

NATURE OF THE ACTION

1. This is a patent infringement and trademark infringement action to stop Defendants' infringement of Plaintiffs' intellectual property rights.
2. United States Patent No. 9,511,298 (hereinafter, "298 patent"), entitled "Sgromo et al. Water Slide." A copy of the '298 patent is attached hereto as Exhibit A. Sgromo is the inventor and assignee of the '298 patent. Plaintiffs seeks injunctive relief and monetary damages.
3. United States Patent No. 7,046,440 (hereinafter, the "440 patent") entitled "3-D Vision System for Swimming Pools." A copy of the '440 patent is attached hereto as Exhibit B. Plaintiff is the assignee of the '440 patent. Plaintiffs seeks injunctive relief and monetary damages.
4. United States Trademark Registration No. 4940366 for Word Mark "H2O GO!" (hereinafter, the "366 trademark"). A copy of the trademark registration is attached hereto as Exhibit C. Sgromo is the creator and assignee of '366 trademark. Plaintiffs seeks injunctive relief and monetary damages.

PARTIES

5. Plaintiff Sgromo is an individual, an inventor, Canadian National, residing at 32600 Bobcat Dr., in the District of Mission, in the Province of British Columbia, in the country of CANADA.
6. Sgromo is the assignee of all title and interest of the '298 patent and the '366 trademark. Sgromo possesses the entire right to sue for infringement and recover past damages.
7. []
8. Sgromo is the assignee of all title and interest of the '440 patent. Sgromo possesses the entire right to sue for infringement and recover past damages.

9. Upon information and belief, Defendant Bestway Global Holding Inc., is incorporated in the Cayman Islands with limited liability, with its principal place of business at Bestway Center, No. 3065 Road Shanghai, 201812 China

10. Upon information and belief, Defendant Bestway Enterprise Co. Ltd. is a limited liability company duly organized under the laws of Hong Kong, with its principal place of business at Suite 713, 7/F, East Wing, Tsim Sha Tsui Centre, 66 Mody Road, Tsim Sha Tsui, Kowloon, Hong Kong. Bestway Enterprise Co. Ltd.¹

11. Upon information and belief, Defendant Bestway (Hong Kong) International Ltd. is a limited liability company duly organized under the laws of Hong Kong, with its principal place of business at Suite 713, 7/F, East Wing, Tsim Sha Tsui Centre, 66 Mody Road, Tsim Sha Tsui, Kowloon, Hong Kong.

12. Upon information and belief, Defendant Bestway Inflatables and Material Corporation is a limited liability company duly organized under the laws of the Peoples Republic of China, with its principal place of business at No.3065 Cao An Rd, Shanghai 201812, China.

13. Upon information and belief, Defendant Eureka Inventions LLC, is a limited liability company duly organized under the laws of California, with its principal offices at 637 Noe St., San Francisco, CA 94114.

14. Upon information and belief, Defendant HEB Grocery Company, LP is a corporation duly organized under the laws of Texas, with its principal offices at River Annex Compliance Building, 646 South Flores Street, San Antonio, TX 78204.

15. Upon information and belief, Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors is a corporation duly organized under the laws of Texas, with its principal offices at 1800 N Mason Rd, Katy, TX 77449.

¹ Bestway Enterprise Co. Ltd. is the majority shareholder in Bestway (USA) Inc., which is duly organized under the laws of the state of Arizona and not a party to this dispute.

16. Upon information and belief, Target Stores Inc., is duly organized under the laws of MN, with offices at 811 Dallas Ave., Houston TX, 77002.

17. Upon information and belief, defendant Wal-Mart Stores, Inc. is a Delaware corporation, with a place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Defendant Wal-Mart Stores, Inc. is registered for the right to transact business in Texas and has a registered agent in Texas, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

18. Upon information and belief, defendant Wal-Mart Stores Texas, LLC is a Delaware limited liability company, with a place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Defendant Wal-Mart Stores Texas, LLC is registered for the right to transact business in Texas and has a registered agent in Texas, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

19. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

20. This Court has subject matter jurisdiction under § 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338. Subject matter jurisdiction over Sgromo's related common law trademark infringement claims is proper pursuant to 28 U.S.C §§ 1338 and 1367.

21. The Court has personal jurisdiction over each Defendant because each Defendant has minimum contacts within the State of Texas, and the Eastern District of Texas; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; upon information and belief, each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and, Plaintiff's cause of action arise directly from Defendants' business contacts and activities in the Eastern District of Texas.

22. More specifically, each Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises its products in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, each Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendant's products in the State of Texas and in the Eastern District of Texas.

23. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c)(2) and 1400(b).

COUNT I – PATENT INFRINGEMENT- ‘298 PATENT

24. United States Patent No. 9,511,298, entitled “Sgromo et al. Water Slide,” was duly and legally issued by the United States Patent and Trademark Office on December 06, 2016 after full and fair examination. Plaintiff, Sgromo is the assignee of all rights, title, and interest in and to the ‘298 patent and possesses all rights of recovery under the ‘298 patent including the right to sue for infringement and recover past damages.

25. Upon information and belief, Bestway has infringed and continues to infringe one or more claims of the ‘298 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, a device, such as its H2O-GO!™ Single Slide, Double Slide, Triple Slide, 18’ LED Lighter Slide, Shark Attack Slide. Upon information and belief, Bestway has also contributed to the infringement of one or more claims of the ‘298 patent and/or actively induced others to infringe one or more claims of the ‘298 patent, in this district and elsewhere in the United States.

26. Upon information and belief, Eureka has infringed and continues to infringe one or more claims of the '298 patent by falsely representing that it has acquired the exclusive rights to the '298 patent and is profiting from accepting royalties from the '298 Patent, in this district and elsewhere in the United States, a device, such as H2O-GO!™ Single Slide, Double Slide, Triple Slide, 18' LED Lighter Slide, Shark Attack Slide. Upon information and belief, Eureka has also contributed to the infringement of one or more claims of the '298 patent and/or actively induced others to infringe one or more claims of the '298 patent, in this district and elsewhere in the United States.

27. Upon information and belief, HEB has infringed and continues to infringe one or more claims of the '298 patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '298 Patent in this district and elsewhere in the United States, a device, such as H2O-GO!™ Single Slider, and H2O-GO!™ Triple Slider.

28. Upon information and belief, Target Stores Inc. has infringed and continues to infringe on one or more claims of the '298 Patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '298 Patent in this district and else where in the United States, a device, such as H2O-GO!™ Aqua Ramp Single Slide, H2O-GO!™ Aqua Ramp Double Slide, H2O-GO!™ Aqua Ramp Triple Slide.

29. Upon information and belief, Walmart Stores Inc. and Walmart Bentonville Inc. has infringed and continues to infringe on one or more claims of the '298 Patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '298 Patent in this district and elsewhere in the United States, a device, such as H2O-GO!™ Single Ramped Water Slide, H2O-GO!™ Double Ramped Slide, H2O-GO!™ Triple Ramped Slide, H2O-GO!™ Slide N Splash Bowling Water Slide, H2O-GO!™ LED Lighted Water Slide.

30. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

31. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

32. Defendants' infringement of Plaintiff's exclusive rights under the '298 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II – PATENT INFRINGEMENT- '440 PATENT

33. United States Patent No. 7,046,440 entitled "3-D Vision System for Swimming Pools," was duly and legally issued by the United States Patent and Trademark Office on December 06, 2016 after full and fair examination. Plaintiff, is the assignee of all rights, title, and interest in and to the '440 patent and possesses all rights of recovery under the '440 patent including the right to sue for infringement and recover past damages.

34. Upon information and belief, Bestway has infringed and continues to infringe one or more claims of the '440 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, a device, such as its H2O-GO!™ Interactive 3D Adventure Pool, and H2O-GO!™ Splash and Play 3D Adventure Above Ground Pool. Upon information and belief, Bestway has also contributed to the infringement of one or more claims of the '440 patent and/or actively induced others to infringe one or more claims of the '440 patent, in this district and elsewhere in the United States.

35. Upon information and belief, Eureka has infringed and continues to infringe one or more claims of the '440 patent by falsely representing that it has acquired the exclusive rights to the '298 patent and is profiting from accepting royalties from the '440 Patent, in this district and elsewhere in the United States, a device, such as B H2O-GO!™ Interactive 3D Adventure Pool,

and H2O-GO!™ Splash and Play 3D Adventure Above Ground Pool. Upon information and belief, Eureka has also contributed to the infringement of one or more claims of the '440 patent and/or actively induced others to infringe one or more claims of the '440 patent, in this district and elsewhere in the United States.

36. Upon information and belief, HEB has infringed and continues to infringe one or more claims of the '440 patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '440 Patent in this district and elsewhere in the United States, a device, such as H2O-GO!™ 3D Undersea Adventure Pool

37. Upon information and belief, Walmart Stores Inc. and Walmart Bentonville Inc. has infringed and continues to infringe on one or more claims of the '298 Patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '298 Patent in this district and elsewhere in the United States, a device, such as H2O-GO!™ 3D Undersea Adventure Pool.

38. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

39. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

40. Defendants' infringement of Plaintiff's exclusive rights under the '298 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT III – TRADEMARK INFRINGEMENT- H2O-GO!

41. United States Trademark Registration No. 4940366 for Word Mark “H2O GO!” was duly and legally issued by the United States Patent and Trademark Office on December 06, 2016 after full and fair examination. Plaintiff, is the assignee of all rights, title, and interest in and to the ‘366 trademark and possesses all rights of recovery under the ‘366 trademark including the right to sue for infringement and recover past damages.

42. Upon information and belief, Bestway has infringed and continues to infringe one or more claims of the ‘366 trademark by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, such devices include but are not limited to H2O-GO!™ Floating Turtle Baby Care Seat, H2O-GO!™ Swan, H2O-GO!™ Jumbo Whale Rider, H2O-GO!™ Pretty Peacock, H2O-GO!™ Candy Delight, H2O-GO!™ Double Beach Bed, H2O-GO!™ Luxury Flamingo, H2O-GO!™ POP Swim Tube, H2O-GO!™ Dragstrip Splash Slide, H2O-GO!™ Hydrostorm Splash Mega Water Park, and H2O-GO!™ Tsunami Waves Summit Mega Water Park.

43. Upon information and belief, Bestway has also contributed to the infringement of one or more claims of the ‘366 trademark and/or actively induced others to infringe one or more claims of the ‘366 trademark, in this district and elsewhere in the United States.

44. Upon information and belief, HEB has infringed and continues to infringe one or more claims of the ‘366 trademark by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the ‘366 trademark in this district and elsewhere in the United States, a device, such as H2O-GO!™ Floating Turtle Baby Care Seat, H2O-GO!™ Swan, H2O-GO!™ Jumbo Whale Rider, H2O-GO!™ Pretty Peacock, H2O-GO!™ Candy Delight, H2O-GO!™ Double Beach Bed, H2O-GO!™ Luxury Flamingo, and H2O-GO!™ POP Swim Tube.

45. Upon information and belief, Academy has infringed and continues to infringe one or more claims of the '366 trademark by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '366 trademark in this district and elsewhere in the United States, a device, such as H2O-GO!™ Dragstrip Splash Slide, H2O-GO!™ Hydrostorm Splash Mega Water Park, and H2O-GO!™ Tsunami Waves Summit Mega Water Park.

46. Upon information and belief Target has infringed and continues to infringe one or more claims of the '366 trademark by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '366 trademark in this district and elsewhere in the United States, a device, such as H2O-GO!™ Tsunami Waves Sunnit Kids Inflatable Slide Water Parkm H2O-GO!™ Hydrostorm Splash Kids Inflatable Slide Water Park, H2O-GO!™ H2O-GO!™ Rainbow Blobz, H2O-GO!™ Limbo Sprinkler, H2O-GO!™ Blobzter, H2O-GO!™ H2O-GO!™ H2O-GO!™ H2O-GO!™

47. Upon information and belief, Walmart Stores Inc. and Walmart Bentonville Inc., has infringed and continues to infringe on one or more claims of the '298 Patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '366 Trademark in this district and elsewhere in the United States, a device, such as H2O-GO!™ Fun Sketching Art Splash Blobz, H2O-GO!™ Family Fun Inflatable Kiddie Pool, H2O-GO!™ Turbo Splash Zone Mega Water Park, H2O-GO!™, H2O-GO!™ Spraying Arch Water Slide, H2O-GO!™ Fantasy Unicorn Rider Inflatable Pool Float, Dinosaur Fill'N Fun Kiddie Poole, H2O-GO!™ Fiesta Skull Pool Float, H2O-GO!™ Single Water Slide, H2O-GO!™ UV Careful Kiddie Car Inflatable Pool Floar, H2O-GO!™ Fill-n-Fun Odyseeey Kiddie Play Pool, H2O-GO!™ Whale Rider, H2O-GO!™ Space Ship Inflatable Play Pool, H2O-GO!™ 18' Wild Ride Safari Slide, H2O-GO!™ Pretty Pink Flamingo Ride Pool Float, H2O-GO!™ Cannon Catapult Play Pool, H2O-GO!™ Tsunami Summit mega Water Park, H2O-GO!™ Hurricane Tunnel Blast Mega Water Park, H2O-GO!™ Doodle Glow Inflatbale Pool, H2O-GO!™ Double Lane Water Slide, H2O-

GO!™ Lil' Champ Inflatable Play Center, H2O-GO!™ POP Rhino Ride-on Pool Float, H2O-GO!™ Floating Turtle Baby Care Seat Pool Float, H2O-GO!™ Jumbo Whale Rider Inflatable Pool Float, H2O-GO!™ Oval Inflatable Kiddie Swimming Pool, H2O-GO!™ Lava Lagoon Inflatable Play Center, H2O-GO!™ Wet Jet Rider Inflatable Pool Float, H2O-GO!™ Great White Shark Inflatable Rider, H2O-GO!™ Family Pool w Slide, H2O-GO!™ Shark Splash Boxer Outdoor Sprinkler, H2O-GO!™ River Gator Swim Tube, H2O-GO!™ 18' Slime Blast Slide, H2O-GO!™ Big Lagoon Inflatable Family Pool, H2O-GO!™ Pop Ostrich, H2O-GO!™ Window Inflatable Kiddie Pool, H2O-GO!™ Inflatable Fish Swim Ring, H2O-GO!™ Inflatable Swim Dolphin Arm Bands, H2O-GO!™ Double Beach Bed Inflatable Pool Float, H2O-GO!™ Inflatable Rainbow Play Kids Swimming Pool, H2O-GO!™ Turtle Totz Inflatable Play Pool, H2O-GO!™ Turtle Ride-On, H2O-GO!™ Unsinkable Submarine Rider Pool Float, H2O-GO!™ Sea Life Inflatable Play Center, H2O-GO!™ Lil Animal Pool Float, H2O-GO!™ POP Llama Ride-on Pool Float, H2O-GO!™ 23' XL Slide, H2O-GO!™ Matte Finish Air Mat Inflatable Pool Float, H2O-GO!™ Octo Spray N Splash Sprayer, H2O-GO!™ 36" Big Eyes, H2O-GO!™ Summer Set Pool, H2O-GO!™ UV Careful, H2O-GO!™ Supersized Flamingo Rider Swimming Pool Float, H2O-GO!™ Hydrostorm Splash Zone Mega Water Park, H2O-GO!™

48. Upon information and belief, Walmart Bentonville Inc. has infringed and continues to infringe on one or more claims of the '298 Patent by offering to sell to the ultimate consumer, online and brick and mortar, and profiting from such sales from the '298 Patent in this district and elsewhere in the United States, a device, such as H2O-GO!™ Single Ramped Water Slide, H2O-GO!™ Double Ramped Slide, H2O-GO!™ Triple Ramped Slide

49. Each Defendants, Bestway aforesaid activities have been without authority and/or license from Plaintiff.

40. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

41. Defendants' infringement of Plaintiff's exclusive rights under the '366 trademark will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

42. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

43. Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '298 patent has been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- B. An adjudication that one or more claims of the '440 patent has been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- C. An adjudication that the '336 trademark has been infringed and Defendants Bestway and Eureka's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Sgromo's H2O-GO! mark to

Sgromo's great and irreparable harm. Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;

- D. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendants' acts of infringement together with pre-judgment and post-judgment interest;
- E. That one or more of the Defendants' acts of infringement be found to be willful from the time that Defendants became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- F. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '298 patent;
- G. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and 15 U.S.C. §§ 1114, 1116, and 1117.
- H. Any further relief that this Court deem just and proper.

Dated: February 19, 2019

Respectfully submitted,

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