

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

AXON ENTERPRISE, INC.
a Delaware corporation,

Plaintiff,

vs.

PHAZZER ELECTRONICS, INC.,
a Delaware corporation; STEVEN
ABBOUD, an individual; DIANA
ROBINSON, an individual;
PHAZZER-USA LLC, a
Delaware limited liability company;
LESS LETHAL SAFETY SUPPLY,
INC., a Delaware corporation;
PHAZZER HOLDINGS, INC., a
Colorado corporation;
PHAZZER FEDERAL SUPPLY, an
unincorporated entity; DOES 1-20,

Defendants.

Case No.:

INJUNCTIVE RELIEF REQUESTED

JURY TRIAL REQUESTED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Axon Enterprise, Inc., hereby files its Complaint against Defendants
and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the United States Patent Laws, 35 U.S.C. § 271 *et seq.*

PARTIES

2. Plaintiff Axon Enterprise, Inc. (“Axon”), is a Delaware corporation with its principal place of business at 17800 N. 85th Street, Scottsdale, Arizona 85255. Axon was formerly known as TASER International, Inc. (“TASER”).

3. Upon information and belief, Defendant Phazzer Electronics, Inc. (“Phazzer Electronics”) is a Delaware corporation with its principal place of business at 339 Lancaster Drive, Davenport, Florida 33897.

4. Defendant Steven Abboud (“Abboud”) is a Florida resident with an address of 339 Lancaster Drive, Davenport, Florida 33897. Upon information and belief, Abboud has managed and controlled Phazzer Electronics since its inception and used it as his alter ego. Abboud was the “General” and chief operating officer running the day-to-day operations of Phazzer Electronics until at least August 2017 when he purportedly resigned. Thereafter, upon information and belief, Abboud has continued to serve as a “consultant” to Phazzer Electronics, actively involved in its management and control.

5. Defendant Diana Robinson (“Robinson”) is a Florida resident with an address of 339 Lancaster Drive, Davenport, Florida 33897. Upon information and

belief, Robinson was an employee of Phazzer Electronics from at least July 2014 through 2018, and is Abboud's live-in girlfriend.

6. Upon information and belief, Defendant Phazzer-USA LLC ("Phazzer-USA") is a Delaware limited liability company with its principal place of business at 339 Lancaster Drive, Davenport, Florida 33897. Upon information and belief, Robinson is the sole member of Phazzer-USA.

7. Upon information and belief, Defendant Less Lethal Safety Supply, Inc. ("Less Lethal"), is a Delaware corporation, with its principal place of business at 339 Lancaster Drive, Davenport, Florida 33897. Upon information and belief, Robinson is an owner and/or officer of Less Lethal.

8. Upon information and belief, Defendant PhaZZer Holdings, Inc. ("PhaZZer Holdings"), is a Colorado corporation, with its principal place of business at 339 Lancaster Drive, Davenport, Florida 33897. Upon information and belief, Robinson is an owner and/or officer of PhaZZer Holdings.

9. Upon information and belief, Defendant Phazzer Federal Supply is an unincorporated entity affiliated with Phazzer-USA and operated out of Phazzer-USA's principal place of business at 339 Lancaster Drive, Davenport, Florida 33897.

10. Upon information and belief, all Defendant Entities named herein are owned and/or controlled by Abboud and/or Robinson and serve as their alter egos.

11. Upon information and belief, fictitious Defendants DOES 1-20 are additional Phazzer-related entities owned and/or controlled by Abboud and/or Robinson, used as their alter egos, and operated out of their residence at 339 Lancaster Drive, Davenport, Florida 33897. After appropriate discovery, Axon intends to file an amended complaint replacing the fictitious names of Defendant DOES 1-20 with their real names.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject-matter of this complaint for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has *in personam* jurisdiction as to each Defendant because, upon information and belief, each Defendant is subject to both general and specific jurisdiction in this State. Abboud and Robinson are residents of Florida. Upon information and belief, Abboud and Robinson operate each of the Defendant Entities out of their Lancaster Drive property in Florida. Upon further information and belief, each Defendant Entity regularly conducts business activity in the State of Florida and has made, used, imported, sold, and/or offered for sale products that infringe one or more claims of Axon's patent in this judicial district.

14. Venue is proper under 28 U.S.C. § 1400(b). A substantial part of the events giving rise to the claims occurred within this judicial district. Moreover, the

Defendants reside in Florida and/or have a physical place of business in Florida and have marketed and sold the accused products within this judicial district.

FACTUAL ALLEGATIONS

15. Axon manufactures and sells conducted energy weapons (“CEWs”), which are sold under the TASER[®] brand.

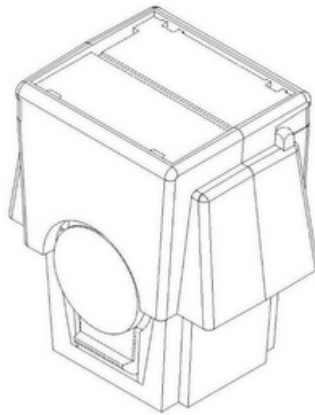
16. Axon manufactures and sells CEWs that utilize a dart cartridge containing a propellant configured to deploy two probes or darts at high velocity toward a target. The probes are connected by conductive wires to a battery-powered circuit located within the CEW. When the probes impact the target, an electrical circuit is established and a low current electrical charge flows through the target causing temporary neuro-muscular incapacitation.

17. Axon is the largest supplier of dart firing CEWs in the world. Axon’s TASER-branded CEWs are used by more than 18,000 law enforcement agencies in 107 countries and are designed to use dart cartridges also manufactured and sold by Axon.

18. Axon is the owner by assignment of all right, title and interest in and to U.S. Patent No. 7,444,939 (the “‘939 patent”), entitled “Ammunition for Electrical Discharge Weapon,” which was duly and legally issued on November 4, 2008, and has the exclusive right to enforce it. A copy of the ‘939 patent is attached as Exhibit A. The ‘939 patent was assigned to Axon on June 27, 2019, as evidenced at

reel/frame 049615/0958 in the U.S. Patent and Trademark Office's patent assignment database. A copy of the patent assignment is attached as Exhibit B.

19. Axon is also the owner of a federal trademark registration, Registration No. 4,423,789, issued by the U.S. Patent and Trademark Office on October 29, 2013, for the non-functional shape, as shown below, of CEW dart cartridges ("Axon's Registered Trade Dress").



20. In 2016, Axon (then known as TASER) sued Phazzer Electronics in this Court for infringement of Axon's Registered Trade Dress (among other claims), in Case No. 6:16-cv-00366-PGB.

21. On July 21, 2017, the District Court entered its sanction order and default judgment finding the dart cartridges sold by Phazzer Electronics infringed Axon's Registered Trade Dress. As a result, Phazzer Electronics and its officers, agents, servants, employees, and attorneys; and any other persons who are in active concert or participation with Phazzer or its officers, agents, servants, employees, or attorneys, were permanently enjoined from selling Phazzer dart cartridges (DC) with

product Nos. 1-DC15, 1-DC21, 1-DC25, 1-DC21-SIDT (collectively, the “Enjoined Cartridges”).¹

22. The product number following the DC designation represents the length in feet of the wire contained in each cartridge, 15, 21 and 25 feet, respectively. Each cartridge has different color blast doors to inform the CEW user of the distance capability of the cartridge. As depicted below, the enjoined Phazzer dart cartridge 1-DC15 has yellow blast doors and 15 feet of wire:



23. The Phazzer 1-DC21 cartridge has green blast doors and 21 feet of wire; the 1-DC25 cartridge has brown blast doors and 25 feet of wire; and the 1-DC21-SIDT cartridge is a 21-foot training cartridge with blue blast doors:



¹ Phazzer Electronics has now exhausted and lost all appeals filed in the Federal Circuit arising out of the underlying judgment and injunction.

24. Each Phazzer dart cartridge is a molded plastic unit with twin barrels set at 6-degree separation with each dart in its own barrel and utilizes a compressed nitrogen propulsion system.

25. After the injunction and in an effort to avoid it, upon information and belief, Phazzer Electronics, Abboud and Robinson set out to redesign the exterior housing of Phazzer cartridges to circumvent Axon's Registered Trade Dress and the injunction.

26. Upon information and belief, Phazzer IP, LLC ("Phazzer IP") is owned and/or controlled by Abboud and/or Robinson. According to Phazzer websites and press releases, Phazzer IP "is the exclusive licensee of all PhaZZer® brand intellectual property in the United States and its territories."

27. On September 25, 2018, Robinson, as a "member" of Phazzer IP, sent a letter to Phazzer Electronics purporting to terminate a Trademark License Agreement dated May 15, 2014 and "any other intellectual property licenses" between the two companies. Phazzer IP then promptly announced new license agreements with Defendants Phazzer-USA, Less Lethal, PhaZZer Holdings, and Phazzer Federal Supply for the sale and distribution of Phazzer products in the United States, including, specifically, CEW dart cartridges. See Exhibit C Press Release.

28. Upon information and belief, Robinson registered domain names for each of the new licensed suppliers: www.buycew.com for Less Lethal, www.phazzerusa.com for PhaZZer Holdings, www.phazzer-usa.com for Phazzer-USA, and www.phazzer.us for Phazzer Federal Supply using her controller@phazzerglobal.com email as the contact for each.

29. Upon information and belief, Leonidas Research Corporation (“Leonidas”), incorporated in Antigua and Barbuda and owned by Abboud, is the registrant organization of the phazzer.us domain. Phazzer Federal Supply operates under the domain “phazzer.us”, which redirects to “phazzer-usa.com”, a domain utilized by Phazzer-USA and registered to Robinson.

30. Upon information and belief, Defendants Phazzer-USA, Less Lethal, PhaZZer Holdings, and Phazzer Federal Supply sell and offer to sell infringing dart cartridges in the United States, including Phazzer Electronics’ preexisting Enjoined Cartridge inventory. Axon has confirmed the sale of at least 10 Enjoined Cartridges in 2019 in the United States by Defendants.

31. On October 11, 2018, Phazzer IP issued a press release announcing the release of “new, redesigned, single shot [dart] cartridges under the PhaZZer® brand” in direct competition with Axon single-shot cartridges, claiming compatibility with TASER X26P, X26E, X26C and M26 CEW models. See Exhibit C Press Release.

32. Phazzer websites expressly acknowledge that the “New Phazzer Dart Probe Cartridge Ammunition was designed by the PhaZZer® Engineering Team for cosmetic purposes ONLY in order to comply with the Pending TASER (Trade Dress) infringement ... while retaining the [former functionality and performance].”

33. Phazzer’s new dart cartridge (NDC), product No. 1-NDC15 with 15 feet of wire and yellow blast doors, is depicted below:²



34. As with the Enjoined Cartridges, the new dart cartridges are sold with varying wire length and color-coded blast doors, but are otherwise identical in form and function: product Nos. 1-NDC15 (15 foot/yellow); 1-NDC21 (21 foot/green); 1-NDC25 (25 foot/brown); and 1-TC21 (21 foot/blue training cartridge) (collectively, the “New Cartridges”).

² The metal clip shown here is a removable static guard to prevent accidental discharge.

35. Both the Enjoined Cartridges and the New Cartridges infringe at least claims 1-3 and 6 of Axon's '939 patent.

**COUNT I
INFRINGEMENT OF THE '939 PATENT**

36. Axon incorporates by reference and re-alleges the allegations of paragraphs 1 through 35.

37. The '939 patent describes and claims a primer-fired ammunition cartridge for an electrical discharge weapon having a housing with an exterior surface and two wire-tethered darts positioned within dart chambers in the housing and two electrical contacts positioned on opposite surfaces of the housing for lengthening an electrical arc path across the exterior surface of the housing.

38. Upon information and belief, Defendants have directly infringed, and continue to infringe, at least claims 1-3 and 6 of the '939 patent under 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing the Enjoined Cartridges and/or the New Cartridges, as demonstrated by the Exhibit D and E claim charts attached hereto.

39. Upon information and belief, Defendants have offered for sale the infringing dart cartridges throughout the United States and within this judicial district.

40. Defendants' acts of infringement have caused damage to Axon, and Axon is entitled to recover from Defendants damages sustained as a result of Defendants' infringement of the '939 patent.

41. The circumstances of Defendants' infringement warrant an injunction barring Defendants from further infringement of the '939 patent. Defendants' acts of infringement have caused, and will continue to cause, irreparable harm to Axon. Axon and Defendants directly compete in the U.S. market for CEW weapon and cartridge sales. Axon is therefore being forced to compete against products that infringe its own patent. The public interest favors an injunction to protect Axon's patent rights and enforce Axon's statutory right to exclude.

PRAYER FOR RELIEF

WHEREFORE, Axon respectfully requests the Court enter judgment in its favor and against Defendants as follows:

- A. For a declaration that the Enjoined Cartridges and New Cartridges are within the scope of the claims of the '939 patent and therefore infringe the '939 patent;
- B. For a preliminary and permanent injunction prohibiting infringement, including making, using, importing, offering for sale, and selling the infringing CEW dart cartridges, as provided by 35 U.S.C. § 283;

- C. For an order stating that Defendants shall file a written report with the Court, under oath, setting forth their compliance with all injunctive relief granted;
- D. For an award of damages to compensate Axon for Defendants' infringement, including damages pursuant to 35 U.S.C. § 284, as well as prejudgment and post-judgment interest;
- E. For attorneys' fees and costs pursuant to applicable law, including, without limitation, 35 U.S.C. § 285, and
- F. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Axon demands trial by jury on all issues that are so triable.

Dated September 4, 2019

s/Ryan T. Santurri

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