C. § 1117(b), SEIRUS is to recover its attorneys fees.

4. BULA, its officers, agents, servants, employees and those persons in active concert or participation with any of them, be permanently enjoined from further acts of unfair competition in violation of 15 U.S.C. § 1125(a) (1)

**E. Common Law Unfair Competition**

1. SEIRUS be awarded damages for all of its lost profits, and the costs of this action.

2. SEIRUS be awarded exemplary and punitive damages in the amount of no less than \$200,000.

3. SEIRUS be awarded all of its costs and attorneys fees attendant to this action.

4. BULA, its officers, agents, servants, employees and those persons in active concert or participation with any of them, be permanently enjoined from further acts of common law unfair competition.

**F. Utah's Truth in Advertising Act**

1. SEIRUS be awarded damages for all of its lost profits, and the costs of this action.

2. SEIRUS be awarded permanent injunctive relief requiring BULA to stop violating Utah's Truth in Advertising Act;

3. BULA be required to undertake corrective advertising activities, pursuant to U.C.A. § 13-11a-4 (3) to remedy the wrongs BULA has committed;

4. SEIRUS be awarded its costs and attorneys' fees.

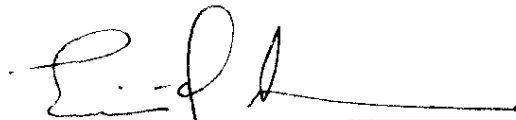
5. SEIRUS be awarded punitive damages for BULA's willful and wanton violation of Utah's Truth in Advertising Act, in an amount of at least \$200,000.

**G. Other**

1. To the extent not otherwise awarded, all costs of this action.

2. Such other and further relief as this court may deem just and proper.

DATED: this 5 day of June 2003.

A handwritten signature in black ink, appearing to read 'T. Rossa', written over a horizontal line.

Thomas Rossa  
Eric G. Maxfield  
HOLME ROBERTS & OWEN LLP  
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Salt Lake City, UT 84111  
Attorneys for Seirus Innovative  
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