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8 Attorneys for Plaintiff
Great American Duck Races, Inc.

10 UNITED STATES DISTRICT COURT FOR THE
11 DISTRICT OF ARIZONA

13 Great American Duck Races, Inc., an
Arizona corporation,

15 Plaintiff,

16 vs.

17 Clear Innovation, LLC, a Delaware
limited liability company; Maurice Dayan
18 and Jennifer Dayan, husband and wife,

19 Defendants.

Case No. _____

COMPLAINT

(Jury Trial Demanded)

21 Plaintiff Great American Duck Races, Inc., which does business as Great American
22 Merchandise & Events (“GAME”), alleges the following for its complaint against
23 defendants Clear Innovation, LLC (“Clear Innovation”), Maurice Dayan, and Jennifer
24 Dayan (collectively, “Defendants”):

PARTIES

26 1. GAME is an Arizona corporation with its principal place of business
27 located in Scottsdale, Arizona.
28

1 competition in the District of Arizona and elsewhere in the United States. On
2 information and belief, Defendants have substantial and continuous contacts with the
3 State of Arizona, have purposefully availed themselves of the privilege of doing
4 business in Arizona, and have purposefully directed their infringing activities at
5 Arizona, knowing GAME would be harmed by the infringement in Arizona. Further,
6 Defendants have purposefully injected their infringing products into the stream of
7 commerce, knowing that the infringing products would be sold in Arizona, and
8 Defendants' products have in fact been sold in Arizona.

9 10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c)
10 and 1400(b) because Defendants are subject to personal jurisdiction here and have
11 committed acts of infringement here, and because a substantial part of the events giving
12 rise to GAME's claims occurred here.

13 **FACTUAL BACKGROUND**

14 11. Headquartered in Scottsdale, Arizona, GAME is an innovative marketing
15 and merchandise company that sells popular consumer products directed at the pool and
16 spa industry. GAME's products are sold in a variety of well-known retail outlets, such
17 as Target, Wal-Mart, Fry's/Kroger, Leslie's, and Walgreens, as well as through online
18 retailers, such as Amazon.com. GAME also provides services to diverse non-profit
19 organizations that raise millions of dollars for charities across the globe with GAME's
20 well-known "Derby Duck Races."

21 12. GAME is the exclusive licensee of rights to a unique series of products
22 called the Underwater Light Show or Underwater Light Show & Fountain (collectively,
23 "ULS"), including the right to manufacture, advertise, promote, offer for sale, sell, and
24 distribute the ULS in the United States. GAME has been selling the ULS since March
25 13, 2006. Since the introduction of the products, GAME has sold over 5.0 million units
26 of ULS products. GAME sells the ULS through national retailers, including the well-
27 known retail outlets listed above.
28

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1 13. The ULS provides a novel and entertaining, bright and colorful light
2 display in a body of water. The ULS creates light shows by, for example, causing LEDs
3 to flash randomly, stay on continuously, fade from one color to the next, flash multiple
4 colors together, or to randomly cycle through various shows. The result is an attractive
5 light display that enhances the environment in and around a body of water.

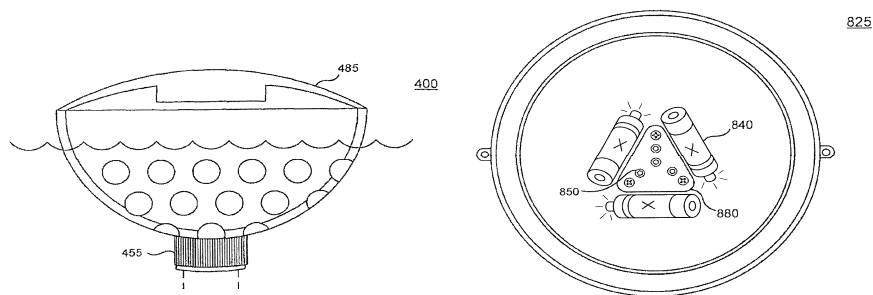
6 14. Since 2006, GAME has invested significant sums to market and advertise
7 the ULS, which has resulted in significant consumer goodwill and recognition of GAME
8 as the source of the ULS, including the ULS depicted below. The ULS contains non-
9 functional, source-identifying trade dress, designs, features, and other indicia that are
10 distinctive and capable of identifying GAME as the source of the ULS.

11 15. On August 19, 2008, the United States Patent and Trademark Office
12 (“PTO”) issued United States Patent Number 7,413,319 (“the ’319 Patent”) [attached as
13 Ex. A], entitled “METHOD AND SYSTEM FOR UNDERWATER LIGHT
14 DISPLAY,” and on May 18, 2010, the PTO issued United States Patent Number
15 7,717,582 (“the ’582 Patent”) [attached as Ex. B], also entitled “METHOD AND
16 SYSTEM FOR UNDERWATER LIGHT DISPLAY,” to Jose Longoria, Loren T.
17 Taylor, and Traci Heather Feldman. Taylored Concepts, LLC, a New Jersey corporation
18 having its principal place of business located in Chatham, New Jersey, and Longoria
19 Design, LLC, a Florida company having its place of business located in Miami, Florida,
20 are the assignees of all right, title, and interest in and to the ’319 and ’582 Patents. The
21 ’319 and ’582 Patents include disclosure relating to the ULS. True and correct copies of
22 the ’319 and ’582 Patents are attached to this Complaint as Exhibit A and Exhibit B.

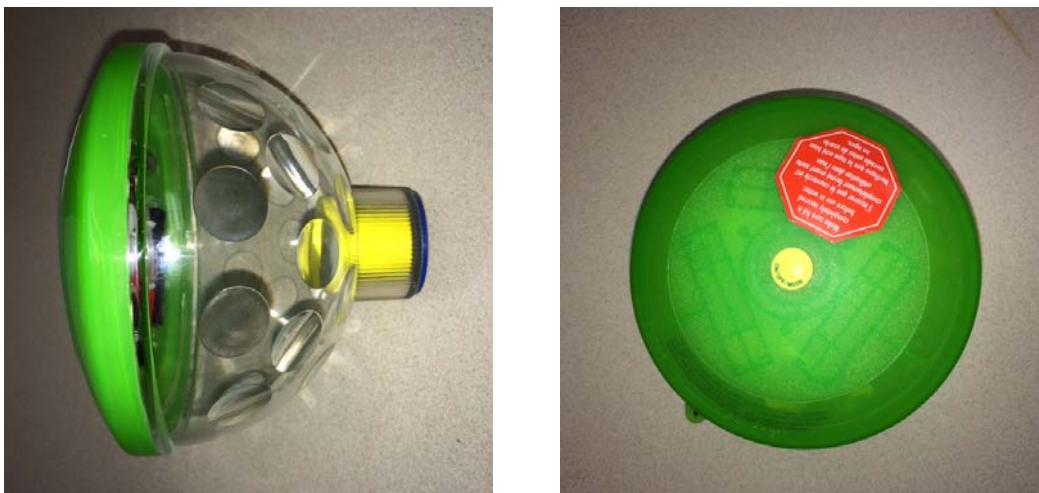
23 16. GAME is the exclusive licensee of the ’319 and ’582 Patents from
24 Taylored Concepts, LLC and Longoria Design, LLC, with the exclusive right to
25 manufacture, advertise, promote, offer for sale, sell, and distribute products associated
26 with the ’319 and ’582 Patents in the United States, and with the right to bring suit to
27 enforce the ’319 and ’582 Patents, including the right to recover damages for past
28

1 infringement. GAME has been the exclusive licensee throughout the period of the
 2 Defendants' infringing acts and remains as such.

3 17. FIGs. 4 and 8 from the '582 patent, shown below, which are similar to
 4 FIGs. 4 and 8 from the '319 patent, illustrate GAME's patented ULS, which is one
 5 embodiment of GAME's exclusive rights under the '319 and '582 patents:



12 18. A front view and a top view of GAME's patented ULS are shown below:



22 19. Defendants manufacture, offer for sale, sell, import into the United States,
 23 and/or distribute infringing products under the name Aqualife Floating Multi-Color LED
 24 Disk ("Floating LED Disk").

1 20. Defendants' infringing Floating LED Disk is illustrated below:



11 21. Defendants have made, used, sold, or offered for sale Defendants' Floating
12 LED Disk in the United States and in Arizona, and have imported or distributed
13 Defendants' Floating LED Disk into the United States and into Arizona. In particular,
14 the Defendants have sold the Floating LED Disk on Amazon.com and HomeDepot.com,
15 at:

- 16
- 17 • http://www.amazon.com/AquaLife-Color-Changing-LED-Coaster/dp/B00K3FYIV4/ref=pd_bxgy_200_img_y
 - 18 • <http://www.homedepot.com/p/AquaLife-LED-Disk-AL100LCOA1/205196218>
- 19

20 22. On information and belief, the Defendants have also sold the Floating
21 LED Disk on Walmart.com, on HomeDepot.com, and in Wal-Mart stores throughout
22 Phoenix, Arizona and surrounding areas under the name "Banana Boat LED Disk."

- 23
- 24 • <http://www.walmart.com/ip/banana-boat-led-disk/43184879>
 - 25 • <http://www.homedepot.com/p/Banana-Boat-LED-Disk-BBDISK100/205870815>.
- 26

27 23. Defendants copied functional aspects of the ULS, such that Defendants'
28 Floating LED Disk infringes one or more claims of the '319 and '582 Patents.

1 24. Prior to copying the ULS, Defendants were aware that the ULS was
2 protected by the '319 and '582 Patents.

3 25. On information and belief, based on Defendants' intentional production
4 and sale of the Floating LED Disk to create a bright and colorful light display in and
5 around a body of water and Defendants' knowledge of the '319 and '582 Patents before
6 copying functional aspects of the ULS, Defendants willfully infringed the '319 and '582
7 Patents.

8 **COUNT ONE**

9 **(Infringement of the '582 Patent)**

10 26. GAME realleges and incorporates by reference the preceding paragraphs
11 of this Complaint as though fully set forth herein.

12 27. Defendants have infringed and continue to infringe, literally and/or under
13 the doctrine of equivalents, the '582 Patent by practicing one or more claims of the '582
14 Patent in the manufacture, use, offering for sale, sale, and/or importation or exportation
15 of Defendants' Floating LED Disk in violation of 35 U.S.C. § 271.

16 28. Defendants have infringed and continue to infringe the '582 Patent by
17 contributing to and/or actively inducing the infringement by others of the '582 Patent by
18 the manufacture, use, offering for sale, sale, and/or importation or exportation of
19 Defendants' Floating LED Disk in violation of 35 U.S.C. § 271.

20 29. On information and belief, Defendants have willfully infringed the '582
21 Patent.

22 30. Defendants' acts of infringement of the '582 Patent will continue as
23 alleged in this Complaint unless enjoined by the Court.

24 31. As a direct and proximate result of Defendants' infringement of the '582
25 Patent, GAME has suffered and will continue to suffer monetary damages.

26 32. GAME is entitled to recover from Defendants the damages sustained by
27 GAME as a result of Defendants' wrongful acts in an amount to be determined at trial.
28

1 33. GAME has suffered irreparable harm as a result of Defendants'
2 infringement of the '582 Patent.

3 34. Unless Defendants are enjoined by this Court from continuing their
4 infringement of the '582 Patent, GAME will continue to suffer irreparable harm and
5 impairment of the value of its patent rights. Thus, GAME is entitled to a preliminary
6 and permanent injunction against further infringement.

7 **COUNT TWO**

8 **(Infringement of the '319 Patent)**

9 35. GAME realleges and incorporates by reference the preceding paragraphs
10 of this Complaint as though fully set forth herein.

11 36. Defendants have infringed and continue to infringe, literally and/or under
12 the doctrine of equivalents, the '319 Patent by practicing one or more claims of the '319
13 Patent in the manufacture, use, offering for sale, sale, and/or importation or exportation
14 of Defendants' Floating LED Disk in violation of 35 U.S.C. § 271.

15 37. Defendants have infringed and continue to infringe the '319 Patent by
16 contributing to and/or actively inducing the infringement by others of the '319 Patent by
17 the manufacture, use, offering for sale, sale, and/or importation or exportation of
18 Defendants' Floating LED Disk in violation of 35 U.S.C. § 271.

19 38. On information and belief, Defendants have willfully infringed the '319
20 Patent.

21 39. Defendants' acts of infringement of the '319 Patent will continue as
22 alleged in this Complaint unless enjoined by the Court.

23 40. As a direct and proximate result of Defendants' infringement of the '319
24 Patent, GAME has suffered and will suffer monetary damages.

25 41. GAME is entitled to recover from Defendants the damages sustained by
26 GAME as a result of Defendants' wrongful acts in an amount to be determined at trial.

27 42. GAME has suffered irreparable harm as a result of Defendants'
28 infringement of the '319 Patent.

1 43. Unless Defendants are enjoined by this Court from continuing their
2 infringement of the '319 Patent, GAME will suffer additional irreparable harm and
3 impairment of the value of its patent rights. Thus, GAME is entitled to a preliminary
4 and permanent injunction against further infringement.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, GAME prays for judgment against Defendants as follows:

7 1. For judgment in favor of GAME and against Defendants on the claims set
8 forth above;

9 2. For judgment that the '319 and '582 Patents are valid, enforceable and
10 infringed by Defendants;

11 3. For profits and damages resulting from Defendants' past and present
12 infringement of the '319 and '582 Patents;

13 4. For judgment that Defendants' conduct on each of the claims set forth
14 above was willful, intentional, and/or in bad faith;

15 5. For treble damages resulting from Defendants' willful infringement of the
16 '319 and '582 Patents under 35 U.S.C. § 284;

17 6. For judgment that this is an exceptional case under 35 U.S.C. § 285;

18 7. For an award of reasonable attorneys' fees, including under 35 U.S.C.
19 § 285;

20 8. For injunctive relief, preliminarily and permanently enjoining against the
21 continuing infringement of the '319 and '582 Patents by Defendants, their officers,
22 agents, servants, employees, and those persons acting in active concert or in
23 participation with them, under 35 U.S.C. § 283;

24 9. For an order that all of Defendants' existing inventory of Defendants'
25 Floating LED Disk be impounded and destroyed, or otherwise reasonably disposed of;

26 10. For costs and disbursements incurred by GAME;

27 11. For an assessment of prejudgment interest; and

28 12. For any other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

GAME hereby demands a jury trial under Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit of which trial by jury is permitted.

Dated this 8th day of June, 2015.

SNELL & WILMER L.L.P.

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