

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
Case No.

BLUE WATER INNOVATIONS, LLC,

Plaintiffs,

v.

VEVAZZ, LLC, a  
Limited Liability Company of unknown  
corporate formation,

Defendant.

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**VERIFIED COMPLAINT FOR PATENT INFRINGEMENT:**  
**INJUNCTIVE RELIEF SOUGHT**

Plaintiff, BLUE WATER INNOVATIONS, LLC, (“Blue Water”), by and through undersigned counsel, sues Defendant, VEVAZZ, LLC (“Vevazz”) for acts of patent infringement, and alleges as follows:

**BASIS FOR VERIFIED COMPLAINT**

1. This is an action for patent infringement in connection with Vevazz making, importing, offering for sale and selling a system and method for reducing lipid content of adipocytes in a body, and a fat reducing device and method utilizing optical emitters, that contain and comprise patented proprietary technology covered by a United States Patents duly owned and exclusively used by Blue Water. Vevazz then used the patented technology to manufacture knockoffs that have been widely advertised online, sold, offered for sale, and/or displayed and offered through important and relevant industry trade shows throughout the United States. Vevazz’ infringing conduct has damaged Blue Water and inflicted irreparable harm.

2. Vevazz has also fraudulently used the efforts of Blue Water by using Blue Water's exclusive lab testing to obtain an FDA pre-market approval so that Vevazz is able to perpetrate a fraud not only on the FDA, but the consuming public at large, by claiming that its device is a "substantial equivalent" of the Blue Water device and method, and as a result, not only is the FDA and the consuming public deceived, but Vevazz is able to compete in the market unfairly, resulting in substantial damage to Blue Water, as a competitor not playing fairly.

3. Blue Water seeks, *inter alia*, disgorgement of Vevazz' profits from the sale of infringing products, other applicable damages, and injunctive relief.

#### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over the claims for patent infringement under 28 U.S.C. §§ 1331 and 1338(a) in that said claims arise under the Patent Laws of the United States, 35 U.S.C. § 1 et seq."

5. This Court has jurisdiction over Vevazz pursuant to FLA. STAT. §48.193, in that: (a) it is residing, operating, conducting, engaging or carrying on a business, in the State of Florida; (b) has committed tortious acts within the State of Florida; and (c) is engaged in substantial and not isolated activity within the State of Florida.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Vevazz is conducting infringing acts in this District, and substantial part of the events giving rise to the claims occurred in this District.

7. Blue Water, through Terry Ward, M.H.A., has conducted a systematic comparison of the Vevazz device and method and found it, based on his personal and professional expertise as the inventor of the patented technology at issue, to be infringing, either directly or through the doctrine of equivalents.

**THE PARTIES**

8. Blue Water is an LLC organized under the laws of Nevis. In addition, Blue Water is listed with the State of Florida as the Managing Director of Ward Photonics, LLC, a Florida limited liability company that is the exclusive manufacturer and licensee of the patented technology that serves as the basis for this Complaint, and Blue Water resides in and operates out of the State of Florida, and specifically, in the Middle District of Florida.

9. Upon information and belief, VEVAZZ, LLC is a limited liability company of unknown origin that has offices in, amongst other places, this District, Dallas, Texas, and Eaton, Colorado, and serves as the purported business entity that makes, sells, and otherwise uses Blue Water's patented technology in furtherance of its infringing activities.

**BLUE WATER'S BUSINESS**

10. Well prior to the acts complained of, Blue Water has been involved in the business of manufacturing a high quality system and method for reducing lipid content of adipocytes in a body, and a fat reducing device and method utilizing optical emitters (hereinafter referred to as "the fat reducing system"), and sells and distributes these devices and methods in a variety of markets.

11. Blue Water's fat reducing system is uniquely designed and has been enormously successful in the market, and has met substantial success in the relevant market, and channels of trade.

12. Blue Water products are sold throughout the United States and are sold primarily through and to doctors, and Blue Water has spent substantial resources, including money, to obtain not only a proven fat reducing system, but one that was tested extensively and as a result, obtained the requisite FDA authorization for sale to its customers and clients.

13. As a result of the originality and high quality of its fat reducing system, Blue Water has developed a reputation for excellence and innovation which has generated several million dollars in sales, and many loyal clients.

14. Blue Water, through its approved licensees, provides financing and leasing options to help support those doctors who use the patented technology and fat reducing system in their respective practices.

15. As a result of the unauthorized copying and infringement by Vevazz, several clients have complained that the Vevazz device and system is substantially less expensive, and sells for approximately 10% of the Blue Water device and system, as the Vevazz product is a cheaply made “knock-off,” which has resulted in substantial damage to Blue Water and lost sales.

16. Vevazz has claimed to have sold over 300 of its systems, at a price approximating \$25,000.00, resulting in sales in excess of \$7,500,00.00, and have made such sales by obtaining permission and approval from the FDA by informing the FDA that its product is substantially equivalent to the Blue Water fat reducing system, despite using Blue Water’s patented technology without approval or sponsorship from Blue Water.

### **BLUE WATER’S PATENTS**

#### **A. The ‘595 Patent**

17. On June 2, 2015, U.S. Patent No. 9,044,595 (the “‘595 Patent”), for a system and method for reducing lipid content of adipocytes in a body, was issued by the United States Patent and Trademark Office. In 2018, the claims of the ‘595 patent underwent Ex Parte Reexamination at the United States Patent and Trademark Office, and a Reexamination Certificate (11559<sup>th</sup>) for the ‘595 Patent was issued on August 19, 2019. A true and correct copy of the ‘595 Patent with Reexamination Certificate is attached as Composite Exhibit “A” hereto.

Blue Water is the owner of the '595 Patent and Blue Water has the exclusive right to use, make, sell and offer a system and method for reducing lipid content of adipocytes in a body with the patented technology.

18. The '595 Patent is in full force and effect as of the date of this Verified Complaint and all times relevant to the allegations herein.

19. The '595 Patent discloses a novel system for reducing lipid content of adipocytes in a body. One or more embodiments disclosed in the '595 Patent are directed at a system having a plurality of LED's that are controlled by a controller and directed toward a region of the body.

20. The '595 Patent provides the technological advancement necessary for utilizing LED's to illuminate a region of a body at a selective peak wavelength to reduce lipid content.

**B. The '641 Patent**

21. On November 22, 2016, U.S. Patent No. 9,498,641 (the "'641 Patent'"), for a fat reducing device and method utilizing optical emitters, was issued by the United States Patent and Trademark Office. A true and correct copy of the '641 Patent is attached as Composite Exhibit "A" hereto.

22. The '641 Patent discloses a novel device for applying optical emissions to a recipients body. The '641 Patent provides the technological advancement necessary for creating a device having LED's that operate to selectively illuminate a region of a body at a selective peak wavelength to reduce lipid content.

23. Blue Water is the owner of the '641 Patent and Blue Water has the exclusive right to use, make, sell and offer a fat reducing device and method utilizing optical emitters with the patented technology.

24. The '641 Patent is in full force and effect as of the date of this Verified Complaint and all times relevant to the allegations herein.

**C. The '314 Patent**

25. On November 7, 2017, U.S. Patent No. 9,808,314 (the "'314 Patent"), for a fat reducing device and method utilizing optical emitters, was issued by the United States Patent and Trademark Office. A true and correct copy of the '314 Patent is attached as Composite Exhibit "A" hereto.

26. The '314 Patent discloses a novel method of reducing lipid content of subcutaneous adipocytes. The '314 Patent provides the technological advancement necessary for reducing lipid content in a body utilizing LED's at a selective peak wavelength.

27. Blue Water is the owner of the '314 Patent and Blue Water has the exclusive right to use, make, sell and offer a fat reducing device and method utilizing optical emitters with the patented technology.

28. The '314 Patent is in full force and effect as of the date of this Verified Complaint and all times relevant to the allegations herein.

29. At all times relevant, Blue Water began manufacturing and selling devices that incorporate the patented technology, and has marked the devices with the relevant patent numbers.

30. Blue Water's devices and systems embody the technology claimed in the '595, '641, and '314 patents, and have been a market success, and are marked with Plaintiffs' patent numbers in accordance with the requisite statutes.

**COUNT I - INFRINGEMENT OF THE '595 PATENT**

31. Blue Water re-alleges and incorporates hereto by reference all preceding paragraphs of this Verified Complaint.

32. This cause of action arises under the patent laws of the United States of America and, in particular, 35 U.S.C. §§271 et seq.

33. Defendant VEVAZZ has directly infringed and continue to infringe claims 22-25 of the '595 Patent as provided by the Reexamination Certificate. With reference to exemplary claim 22 of the '595 Patent, Defendant has infringed and continue to directly infringe that claim by, among other things, manufacturing, using, offering for sale and/or selling fat reducing devices that are virtually identical to the design claimed in the '595 Patent, and will continue to do so unless enjoined by this Court.

34. Independent Claim 22 recites "A system for reducing lipid content of adipocytes in a body". The full text of Claim 22 follows:

A system for reducing lipid content of adipocytes in a body,  
said system comprising:  
an array of LEDs configured to illuminate a region of a  
body at a selective peak wavelength of about 635 nm;  
a controller connected to the array of LEDs to determine a  
selective power density and selective time period to stimulate  
lipolysis in the adipocytes;  
wherein said selective time period is no less than is  
sufficient to deliver approximately 40-70 J/cm<sup>2</sup> to the adipocytes  
during a time frame of between 5-120 minutes;  
wherein said array of LEDs is further configured to be  
oriented toward the region of the body.

35. Defendant's devices are a "system for reducing lipid content of adipocytes in a body" that comprises all of the claim limitations set forth in claim 22 and, therefore, at least infringe claim 22 of the '595 Patent.

36. Defendant's devices comprise, among other things, an array of LED's for illuminating a region of a body, a controller that is connected to the array of LED's to output light at the claimed power density.

37. Defendant's devices also comprise all of the claim limitations set forth in claims 23 and 24 which depend from claim 22 of the '595 patent and therefore infringe on these claims as well.

38. Independent Claim 25 of the '595 patent recites "a system". The full text of Claim 25 follows:

A system comprising:  
an array of LEDs configured to directly illuminate a region of a body at a selective peak wavelength in a range between 630-660 nm and at a selective power density for a selective time period to reduce lipid content of adipocytes in the body;  
said array of LEDs not including any optical components to collimate the light emanating from said array of LEDs;  
a controller connected to the array of LEDs to determine the selective wavelength, the selective power density and the selective time period to stimulate lipolysis in the adipocytes,  
wherein said array of LEDs is further configured to be oriented toward the region of the body.

39. Defendant's devices are a "system" and comprise all the claim limitations set forth in claim 25 and, therefore, at least infringe claim 25 of the '595 Patent.

40. Defendant's devices comprise, among other things, an array of LED's for illuminating a region of a body, and a controller that is connected to the array of LED's to determine power density for stimulating lipolysis in the adipocytes of a body.

41. By making, using, testing, assembling, offering for sale, selling, and importing devices such as the "Vevazz Laser Like Lipo Machine", also marketed as "Vevazz Contouring" but not limited to the "Vevazz Laser Like Lipo Machine", and by placing such machines into service, Defendant has injured Blue Water Innovations and are liable to Blue Water innovations for





directly infringing one or more claims of the '595 Patent, including at least claims 22-25, pursuant to 35 U.S.C. §271(a).

42. In addition, through the use of a manufacturer, and through its dealer network, and clients, Defendant has induced infringement of the '595 Patent by others and has committed acts of contributory infringement of the '595 Patent. These acts include designing, assembling and installing "Laser Like Lipo Machines" and other devices in a manner that infringes the patented claims of the '595 Patent, and by providing instructions, advertisements and training to customers to induce infringement.

43. Defendant's intended to induce patent infringement by its customers and had knowledge that the inducing acts would cause infringement or was willfully blind to the possibility that its inducing acts would cause infringement.

44. Defendant's infringement of the '595 Patent has been willful and malicious and with actual or constructive knowledge that Blue Water is the owner of a patent claiming the infringed technology.

45. Blue Water has sustained damages as a result of the infringing acts of Defendant .

46. Blue Water has suffered and will continue to suffer irreparable harm unless infringement of the '595 Patent is enjoined.

#### **COUNT II - INFRINGEMENT OF THE '641 PATENT**

47. Blue Water re-alleges and incorporates hereto by reference all preceding paragraphs of this Verified Complaint.

48. This cause of action arises under the patent laws of the United States of America and, in particular, 35 U.S.C. §§271 et seq.

49. Defendant, VEVAZZ has directly infringed and continue to infringe claims 1-8 of the '641 Patent. With reference to exemplary claim 1 of the '641 Patent, Defendant has infringed and continue to directly infringe that claim by, among other things, manufacturing, using, offering for sale and/or selling fat reducing devices that are virtually identical to the design claimed in the '641 Patent, and will continue to do so unless enjoined by this Court.

50. Independent Claim 1 recites "A device for applying optical emissions to a recipient's body". The full text of Claim 1 follows:

A device for applying optical emissions to a recipients body, said device comprising:  
an output array that includes a main body having a first surface which may be oriented toward and positioned a first distance from, a target area of a recipient to be treated,  
a plurality of optical emitters disposed within the main body such that an optical emission from each of the emitters is directed outward from the first surface; and  
a controller that is in communication with the array, said controller including  
a plurality of user interface devices for instructing an operation of the array and for transitioning the array between an on-position and an off-position, wherein in the on-position, the array produces an optical output of red light at approximately 635 nm, and at approximately 40,000 Lux, to reduce a lipid content of adipocytes in the target area of the recipient, and an internal signal generator for creating a reference waveform, a power input module, a rectifier and a solid state relay, said rectifier and relay functioning to provide a modulated power output to the array based on the created reference waveform, said rectifier and relay further functioning to provide the power output to the array only during a positive portion of the created reference waveform.

51. Defendant's devices are "for applying optical emissions to a recipients body" and comprise all of the claim limitations set forth in claim 1 and, therefore, at least infringe claim 1 of the '641 Patent.

52. Defendant's devices comprise, among other things, "an output array", "a plurality of optical emitters", and "a controller that is in communication with the array, said controller including a plurality of user interface devices for instructing an operation of the array". Defendant device is advertised and constructed for the purpose of "reduc[ing] a lipid content of adipocytes in the target area of the recipient".

53. Defendant's devices also comprise all of the claim limitations set forth in claims 2-8 of the '641 patent and therefore infringe on these claims as well.

54. By making, using, testing, assembling, offering for sale, selling, and importing devices such as the "Vevazz Laser Like Lipo Machine", also marketed as "Vevazz Contouring" but not limited to the "Vevazz Laser Like Lipo Machine", and by placing such machines into service, Defendant has injured Blue Water Innovations and is liable to Blue Water innovations for directly infringing one or more claims of the '641 Patent, including at least claims 1-8, pursuant to 35 U.S.C. §271(a).

55. In addition, through the use of a manufacturer, and through its dealer network, and clients, Defendant has induced infringement of the '641 Patent by others and has committed acts of contributory infringement of the '641 Patent. These acts include designing, assembling and installing "Laser Like Lipo Machines" and other devices in a manner that infringes the patented claims of the '641 Patent, and by providing instructions, advertisements and training to customers to induce infringement.

56. Defendant intended to induce patent infringement by its customers and had knowledge that the inducing acts would cause infringement or was willfully blind to the possibility that its inducing acts would cause infringement.

57. Defendant's infringement of the '641 Patent has been willful and malicious and with

actual or constructive knowledge that Blue Water is the owner of a patent claiming the infringed technology.

58. Blue Water has sustained damages as a result of the infringing acts of Defendant.

59. Blue Water has suffered and will continue to suffer irreparable harm unless infringement of the '641 Patent is enjoined.

### **COUNT III - INFRINGEMENT OF THE '314 PATENT**

60. Blue Water re-alleges and incorporates hereto by reference all preceding paragraphs of this Verified Complaint.

61. This cause of action arises under the patent laws of the United States of America and, in particular, 35 U.S.C. §§271 et seq.

62. Defendant VEVAZZ has directly infringed and continue to infringe claims 1-4 and 6 of the '314 Patent. With reference to exemplary claim 1 of the '314 Patent, Defendant has infringed and continue to directly infringe that claim by, among other things, manufacturing, using, offering for sale and/or selling fat reducing devices that perform functionality that is identical to the functionality claimed in the '314 Patent, and will continue to do so unless enjoined by this Court.

63. Independent Claim 1 recites "A method of reducing lipid content of subcutaneous adipocytes". The full text of Claim 1 follows:

A method of reducing lipid content of subcutaneous adipocytes, said method comprising:  
    providing a device for applying optical emissions to a recipients body containing a lipid content of subcutaneous adipocytes, said device including an output array having a plurality of optical emitters, and a controller for instructing an operation of the array;  
    positioning the array a discrete distance from a target area of the recipient;

providing a power source to the array; producing, via the array, an optical output;  
directing the optical output towards the target area of the recipient to reduce the lipid content of subcutaneous adipocytes in the target area of the recipient; and  
delivering red light at approximately 313.6 Lux at a wavelength of approximately 635 nm for between 1 and 8 minutes, resulting in a total delivery of 2.88 Joules to the subcutaneous adipocytes of the target area of the recipient,  
wherein each of the plurality of optical emitters comprise, at least one of, a light emitting capacitor, a light emitting diode, and a super-luminous light emitting diode.

64. Defendant is in the business of “providing a device for applying optical emissions to a recipients body containing a lipid content of subcutaneous adipocytes,” and Defendant’s utilize the devices to perform “a method of reducing lipid content of subcutaneous adipocytes” that comprises all of the claim limitations set forth in claim 1 and, therefore, at least infringe claim 1 of the ‘314 Patent.

65. Through Defendant’s training program, Defendant infringe the 314 patent by “providing a device for applying optical emissions to a recipients body”, “positioning the array a discrete distance from a target area of the recipient”, “providing a power source to the array”, “producing, via the array, an optical output”, and “directing the optical output towards the target area of the recipient to reduce the lipid content of subcutaneous adipocytes in the target area of the recipient” at the claimed power and energy amounts.

66. Defendant’s perform, and Defendant’s devices also comprise all of the claim limitations set forth in claims 2-4, and 6 of the ‘314 Patent and therefore infringe on these claims as well.

67. By making, using, testing, assembling, offering for sale, selling, and importing devices such as the “Vevazz Laser Like Lipo Machine”, also marketed as “Vevazz Contouring” but not limited to the “Vevazz Laser Like Lipo Machine”, and by placing such machines into service,

Defendant has injured Blue Water Innovations and are liable to Blue Water innovations for directly infringing one or more claims of the '314 Patent, including at least claims 1-4 and 6, pursuant to 35 U.S.C. §271(a).

68. In addition, through the use of a manufacturer, through its dealer network, through its client training program and clients, Defendant has induced infringement of the '314 Patent by others and has committed acts of contributory infringement of the '314 Patent. These acts include performing a method of reducing lipid content of subcutaneous adipocytes called "Vevazz Contouring" and using devices such as the "Laser Like Lipo Machines" and other devices in a manner that infringes the patented claims of the '314 Patent, and by providing instructions, advertisements and training to customers to induce infringement.

69. Defendant intended to induce patent infringement by its customers and had knowledge that the inducing acts would cause infringement or was willfully blind to the possibility that its inducing acts would cause infringement.

70. Defendant's infringement of the '314 Patent has been willful and malicious and with actual or constructive knowledge that Blue Water is the owner of a patent claiming the infringed technology.

71. Blue Water has sustained damages as a result of the infringing acts of Defendant .

72. Blue Water has suffered and will continue to suffer irreparable harm unless infringement of the '314 Patent is enjoined.

**WHEREFORE**, Plaintiff, BLUE WATER INNOVATIONS, LLC prays that the Court:

- A. Enter a judgment that Defendant has infringed, induced infringement and contributed to the infringement of U.S. Patent Nos. 9,044,595, 9,498,641, and/or 9,808,314.
- B. Order Defendant to pay damages under 35 U.S.C. §285 and §289 to adequately

compensate Plaintiffs for their acts of patent infringement, including an award of Defendant's profits from its infringement together with pre- and post-judgment interest;

C. Find that Defendant's patent infringement was willful and malicious and award treble damages to Plaintiffs under 35 U.S.C. 284;

D. Find this to be an exceptional case of patent infringement and award reasonable attorneys' fees to Plaintiffs under 35 U.S.C. §285;

E. Temporary and/or permanent injunctive relief by enjoining Defendant, its officers, employees, and agents, and all persons or entities in active concert with it, from using, displaying, advertising, or selling their goods under, or from otherwise doing business under the UltraSlim® trademark and any other confusingly similar alternative or variation thereof;

F. Order the forfeiture, and/or destruction of any fat reducing devices, printed materials, store signage, advertisements, web sites, or any other items or materials containing any variation that comprises any technology protected by Blue Water's patents;

H. Pay damages as so permitted by applicable law, and for an award of attorney's fees for a finding of an exceptional case of willfulness.

I. Award such other and further relief as the Court deems just and equitable.

#### **VERIFICATION**

I have read the factual allegations contained in the foregoing Complaint and I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, under the laws of the United States of America that these factual allegations are true and correct, and for those allegations that are based upon information and belief, I believe those to be true and correct.

Dated: March 24, 2020

By: /s/Terry Ward, M.H.A.  
Terry Ward, M.H.A.  
(original signature held in trust)



Dated: March 27, 2020

Respectfully submitted,

By:/s/ Louis R. Gigliotti/  
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