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Great American Duck Races, Inc.

9 UNITED STATES DISTRICT COURT FOR THE  
10 DISTRICT OF ARIZONA

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

13 Plaintiff,

14 vs.

15 DGL Group, Ltd., a New York  
16 corporation,

17 Defendant.

Case No.

**COMPLAINT**

(Jury Trial Demanded)

18  
19 Plaintiff Great American Duck Races, Inc., which does business as Great American  
20 Merchandise & Events (“GAME”), alleges the following for its complaint against DGL  
21 Group, Ltd. (“DGL” or “defendant”):

22 **PARTIES**

23 1. GAME is an Arizona corporation with its principal place of business  
24 located in Scottsdale, Arizona.

25 2. Defendant DGL Group, Ltd. is a New York corporation with its principal  
26 place of business at 195 Raritan Center Parkway, Edison, NJ 08837.

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**JURISDICTION AND VENUE**

1  
2 3. This civil action includes claims for patent infringement arising under the  
3 patent laws of the United States, 35 U.S.C. §§ 1-376. This civil action further includes  
4 claims for common law unfair competition under the laws of the State of Arizona.  
5 GAME is a citizen and resident of the State of Arizona.

6 4. This court has subject matter jurisdiction over this action under 28 U.S.C.  
7 §§ 1331 and 1338. This Court also has supplemental jurisdiction over the claim of  
8 unfair competition as provided in 28 U.S.C. § 1367.

9 5. Upon information and belief, this Court has personal jurisdiction over  
10 defendant because defendant has committed acts of patent infringement, contributed to  
11 and induced acts of patent infringement by others, and/or committed acts of unfair  
12 competition in the District of Arizona and elsewhere in the United States. On  
13 information and belief, defendant has substantial and continuous contacts with the State  
14 of Arizona, has purposefully availed itself of the privilege of doing business in Arizona,  
15 and has purposefully directed its infringing activities at Arizona, knowing GAME would  
16 be harmed by the infringement in Arizona. Further, defendant has purposefully injected  
17 its infringing products into the stream of commerce, knowing that the infringing  
18 products would be sold in Arizona.

19 6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c)  
20 and 1400(b) because defendant is subject to personal jurisdiction here and has  
21 committed acts of infringement here, and because a substantial part of the events giving  
22 rise to GAME's claims occurred here.

**FACTUAL BACKGROUND**

23  
24 7. Headquartered in Scottsdale, Arizona, GAME is an innovative marketing  
25 and merchandise company that sells popular consumer products directed at the pool and  
26 spa industry. GAME's products are sold in a variety of well-known retail outlets, such  
27 as Fry's/Kroger, Target, Wal-Mart, Walgreens, and Leslie's Swimming Pool Supplies,  
28 as well as through online retailers, such as Amazon.com. GAME also provides services

1 to diverse non-profit organizations that raise millions of dollars for charities across the  
2 globe with GAME's well-known "Derby Duck Races."

3 8. GAME is the exclusive licensee of rights to a unique series of products  
4 called the Underwater Light Show or Underwater Light Show & Fountain (collectively  
5 "ULS"), including the right to manufacture, advertise, promote, offer for sale, sell, and  
6 distribute the ULS in the United States. GAME has been selling the ULS since March  
7 13, 2006. Since the introduction of the products, GAME has sold over 5.0 million units  
8 of ULS products. GAME sells the ULS through national retailers, including the well-  
9 known retail outlets listed above.

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

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

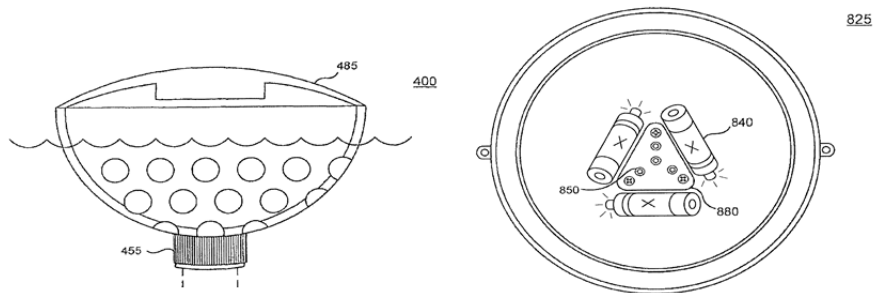
20 11. On August 19, 2008, the United States Patent and Trademark Office  
21 ("PTO") issued United States Patent Number 7,413,319 ("the '319 Patent"), entitled  
22 "METHOD AND SYSTEM FOR UNDERWATER LIGHT DISPLAY," and on May  
23 18, 2010, the PTO issued United States Patent Number 7,717,582 ("the '582 Patent"),  
24 also entitled "METHOD AND SYSTEM FOR UNDERWATER LIGHT DISPLAY," to  
25 Jose Longoria, Loren T. Taylor, and Traci Heather Feldman. Taylored Concepts, LLC,  
26 a New Jersey corporation having its principal place of business located in Chatham,  
27 New Jersey, and Longoria Design, LLC, a Florida company having its place of business  
28 located in Miami, Florida, are the assignees of all right, title, and interest in and to the

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1 '319 and '582 Patents. The '319 and '582 Patents include disclosure relating to the  
 2 ULS. True and correct copies of the '319 and '582 Patents are attached to this  
 3 complaint as Exhibit A and Exhibit B, respectively.

4 12. GAME is the exclusive licensee of the '582 and '319 Patents from  
 5 Taylored Concepts, LLC and Longoria Design, LLC, with the exclusive right to  
 6 manufacture, advertise, promote, offer for sale, sell, and distribute products associated  
 7 with the '582 and '319 Patents in the United States, and with the right to bring suit to  
 8 enforce the '582 and '319 Patents, including the right to recover damages for past  
 9 infringement. GAME has been the exclusive licensee throughout the period of the  
 10 defendant's infringing acts and remains as such.

11 13. FIGs. 4 and 8 from the '582 patent, shown below, which are similar to  
 12 FIGs. 4 and 8 from the '319 patent, illustrate GAME's patented ULS:



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



1           15.     GAME also offers various highly successful Bluetooth versions of its  
2 ULS, through which users can play music and answer phone calls while enjoying the  
3 ULS's light show in a body of water. GAME's Wireless Speaker & Light Show,  
4 Waterproof Bluetooth Speaker with Underwater Light Show, and WaveDancer Speaker  
5 & Light Show (depicted in that order from left to right below) all are embodiments of  
6 GAME's exclusive rights under the '319 and '582 Patents.



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15           16.     Defendant manufactures, offers for sale, sells, imports into the United  
16 States, and/or distributes infringing products under such names as “AquaLight Floating  
17 Color-Changing Light,” and “AquaBall Bluetooth Speaker” (collectively “Floating  
18 Light Shows”).

19           17.     On information and belief, defendant's Floating Light Shows are virtually  
20 identical knock-offs of GAME's ULS and Bluetooth ULS products, created and sold  
21 with the intent to utilize GAME's intellectual property and to trade on GAME's good  
22 will.

23           18.     Representative depictions of defendant's infringing Floating Light Shows  
24 are attached in Exhibit C.

25           19.     On information and belief, defendant has made, used, sold, or offered for  
26 sale its Floating Light Shows in the United States and in Arizona, and have imported or  
27 distributed defendant's Floating Light Shows into the United States and into Arizona. In  
28 particular, defendant has offered its Floating Light Shows for sale to Leslie's Poolmart

1 Inc., which does business as Leslie's Swimming Pool Supplies, in Arizona. Leslie's is a  
2 large pool supply retailer, which sells numerous GAME products including GAME's  
3 ULS.

4 20. Defendant copied functional aspects of the ULS, such that defendant's  
5 Floating Light Shows infringe one or more claims of the '582 and '319 Patents.

6 21. On information and belief, prior to copying the GAME's products,  
7 defendant was aware that the ULS is protected by the '582 and '319 Patents.

8 22. On information and belief, based on defendant's intentional copying of the  
9 ULS and defendant's knowledge of the '582 and '319 Patents before it copied the ULS,  
10 defendant willfully infringed the '582 and '319 Patents.

11 **DEFENDANT INTENTIONALLY COPIED GAME'S PRODUCTS TO**  
12 **UNFAIRLY COMPETE WITH GAME**

13 23. Through the Floating Light Shows, defendant has copied GAME's ULS.

14 24. In particular, defendant has offered for sale and sold virtually identical  
15 copies of the ULS, namely the Floating Light Shows.

16 25. On information and belief, defendant has made, used, sold, or offered for  
17 sale defendant's Floating Light Shows in the United States and in Arizona, and has  
18 imported or distributed the Floating Light Shows into the United States and into  
19 Arizona.

20 26. On information and belief, defendant purposefully directed its intentional  
21 acts of infringement relating to defendant's Floating Light Shows at Arizona by  
22 expressly aiming those intentional acts at Arizona, with the knowledge that GAME was  
23 likely to suffer harm in Arizona.

24 27. Defendant offered its Floating Light Shows for sale to Leslie's in Arizona,  
25 intending for Leslie's to sell the Floating Light Shows to consumers in Arizona and  
26 throughout the United States.

27 28. As nearly identical copies of GAME's ULS, defendant's Floating Light  
28 Shows have also copied certain non-functional, distinctive, source-identifying features



1 and indicia of the ULS in an attempt to unfairly compete with GAME and capitalize on  
2 the goodwill GAME has developed through its extensive marketing and sales of the  
3 ULS and its other products.

4 29. Defendant's Floating Light Shows, while appearing nearly identical to  
5 GAME's ULS, are inferior in quality to GAME's product in numerous respects.

6 30. In addition to copying non-functional, source-identifying features and  
7 indicia associated with the ULS, defendant also copied functional aspects of the ULS,  
8 such that the Floating Light Shows infringe one or more claims of the '582 and '319  
9 Patents.

10 31. Defendant intentionally copied the ULS, which is evidenced by the degree  
11 to which defendant sought to make the copied products appear nearly identical to  
12 GAME's products. As depicted in Exhibit C, defendant attempted to make nearly  
13 identical copies of certain functional and non-functional features of the ULS, including  
14 without limitation, (1) the overall shape of the ULS, (2) the shape and location of lenses  
15 on the ULS, (3) the location of batteries within the ULS, (4) the varying underwater  
16 light display associated with the ULS, (5) certain labels and marking appearing on the  
17 ULS and packaging, and (6) the location of the interior light assembly. What's more,  
18 defendant copied the overall shape, appearance, and features of GAME's Bluetooth  
19 ULS products depicted in Paragraph 15 above.

20 32. Defendant's intent to copy also is evidenced by defendant causing the  
21 Floating Light Shows to appear in close proximity to the ULS by describing the Floating  
22 Light Shows in such a way as to appear in an internet search for the terms "Underwater  
23 Light Show" and by offering to sell the Floating Light Shows to Leslie's, which sells  
24 GAME's ULS products.

25 33. Defendant's direct and intentional copying show that non-functional,  
26 source-identifying features of the ULS that defendant copied are distinctive and have  
27 secondary-meaning, such that consumers identify GAME as the source of the ULS  
28 based on those features.

1 34. Prior to copying the GAME's ULS, defendant was aware that the ULS is  
2 protected by the '582 and '319 Patents.

3 35. Based on defendant's intentional copying of GAME's ULS and  
4 defendant's knowledge of the '582 and '319 Patents before copying the ULS, defendant  
5 willfully infringed the '582 and '319 Patents.

6 36. Defendant is unfairly competing with GAME, because defendant made  
7 nearly identical copies of the ULS, has infringed the '582 and '319 Patents, and has  
8 copied and infringed the non-functional, source-identifying features and trade dress of  
9 GAME's products. As such, defendant is piggybacking on GAME's goodwill and fame,  
10 to GAME's detriment and defendant's unfair advantage and gain.

11 **COUNT ONE**

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

13 37. GAME realleges and incorporates by reference the preceding paragraphs  
14 of this complaint as though fully set forth herein.

15 38. Defendant has infringed and continues to infringe, literally and/or under  
16 the doctrine of equivalents, the '582 Patent by practicing one or more claims of the '582  
17 Patent in the manufacture, use, offering for sale, sale, and/or importation or exportation  
18 of defendant's Floating Light Shows in violation of 35 U.S.C. § 271.

19 39. Defendant has infringed and continues to infringe the '582 Patent by  
20 contributing to and/or actively inducing the infringement by others of the '582 Patent by  
21 the manufacture, use, offering for sale, sale, and/or importation or exportation of  
22 defendant's Floating Light Shows in violation of 35 U.S.C. § 271.

23 40. On information and belief, defendant has willfully infringed the '582  
24 Patent.

25 41. Defendant's acts of infringement of the '582 Patent will continue as  
26 alleged in this complaint unless enjoined by the Court.

27 42. As a direct and proximate result of Defendant's infringement of the '582  
28 Patent, GAME has suffered and will suffer monetary damages.



1 43. GAME is entitled to recover from defendant the damages sustained by  
2 GAME as a result of defendant's wrongful acts in an amount to be determined at trial.

3 44. GAME has suffered irreparable harm as a result of defendant's  
4 infringement of the '582 Patent.

5 45. Unless defendant is enjoined by this Court from continuing its  
6 infringement of the '582 Patent, GAME will continue to suffer irreparable harm and  
7 impairment of the value of its patent rights. Thus, GAME is entitled to a preliminary  
8 and permanent injunction against further infringement.

9 **COUNT TWO**

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

11 46. GAME realleges and incorporates by reference the preceding paragraphs  
12 of this complaint as though fully set forth herein.

13 47. Defendant has infringed and continues to infringe, literally and/or under  
14 the doctrine of equivalents, the '319 Patent by practicing one or more claims of the '319  
15 Patent in the manufacture, use, offering for sale, sale, and/or importation or exportation  
16 of defendant's Floating Light Shows in violation of 35 U.S.C. § 271.

17 48. Defendant has infringed and continues to infringe the '319 Patent by  
18 contributing to and/or actively inducing the infringement by others of the '319 Patent by  
19 the manufacture, use, offering for sale, sale, and/or importation or exportation of  
20 defendant's Floating Light Shows in violation of 35 U.S.C. § 271.

21 49. On information and belief, defendant has willfully infringed the '319  
22 Patent.

23 50. Defendant's acts of infringement of the '319 Patent will continue as  
24 alleged in this complaint unless enjoined by the Court.

25 51. As a direct and proximate result of defendant's infringement of the '319  
26 Patent, GAME has suffered and will suffer monetary damages.

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

1 53. GAME has suffered irreparable harm as a result of defendant's  
2 infringement of the '319 Patent.

3 54. Unless defendant is enjoined by this Court from continuing its  
4 infringement of the '319 Patent, GAME will suffer additional 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 THREE**

8 **(Common Law Unfair Competition)**

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

11 56. GAME owns common law rights in distinctive, non-functional, source-  
12 identifying aspects of the ULS (the "ULS Trade Dress") in Arizona and throughout the  
13 United States.

14 57. Defendant has sold and continues to sell nearly identical copies of  
15 GAME's ULS, and defendant's Floating Light Shows infringe the ULS Trade Dress.

16 58. Defendant has intentionally caused its nearly identical products to appear  
17 in close proximity to the ULS by describing the Floating Light Shows in such a way as  
18 to appear in an internet search for the terms "Underwater Light Show" and by offering  
19 the infringing products for sale to Leslie's, which sells GAME's ULS.

20 59. Defendant has intentionally caused its Floating Light Shows to appear to  
21 be similar to the ULS, but the Floating Light Shows are inferior knock-off products.

22 60. By reason of defendant's acts alleged herein, defendant falsely represents  
23 that it is somehow affiliated with, or sponsored or endorsed by, GAME; defendant  
24 dilutes the goodwill in the ULS Trade Dress; and defendant's conduct therefore is likely  
25 to confuse, mislead, or deceive purchasers.

26 61. By reason of defendant's acts alleged herein, GAME has suffered and  
27 continues to suffer damage to its business, reputation, and goodwill, together with the  
28

1 loss of sales and profits GAME would have made but for defendant's acts, in an amount  
2 to be proven at trial.

3 62. By reason of defendant's acts alleged herein, GAME has suffered and  
4 continues to suffer irreparable damage. Unless defendant is restrained, the damage and  
5 irreparable harm to GAME will increase. GAME has no adequate remedy at law.  
6 GAME is entitled to preliminary and permanent injunctive relief.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, GAME prays for judgment against defendant as follows:

9 1. For judgment in favor of GAME and against defendant on the claims set  
10 forth above;

11 2. For judgment that the '582 and '319 Patents are valid, enforceable and  
12 infringed by defendant;

13 3. For profits and damages resulting from defendant's past and present  
14 infringement of the '582 and '319 Patents;

15 4. For judgment that defendant's conduct on each of the claims set forth  
16 above was willful, intentional, and/or in bad faith;

17 5. For treble damages resulting from defendant's willful infringement of the  
18 '582 and '319 Patents under 35 U.S.C. § 284;

19 6. For defendant's profits, and damages resulting from defendant's willful  
20 intent to trade on GAME's reputation and goodwill, and defendant's willful intent to  
21 cause dilution of GAME's reputation and goodwill in the ULS trade dress;

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

23 8. For an award of reasonable attorneys' fees, including under 35 U.S.C.  
24 § 285;

25 9. For injunctive relief, preliminarily and permanently enjoining against the  
26 continuing infringement of the '319 and '582 Patents by defendant, its officers, agents,  
27 servants, employees, and those persons acting in active concert or in participation with  
28 defendant, under 35 U.S.C. § 283;

