

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

COBALT BOATS, LLC,)	
)	
<i>Plaintiff,</i>)	
v.)	
)	No.: 2:15-CV-00021-HCM-LRL
SEA RAY BOATS, INC., and)	
BRUNSWICK CORPORATION,)	JURY TRIAL DEMANDED
)	
<i>Defendants.</i>)	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Cobalt Boats, LLC ("Cobalt"), the Plaintiff, for its Amended Complaint against Sea Ray Boats, Inc. ("Sea Ray") and Brunswick Corporation ("Brunswick") (collectively, "Defendants"), alleges as follows:

Background & Parties

1. This is an action for infringement of U.S. Patent No. 8,375,880 ("the '880 Patent"), entitled "Retractable Step for Boat Swim Platform," arising from Defendants' manufacture, use, offer for sale, and sale of boats having an infringing submersible swim step that competes directly with the patented "Swim Step" on Cobalt boats.

2. Cobalt Boats, LLC is a Delaware limited liability company headquartered in Neodesha, Kansas. Cobalt is a world-renowned designer and manufacturer of high quality performance boats. For over four decades, Cobalt's innovations and craftsmanship in boat design have established its reputation as an industry leader in boat building. Cobalt has authorized dealers in the Eastern District of Virginia, including, but not limited to Hoffmasters Marina, which is located in Woodbridge, Virginia and Bill's Marine, which is located in Portsmouth, Virginia.

3. Sea Ray Boats, Inc. is a Florida Corporation headquartered in Knoxville, Tennessee.

4. Brunswick Corporation is a Delaware corporation headquartered in Lake Forest, Illinois.

Jurisdiction & Venue

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has federal question jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants Sea Ray and Brunswick because they have transacted business and committed acts of infringement in this district, and this action arises from those transactions of business and infringements.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Defendants Sea Ray and Brunswick have transacted business and committed acts of infringement in this district, and this action arises from those transactions of business and infringements in this district. Specifically:

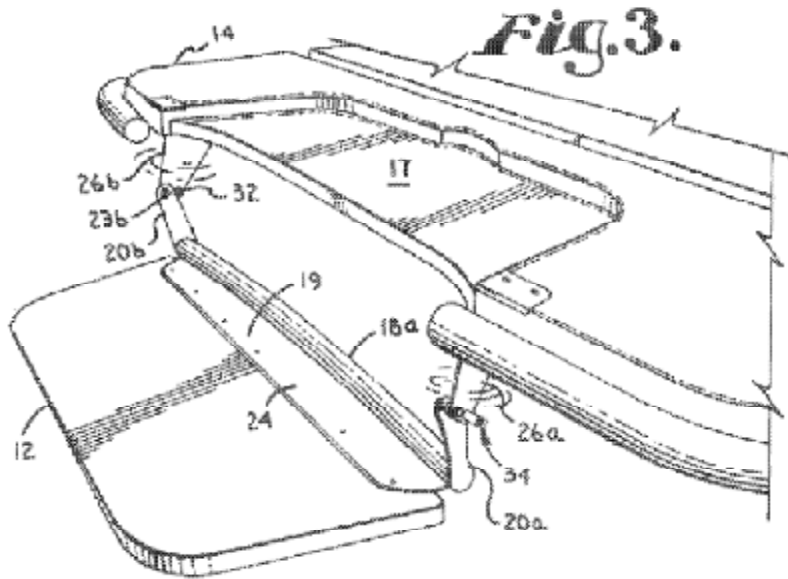
- a. Defendants Sea Ray and Brunswick have numerous authorized dealers in this district that offer for sale, and sell Sea Ray boats.
- b. Prince William Marina, an authorized Sea Ray dealer that was purportedly voted the "#1 [Sea Ray] dealer in North America 2010 and 2011," is located in this district in Woodbridge, Virginia.
- c. Lynnhaven Marine, an authorized Sea Ray dealer, is located in this district in Virginia Beach, Virginia.

- d. Richmond Marine Center, an authorized Sea Ray dealer, is located in this district in Richmond, Virginia.
- e. On their own, and through their authorized dealers, Defendants Sea Ray and Brunswick have sold, offered for sale, and/or currently sell boats with the accused Swim Step feature within the Eastern District of Virginia.
- f. Defendants Sea Ray and Brunswick, and their representatives, regularly attend trade shows in the Eastern District of Virginia, including, but not limited to the Fredericksburg Boat Show in Fredericksburg, Virginia. Indeed, Sea Ray and Brunswick were represented at the 10th Annual Fredericksburg Boat Show by Prince William Marina—which was held, January 23-25, 2015 in Fredericksburg, Virginia—and were advertising, promoting, and/or offering for sale the infringing submersible Swim Step feature at that trade show.
- g. Sea Ray is a wholly-owned subsidiary of Brunswick Corporation, which is registered with the Commonwealth of Virginia State Corporation Commission as a foreign corporation authorized to do business in the Commonwealth of Virginia.

FACTUAL BACKGROUND

A. U.S. Patent No. 8,375,880

8. Around 2010, Cobalt employees designed the Swim Step for use in recreational boats, a version of which is depicted below ('880 Patent, Figure 3):



9. The Swim Step is unique in that it provides a retractable step moveable between a stored position and a deployed position. In the deployed position, the step may be locked below the water surface. In this position, swimmers may use the step to reach the swim platform or may rest on the step while at least partially submerged in the water. The step is easily moved from the deployed position to the stored position by releasing the lock and retracting the step to its stored position. When in the stored position, the step is above the water surface and does not add unwanted length to the boat.

10. On February 19, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,375,880, a copy of which is attached hereto as Exhibit A.

11. The '880 Patent generally covers a retractable step and method of deploying the step wherein the step is rotatable from a stored position within a recess on the boat, such as in the rear swim platform, to a deployed position below the surface of the water.

12. Cobalt is the owner by assignment of the entire right, title, and interest in and to the '880 Patent, including the right to bring this suit for injunctive relief and damages.

13. The '880 Patent is valid and enforceable.

14. Pursuant to 35 U.S.C. § 287, Cobalt prominently places the '880 Patent number on all of its boats with the Swim Step feature. Cobalt has so marked its boats with the Swim Step consistently since early 2013.

B. Defendants' Infringement of the '880 Patent.

15. Cobalt's development of the Swim Step was a significant improvement in the design of boat swim platforms, as recognized by the U.S. Patent Office's award of a patent on that design. As Cobalt proudly advertises on its website, the Swim Step is a "beautiful solution to easy and safe entry into and out of the water." Cobalt also promotes its Swim Step in its marketing materials, through its dealers, and at trade shows throughout the United States.

16. The Swim Step feature has been a huge success for Cobalt since its introduction in the marketplace.

17. Beginning last year, Defendants Sea Ray and Brunswick—direct competitors of Cobalt—began promoting and selling boats that include a Swim Step feature described as a "submersible swim step" that appears to copy Cobalt's Swim Step and, more importantly, infringes Cobalt's '880 Patent. Marketing materials showing and describing the infringing Sea Ray Swim Step are attached hereto as Exhibit B. Defendants Sea Ray and Brunswick advertise and offer for sale boats with their Swim Step feature on the Sea Ray website noting that their "submersible swim step . . . extends at your command to provide seamless water interaction. . . . When you're ready to get underway, the step tucks neatly back into the swim platform." Defendants Sea Ray and Brunswick also promote their infringing boats in their marketing materials, through their dealers, and at trade shows throughout the United States.

18. Defendants Sea Ray and Brunswick do not have a license, or any other authorization, from Cobalt to make, use, offer for sale, sell, or import the inventions covered by

the claims of the '880 Patent and do not have authorization from Cobalt to incorporate the patented Swim Step feature into the Sea Ray line of boats.

19. Due to Sea Ray and Brunswick's continuous marketing and sale of boats with Swim Step features that directly compete with Cobalt's similarly-featured boats, Defendants knew of Cobalt's '880 Patent and of their infringement of that patent.

20. Moreover, given Cobalt's prominent and continuous marking of its Swim Step with the '880 Patent since early 2013, Defendants Sea Ray and Brunswick knew or should have known that their Swim Step infringed the '880 Patent.

21. On October 1, 2014, Cobalt, through counsel, notified Sea Ray and Brunswick that the fold-out step feature on their Swim Step infringed the '880 Patent. A copy of this letter is attached as Exhibit C.

22. Thus, no later than October 1, 2014—and likely much earlier—Defendants Sea Ray and Brunswick had actual knowledge of the '880 Patent and their direct infringement of the '880 Patent. Nevertheless, even though Defendants had ample time to review and analyze the '880 Patent, Defendants have continued to manufacture, use, offer for sale, and sell boats infringing the '880 Patent, including but not limited to, the SEA RAY 220 SUNDECK, SEA RAY 240 SUNDECK, SEA RAY 270 SUNDECK, and SEA RAY 290 SUNDECK boats.

23. As a result of Sea Ray and Brunswick's willful infringement of the '880 Patent, Cobalt has lost sales to Defendants, and has been and continues to be damaged by Defendants' infringing conduct.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,375,880

24. Cobalt repeats the allegations of paragraphs 1-23 above as if fully set forth herein.

25. Defendants Sea Ray and Brunswick have directly (literally and under the doctrine of equivalents) infringed at least claims 1, 3, 5, and 6 of the '880 Patent by making, using, selling, offering to sell, or importing without authority products, including but not limited to the SEA RAY 220 SUNDECK, SEA RAY 240 SUNDECK, SEA RAY 270 SUNDECK, and SEA RAY 290 SUNDECK boats with a Swim Step, that are covered by these claims of the '880 Patent.

26. For example, Claim 5 of the '880 Patent recites:

5. A deployable swim step for use with a boat in water comprising:
a step having a top side and an underside;
means for coupling said step with the boat, said coupling means configured to permit rotation of said step 180° from a stored position above the water surface, wherein said underside is exposed, and a deployed position below the water surface, wherein said top side is exposed; and
means for locking said coupling means in a stationary position when said step is in said deployed position, said locking means further configured to accommodate movement of said step to said stored position.

27. Defendants Sea Ray and Brunswick's submersible Swim Step meets these limitations because it includes a step having a top side and an underside, wherein the step may be stored with the underside exposed in a recess in the platform at the back of the boat. The Defendants' step is coupled by arms to the platform such that it can be rotated 180° to a deployed position below the water surface with the top side of the step exposed. The step is locked into place in the deployed position via a locking mechanism having spring action biased to the locked position. The platform is integral with the boat.

28. Defendants Sea Ray and Brunswick's infringement, in light of their awareness of the '880 Patent, is reckless.

29. Defendants Sea Ray and Brunswick knew, or should have known that making, offering, and selling the accused products constituted an infringement of the claims of the '880 Patent.

30. Defendants Sea Ray and Brunswick's infringement has been, and continues to be, willful.

31. Cobalt has been and continues to be damaged by Defendants' infringement of the '880 Patent in an amount to be determined at trial.

32. Cobalt has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Defendants' infringement of the '880 Patent is enjoined by this Court.

33. Defendants Sea Ray and Brunswick's infringement of the '880 Patent is exceptional and entitles Cobalt to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

DEMAND FOR JURY

Pursuant to Federal Rule of Civil Procedure 38, Cobalt demands a jury on all triable issues.

Prayer for Relief

WHEREFORE, Cobalt respectfully requests the Court to enter judgment for it and against Sea Ray and Brunswick holding that:

- A. Sea Ray has infringed the '880 Patent;
- B. Brunswick has infringed the '880 Patent;
- C. Sea Ray, its officers, agents, employees, and those persons in active concert or participation with it or any of them, and its successors and assigns, be permanently enjoined

from infringement of the '880 Patent, including, but not limited to, an injunction against making, using, selling, and/or offering for sale within the United States, and/or importing into the United States, any product that infringes the '880 Patent;

D. Brunswick, its officers, agents, employees, and those persons in active concert or participation with it or any of them, and its successors and assigns, be permanently enjoined from infringement of the '880 Patent, including, but not limited to, an injunction against making, using, selling, and/or offering for sale within the United States, and/or importing into the United States, any product that infringes the '880 Patent;

E. Cobalt be awarded damages adequate to compensate it for Defendants' infringement of the '880 Patent, such damages to be determined by a jury;

F. Cobalt be awarded treble damages because Defendants willfully infringed the '880 Patent;

G. This case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Cobalt be awarded attorneys' fees, costs, and expenses incurred in connection with this action;

H. Cobalt be awarded pre-judgment and post-judgment interest at the maximum rate allowed by law; and

I. Cobalt be awarded such other and further relief as this Court deems just and proper.

Date: February 23, 2015

Respectfully submitted,

COBALT BOATS, LLC

/s/

Robert A. Angle (VSB No. 37691)
Stanley W. Hammer (VSB No. 82181)
TROUTMAN SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
(804) 697-1200 (telephone)
(804) 697-1339 (facsimile)
robert.angle@troutmansanders.com
stan.hammer@troutmansanders.com

STINSON LEONARD STREET LLP
B. Scott Eidson (*pro hac vice* pending)
7700 Forsyth Boulevard, Suite 1100
Saint Louis, Missouri 63105
(314) 863-0800 (telephone)
(314) 259-3924 (facsimile)
scott.eidson@stinsonleonard.com

Penny R. Slicer (*pro hac vice* pending)
Colin W. Turner (*pro hac vice* pending)
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
(816) 842-8600 (telephone)
(816) 691-3495 (facsimile)
penny.slicer@stinsonleonard.com
colin.turner@stinsonleonard.com

Attorneys for the Plaintiff Cobalt Boats, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2015, I caused a true copy of the foregoing to be sent by email to:

Jason C. White
Morgan, Lewis & Bockius LLP
77 West Wacker Dr.
Chicago, IL 60601-5094
(312) 324-1775
(312) 324-1001 (fax)
jwhite@morganlewis.com

*Attorney for the Defendants Sea Ray Boats, Inc.
and Brunswick Corporation*

/s/
Robert A. Angle (VSB No. 37691)
Stanley W. Hammer (VSB No. 82181)
TROUTMAN SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
(804) 697-1200 (telephone)
(804) 697-1339 (facsimile)
robert.angle@troutmansanders.com
stan.hammer@troutmansanders.com

Attorneys for the Plaintiff Cobalt Boats, LLC