

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

VIKING SURFBOARDS, INC., a Florida Corporation, VIKING SURFS'UP, INC., a Florida Corporation, and CHRISTIAN WOLTERS, an individual,)	Case No.
)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
BRUCE BLUMENFELD, an individual,)	
WAVE SKATER, LLC, a Delaware limited liability company, and CHIMAERA BODYBOARDS LLC, a Delaware limited liability company,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiffs, VIKING SURFBOARDS, INC. (hereinafter "VIKING SURFBOARDS") and VIKING SURFS'UP, INC. (hereinafter "VIKING SURFS'UP")(collectively "VIKING" or "Plaintiffs") and CHRISTIAN B. WOLTERS (hereinafter "WOLTERS") hereby complain against Defendants Bruce Blumenfeld (hereinafter "Blumenfeld"), Wave Skater, LLC (hereinafter "Wave Skater") and Chimaera Bodyboards, LLC (hereinafter "Chimaera") (collectively "Defendants") as "Defendants") as follows:

1. This is an action for declaratory judgment of non-infringement of U.S. Patent Nos. 7,410,399 brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 and arising under the patent laws of the United States, 35 U.S.C. § 271 *et seq* and for other relief under the laws of the State of Florida.

I. THE PARTIES

2. Plaintiffs VIKING are both corporations organized and existing under the laws of the State of Florida, with both having a principal place of business at 1598 Cordova Road, Suite 2, Fort Lauderdale, Florida 33316.

3. Plaintiff WOLTHERS is an individual having a residence in Florida and within the Southern District of Florida. Plaintiff WOLTHERS has been shaping surfboards since at least as early as 1973.

4. Upon information and belief, Defendant Blumenfeld, is an individual residing in the State of New Jersey.

5. Upon information and belief, Defendant Wave Skater LLC is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 68 Shrewsbury Drive, Livingston, New Jersey 07039.

6. Upon information and belief, Defendant Chimaera is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 349 Hollywood Avenue, Long Branch, New Jersey 07740.

II. JURISDICTION AND VENUE

7. This is an action for declaratory judgment under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., and the Declaratory Judgment Action, 28 U.S.C. §§ 2201-2202 and for relief under the laws of the State of Florida.

8. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' state law claims because those claims are so related to the Federal claims that they form part of the same case or controversy.

9. This Court has personal jurisdiction over Defendants because they conduct business in the State of Florida and within the Southern District, have committed the complained of acts in the State of Florida and/or have cause injury to Plaintiffs who reside in the State of Florida. Defendants have also contacted and electronically written and sent emails to Plaintiffs in Florida on numerous occasions. Such contacts have included allegations by Defendant that Plaintiffs' CatBottom products infringe U.S. Patent No. 7,410,399) which list Defendant Blumenfeld as the inventor/owner and an attempted nationwide website posting making false statements regarding Plaintiffs and/or their CatBottom products.

10. Venue properly lies in the Southern District pursuant to 28 U.S.C. § 1391 and §1400, because the acts complained of herein have been committed in this Judicial District and Defendant is subject to personal jurisdiction within the this Judicial District and the Plaintiffs have their principal place of business within this Judicial District.

III. FACTUAL BACKGROUND

11. Plaintiffs offer for sale a variety of surfboards under the Federally registered VIKING SURFBOARDS trademark. One series of surfboards sold by Plaintiffs include a CatBottom design which includes a convex channel along a portion of the length of the bottom surface of the surfboard, but not the entire length. The Viking Surfboards which include the CatBottom design have conventional top surfaces that have been used in the surfing industry for decades.

Pictures of a representative Plaintiffs' CatBottom design surfboards are attached hereto as Exhibit A.

12. Upon information and belief, Defendant Blumenfeld is the owner of U.S. Patent Nos. 7,410,399 ("the '399 Patent"). As of the filing of the Complaint, no Assignment, if any, for the '399 Patent has been recorded with the United States Patent and Trademark Office ("PTO"). A true and correct copy of the '399 Patent is attached hereto as Exhibit B.

13. Upon information and belief, Defendant Wave Skater offers for sale throughout the United States, including within the Southern District of Florida bodyboards and water sport products.

14. Upon information and belief, Defendant Chimaera offers for sale throughout the United States, including within the Southern District of Florida bodyboards and water sport products.

15. Upon information and belief, at least during the time of some the actions complained of herein both Defendants were controlled, managed, directed and/or operated by Bruce Blumenfeld.

16. Prior to the priority date of the '399 Patent, Plaintiffs WOLTHERS and VIKING SURFBOARDS were publicly experimenting with the concepts of a CatBottom design and publicly and openly testing the concepts on surfboards in the ocean, through Plaintiff WOLTHETS and team riders for VIKING SURFBOARDS. Prior to visiting Wave Skater's booth at Surf Expo 2011, Plaintiff WOLTHERS, principal of Plaintiff Viking Surfboard, had previously shaped conventional surfboards with his above-described CatBottom design. Wolthers went to the booth to inquire about selling the Wave Skater body or boogie board at his then just opened or about to be opened first retail store. Plaintiffs products were surfboards

(stand to surf), and Plaintiffs did not have any bodyboards (lie to surf) under their VIKING SURFBOARDS brand. Wolthers purchased a set of the boards to sell at the retail store.

17. Some weeks after the purchase at the Surf Expo 2011, Plaintiffs received a call from Defendant Blumenfeld claiming he reviewed Plaintiffs' webpage and asserted that he had a patent that covered Plaintiffs' CatBottom design. Mr. Blumenfeld also indicated that he expected to receive royalties from Viking Surfboards.

18. After further contact by Blumenfeld regarding the above, and believing and relying in good faith that Mr. Blumenfeld's was honest in his assertions that the CatBottom design infringed his Patent, Viking Surfboards signed a Royalty and Sales Agreement ("Agreement") presented by Mr. Blumenfeld and paid Defendant Wave Skater an upfront payment of \$2,000.00. A true copy of the Agreement is attached as Exhibit C.

19. The Agreement was sent by Defendants to Plaintiffs in the Southern District of Florida.

20. Despite not selling all of the CatBottom boards covered under the upfront \$2,000.00, Defendants began harassing Plaintiffs for additional royalty payments.

21. Subsequent to Defendants harassing demands for further royalty payments, Plaintiffs learned that that the CatBottom designs have never infringed any of the claims of the '399 Patent.

22. At the time Blumenfeld asserted that the claims of the '399 Patent covered Plaintiffs' CatBottom design, Blumenfeld had actual knowledge or constructive knowledge that such assertions were false and that Defendants demands for royalty payments were fraudulent.

23. Defendants have also made false statements regarding Plaintiffs and Plaintiffs' CatBottom design. One non-limiting example of the false statement made by Defendants

includes an attempted Comment sent to the Editor of the online publication Refraction Magazine. A true and correct copy of the Comments send by Defendants to Refraction Magazine that contain one of more false statements regarding Plaintiffs and Plaintiffs' CatBottom design is attached hereto as Exhibit D.

24. Defendants are wrongfully alleging that Plaintiffs have violated federal patent laws.

25. Plaintiffs are in doubt as to its rights and liabilities with respect to the '399 Patent and there is a genuine dispute between the parties as to whether Plaintiffs have infringed such patent, with Plaintiffs believing that the CatBottom product fails to be covered by any claim in the '399 Patent.

26. There is an actual and substantial controversy between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Defendants have a made a threat to all of Plaintiffs' businesses by accusing Plaintiff of unlawful actions and wrongfully inducing Plaintiff through misrepresentations and false statements to enter into the Agreement, which wrongfully requires Plaintiffs to pay royalties to Defendants despite Plaintiffs belief that the CatBottom product does not infringe the '399 Patent.

27. Plaintiff is entitled to a judgment declaring its rights as requested herein and to the other relief related to violations by Defendants of the laws of the State of Florida.

COUNT I

(Declaratory Judgment of Noninfringement – '399 Patent)

28. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-27 as if fully set forth herein.

29. This Count seeks a declaration of rights pursuant to the protections of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

30. There is an actual and justiciable controversy between Plaintiffs and Defendants concerning Defendants' allegations that Plaintiffs have violated Defendants' purported patent rights for the '399 Patent.

31. Upon information and belief, Defendant Blumenfeld is the owner of the '399 Patent. However, the Agreement is between Viking Surfboards and Defendant Wave Skater and in correspondence Defendant Blumenfeld also writes on behalf of Defendant Chimaera.

32. Plaintiffs' CatBottom design surfboards are accused by Defendants to infringe the '399 Patent.

33. Based on Defendants conduct, Plaintiffs believe, in good faith, that one or more of the Defendants will commence suit against Plaintiffs. Because Plaintiffs sell their CatBottom design surfboards that Defendants claim infringe the '399 Patent, there is a substantial, continuing, and justiciable controversy between Plaintiffs, on the one hand, and Defendants, on the other hand, relating to the purported infringement of the '399 Patent.

34. No claim of the '399 Patent can be validly construed to be infringed by any product sold by Plaintiffs. Plaintiffs have not directly, indirectly, or contributorily infringed, or actively induced infringement of, any claim of the '399 patent or otherwise violated Defendants' alleged rights under such patent.

35. As one non-limiting reason why the CatBottom product does not infringe the '399 Patent, all of the claims of the '399 Patent require that the top surface of the board have a recessed stomach cavity, a recessed area defining a raised area for gripping, or a recessed area

for accommodating a user's stomach. The CatBottom product fails to have any of these required claimed elements. See Exhibit A.

36. These allegations by Defendants place a cloud over Plaintiffs' businesses, and in particular Plaintiffs' right and ability to continue its business activities with respect to the product for which Defendants have accused Plaintiffs of patent infringement with respect to the '399 Patent. The allegations by Defendants will cause uncertainty among Plaintiffs' customers, prospective customers and suppliers and elsewhere in the marketplace, likely leading Plaintiffs to lose revenues and/or business opportunities within all industries that the Plaintiffs are involved in.

37. Plaintiffs are entitled to a judgment declaring that Plaintiffs' continued importing, marketing, distributing, selling, offers for sale, and/or other use of the CatBottom product for which Defendants have accused Plaintiffs of patent infringement with respect to the '399 Patent has been and will continue to be lawful, and declaring that Plaintiffs have not otherwise violated any purported rights of Defendants for the '399 Patent.

38. Accordingly, Plaintiffs are entitled to a declaratory judgment that it does not infringe any claim of the '399 Patent.

39. Plaintiffs have satisfied all conditions precedent to bringing this action.

COUNT II

(Declaratory Judgment of Invalidity – '399 Patent)

40. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-39 as if fully set forth herein.

41. This Count seeks a declaration of rights pursuant to the protections of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

42. Upon information and belief the '399 Patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 102, 103 and/or 112.

43. Plaintiffs are entitled to a judgment declaring that the '399 Patent is invalid and unenforceable.

44. Plaintiffs have satisfied all conditions precedent to bringing this action.

COUNT III

FRAUD

45. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-44 as if fully set forth herein.

46. Defendants made false statements to Plaintiffs VIKING SURFBOARD and WOLTHERS when they asserted that Plaintiffs' CatBottom design surfboards are covered by and infringed the claims of the '399 Patent.

47. Defendants had knowledge of the subject matter and patent coverage of the claims of the '399 Patent.

48. Defendants had knowledge that the statements and representations they made to Plaintiff Viking Surfboard and Plaintiff Wolthers that the CatBottom surfboards infringed the '399 Patent were false and were intentionally made by Defendants to induce Plaintiffs to rely on the false representations and enter into the Agreement.

49. Plaintiffs relied on Defendants' false representations and entered into the Agreement and paid Defendant Wave Skater an upfront payment of \$2,000.00.

50. Acting in reliance of Defendants' false representations Plaintiffs have been injured, including, but not limited to, paying Defendant \$2,000.00.

51. Plaintiffs are entitled to award of reimbursement of their \$2,000.00 payment, and all other relief to address their injuries from Defendants' false representations and fraudulent conduct.

COUNT IV

RESCISSION

52. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-51 as if fully set forth herein.

53. On or about April 26, 2012 Plaintiff Viking Surfboard entered in Agreement with Defendants to pay royalties for sales of the CatBottom design, including paying \$2,000.00 upfront, based on the representations by Defendants that the CatBottom design surfboards infringed the '399 Patent.

54. Plaintiff entered into the agreement based on the fraudulent and false representations made by Defendants concerning the CatBottom design infringing the '399 Patent.

55. Alternatively, if Defendants' statements and representations were not fraudulent and false, then the Plaintiffs and Defendants made a mutual mistake as the CatBottom design is not covered by the claims of the '399 Patent and Plaintiffs have not infringed the '399 Patent.

56. By letter dated May 30, 2014, Plaintiffs informed and notified Defendants that they were terminating, and thus rescinding, the Agreement, in view of the fact that the CatBottom

design does not infringe the '399 Patent. A true and correct copy of the May 30, 2014 letter is attached hereto as Exhibit E.

57. Plaintiffs have not received any benefits from the Agreement and in fact have only been injured from the Agreement, including having to pay Defendants \$2,000.00, when their CatBottom design has never infringed the '399 Patent.

58. Plaintiffs have no adequate remedy at law.

59. Plaintiffs are entitled to a rescission of the Agreement.

COUNT V

LIBEL *Per Se*

60. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-59 as if fully set forth herein.

61. A cause of action for libel under Florida law accrued in Florida because Defendants' libelous statements were sent for publication over the Internet, which includes Florida.

62. Plaintiffs and its principals and officers for many years have enjoyed good and outstanding reputations generally and with their occupations and businesses. Plaintiffs and their principals and officers have enjoyed good relations with the public, surfing industry, including the surfing industry publication Refraction Magazine that Defendants sent disparaging and false comments about Plaintiffs. See Exhibit D. Plaintiff WOLTHERS also enjoys an outstanding worldwide reputation in the coffee industry having been involved in the industry for many years in various capacities and serving in many leadership roles within the coffee industry, including, but not limited to, Honorary Chairman and Chief Advisor to Wolthers & Associates located in Santos Brazil (the largest coffee brokerage company in the world), past President of the

Specialty Coffee Association of America located in Long Beach, California (the largest coffee association in the world), past Chairman of UTZ Certified located in Amsterdam (the largest Corporate responsibility certification program in the world for Good Agricultural practices in coffee and other commodities), past Member of the Dunkin' Donuts Advisory Board in Massachusetts, and associated with companies in Guatemala, Colombia and Brazil that represent the quality procurement of coffee for third party companies (including, but not limited to, Dunkin' Donuts, Ahold Supermarkets and other international coffee roasters and distributors).

63. By sending their disparaging and false comments to the editor of Refraction Magazine, and for further republication online for viewing by the entire world, Defendants intended to communicate to others the false statements in their comments (Exhibit D).

64. One or more statements in the Comments to Refraction Magazine are false.

65. Defendants knew or should have known that the statements were false when made, or did not exercise reasonable care in verifying the truth or falsity of such statements before transmitting the Comments to Refraction Magazine for further online republication, or recklessly disregarded the truth or falsity of the statements.

66. Defendants acts were made with the intent to injure Plaintiffs' business reputations and to disparage Plaintiffs' businesses.

67. The false statements in the Refraction Magazine comments are libelous *per se* because: (1) the statements are in printed form and are thus libel; (2) the false statements ascribe characteristics that adversely affect Plaintiffs' fitness for their businesses; and (3) and the statements claim that Plaintiffs have engaged in unlawful conduct and other violations of law.

68. The false and defamatory statements made by Defendants are highly injurious to the business reputation of Plaintiffs *per se* in all of the industries that Plaintiffs are involved in.

Among other things, Defendants' false and defamatory statements have assailed Plaintiffs and Plaintiffs' management, principals and officers and impugned Plaintiffs' integrity and method for doing business. As Defendants' false and disparaging statements are also directed to Plaintiff WOLTHERS individual, the extent of the injury and damages directly and proximately caused by Defendants from such false statements also affect WOLTHERS' reputation within the coffee industry.

69. Plaintiffs have suffered damages directly and proximately caused by Defendants' libelous actions in an amount that is currently unknown. By reason of Defendants' libel, Plaintiffs are entitled to both general damages and all actual and compensatory damages provided at the time of trial.

70. Defendants actions in knowingly sending to the Comments to the Editor of Refraction Magazine and for the intended further republication by Refraction Magazine were intentional and done with express and implied malice on the part of Defendants. Defendants knew or should have known that such statements were false when they transmitted the comments to the Editor of Refraction Magazine. Nonetheless, Defendants sent such false statements recklessly and in conscious disregard of the truth. Further, Defendants committed such acts maliciously, oppressively, and fraudulently, with ill will and an evil intent to defame and injure all of the Plaintiffs.

71. Plaintiffs, therefore, seek an award of exemplary and punitive damages in an amount to be proven at trial.

COUNT VI

FALSE LIGHT

72. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-71 as if fully set forth herein.

73. The false statements regarding Plaintiffs contained in the comments sent to the editor of Refraction Magazine (Exhibit D), placed Plaintiffs in a false light before the public, which would be highly offensive to a reasonable person.

74. Defendants sent the Comments regarding Plaintiffs to the Editor of Refraction Magazine and with the desire for further republication online by Refraction Magazine with actual malice, that is with knowledge of or in reckless disregard of the false light in which Plaintiffs would be cast.

75. As a direct and proximate result of Defendants' action described herein, Plaintiffs seek substantial amounts of general and special damages for these injuries from the Defendants in an amount to be determined by a jury.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for all matters that may be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the entry of a judgment:

- a. Declaring that Plaintiffs have not and do not infringe, under any theory, any claim of the '399 Patent;
- b. Declaring that the '399 Patent is invalid and unenforceable;

c. Declaring that Plaintiffs have not violated any other purported rights of Defendants, including any provisions of 35 U.S.C. § 1 *et seq.* or any other asserted federal, state, or common laws;

d. Declaring this case exceptional in Plaintiffs' favor pursuant to 35 U.S.C. § 285;

e. Awarding judgment in favor of Plaintiffs on all of the above counts, and in an amount to be determined at trial;

f. Awarding Plaintiffs their costs and reasonable attorneys' fees and other litigation expenses, together with such further legal and equitable relief as the Court may deem just and proper.

g. Ordering preliminary and permanent injunctive relief preventing Defendants from making further false, misleading, and malicious statements concerning Plaintiffs and their principals, officers and managers.

h. Plaintiffs reserve the right to plead and prove punitive damages.

Respectfully submitted,

June 5, 2014

_____/s/_____
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