

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

TOM PAYNE, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
OUTDOORS INSIGHT INC,	)	
a Minnesota corporation d/b/a AQUA-VU,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff Tom Payne (“Payne”), through his undersigned attorneys of record, files this Complaint against defendant Outdoors Insight Inc d/b/a Aqua-Vu (“Aqua-Vu”) and states and alleges as follows:

1. This is a patent infringement action brought under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

**PARTIES**

2. Plaintiff Tom Payne is an individual and resident of the State of Kansas and has an address of 2707 Vine Street, Suite #7, Hays, Kansas 67601. Payne is a member of Fishing Lights Etc, LLC (“FLE”) which sells lighting products related to fishing.

3. Upon information and belief, defendant Outdoors Insight Inc is a corporation organized and existing under the laws of the State of Minnesota with a principal place of business at 34076 County Rd 3, Crosslake, Minnesota 56442.

**JURISDICTION AND VENUE**

4. Payne seeks damages for patent infringement and an injunction preventing Aqua-Vu from making, using, selling, offering to sell, and importing Payne's patented design without his permission.

5. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a). This Court also has jurisdiction over Aqua-Vu because it has purposefully introduced its products into interstate commerce and sold its infringing products in this State and this district.

6. Aqua-Vu advertises the infringing products in this State and district, and promotes licensed retailers in this State and district. **Exhibit A.**

7. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise to the claims asserted herein occurred in this district, and Aqua-Vu has committed acts of infringement in this district.

**BACKGROUND**

8. This lawsuit stems from the flagrant theft and misuse of valuable intellectual property belonging to Payne.

9. This intellectual property comprises a patented design for a waterproof light.

10. The patent being infringed is U. S. Design Patent No. D711,573 ("the '573 patent"), which issued to Payne on August 19, 2014. A true and correct copy of the '573 patent is attached as **Exhibit B.**

11. Payne possesses all rights, title and interest in the '573 patent including the right to sue for infringement.

12. Payne has owned the '573 patent throughout the period of Aqua-Vu's infringement.

13. Payne has complied with the statutory requirement of placing a notice of the '573 patent on the patented products he has sold.

14. The '573 patent is valid and enforceable.

15. Aqua-Vu sells fishing lights that infringe the '573 patent. Such infringing lights include Aqua-Vu's Bio-Lume and Bio-Lume XL lights. **Exhibit C.**

16. Aqua-Vu imports its infringing lights from China as shown on its packaging labels. **Exhibit D.**

17. Upon information and belief, Aqua-Vu purchases infringing fishing lights from Ningbo TOP Industry Co., Ltd ("Ningbo"), a Chinese company that regularly misappropriates intellectual property belonging to Payne and his company, FLE.

18. As an example of Ningbo's misappropriation, Ningbo has taken copyrighted drawings and pictures from the FLE website and displayed them on the Ningbo website with "www.ningbotop.com" watermarks. **Exhibit E** shows a drawing and several pictures on the FLE website and **Exhibit F** shows the drawing and pictures copied to the Ningbo website.

19. Upon information and belief, Aqua-Vu has partnered with Ningbo to manufacture fishing lights based on the design in the '573 patent.

20. Upon information and belief, Aqua-Vu purchases and imports Ningbo's SK050 fishing light and resells it under the name Bio-Lume XL.

21. Ningbo's SK050 light is a four-sided, 60 watt light that is 51 centimeters long and has 384 LEDs that produce 6912 lumens of light. **Exhibit G.** Aqua-Vu's Bio-Lume

XL light is also a four-sided, 60 watt light that is 51 centimeters long and has 384 LEDs that produce 6912 lumens of light. **Exhibit D.**

22. Ningbo has a history of stealing intellectual property from Payne and his company and, upon information and belief, Aqua-Vu is using Ningbo to manufacture lights that infringe the '573 patent.

23. On September 14, 2015, Payne sent a patent infringement notice to Aqua-Vu. **Exhibit H.**

24. In complete disregard for Payne's intellectual property rights, Aqua-Vu continues to sell products that infringe the '573 patent.

25. Aqua-Vu is willfully infringing the '573 patent by making, using, selling, offering to sell, and/or importing fishing lights that embody the patented design.

26. Aqua-Vu's actions have infringed and continue to infringe the '573 patent.

27. Accordingly, Payne is entitled to, at his option, either a reasonable royalty under 35 U.S.C. § 284 or Aqua-Vu's total profits under 35 U.S.C. § 289, together with such other and further relief available under 35 U.S.C. § 285.

#### **COUNT I: PATENT INFRINGEMENT**

28. Payne incorporates by reference the foregoing allegations as if fully set forth herein.

29. Aqua-Vu has committed and is continuing to commit direct acts of infringement of the '573 patent under 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing its Bio-Lume (**Exhibit I**) and Bio-Lume XL (**Exhibit J**) fishing lights.

30. An ordinary observer would believe that the designs of the Bio-Lume and Bio-Lume XL lights are substantially the same as the design in the '573 patent.

31. Payne will continue to be damaged unless further infringement is enjoined.

32. Payne is entitled under 35 U.S.C. § 284 to an award of damages adequate to compensate Payne for Aqua-Vu's infringement of the '573 patent. He is entitled to no less than a reasonable royalty for the infringement together with interest and costs. Alternatively, at his option, Payne is entitled to an award of damages under 35 U.S.C. § 289 that are no less than Aqua-Vu's total profits attributable to sales associated with the infringing products.

33. Upon information and belief, Aqua-Vu's past and continuing infringement of the '573 patent has been and continues to be deliberate and willful.

34. Aqua-Vu's conduct warrants an award of treble damages pursuant to 35 U.S.C. § 284.

35. This is an exceptional case that entitles Payne to an award of reasonable attorney fees under 35 U.S.C. § 285.

**DEMAND FOR JURY TRIAL AND DESIGNATION OF PLACE OF TRIAL**

Payne demands trial by jury on all issues so triable, and he designates Kansas City, Kansas as the place of trial.

**PRAYER FOR RELIEF**

WHEREFORE, Payne respectfully prays that this Honorable Court enter relief as follows:

- A. A judgment that Aqua-Vu has infringed the '573 patent;
- B. A judgment and order preliminarily and permanently restraining and enjoining Aqua-Vu and its officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all those acting in concert with or under or through them, from

making, using, selling, offering for sale, and importing any products that infringe the '573 patent, either directly or indirectly;

C. A judgment and order requiring Aqua-Vu to pay damages to Payne adequate to compensate him for Aqua-Vu's infringing acts in accordance with 35 U.S.C. § 284 or, at Payne's option, 35 U.S.C. § 289;

D. A judgment and order requiring Aqua-Vu to pay treble damages in view of its willful and deliberate infringement of the '573 patent;

E. A finding in favor of Payne that this is an exceptional case under 35 U.S.C. § 285 and award to Payne his costs, including reasonable attorneys' fees and other expenses incurred in connection with this action;

F. A judgment and order requiring Aqua-Vu to pay Payne pre-judgment interest under 35 U.S.C. § 284 and post-judgment interest under 28 U.S.C. § 1961 on all damages awarded; and

H. Such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ James J. Kernell

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