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CADES SCHUTTE LLP
A Limited Liability Law Partnership

MARTIN E. HSIA 2954-0
COLIN O. MIWA 2997-0
MEGAN S. JOHNSON 8272-0
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4216
Telephone: (808) 521-9200
Facsimile: (808) 540-5011
E-mail: mhsia@cades.com
E-mail: cmiwa@cades.com
E-mail: mjohnson@cades.com

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 25 2010

at 11 o'clock and 20 min. A.M.
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Attorneys for Plaintiff
NALU KAI INCORPORATED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

NALU KAI INCORPORATED, a
Delaware corporation,

Plaintiff,

v.

MOTION WATER SPORTS, INC.
dba LIQUID FORCE
KITEBOARDING, a Washington
corporation,

Defendant.

CIVIL NO. **C V 10 00099 HG BMK**
(Patent)

**COMPLAINT; EXHIBITS "A"- "B";
DEMAND FOR JURY TRIAL;
SUMMONS**

COMPLAINT

Plaintiff NALU KAI INCORPORATED, a Delaware corporation, for its complaint against Defendant MOTION WATER SPORTS, INC. dba LIQUID FORCE KITEBOARDING, a Washington corporation, alleges and avers as follows:

I. THE PARTIES AND JURISDICTION

1. Plaintiff NALU KAI INCORPORATED (“Nalu Kai”) is a Delaware corporation that is located and doing business at 810 Haiku Road, Suite 380, Haiku, Hawaii 96708.
2. On information and belief, Defendant MOTION WATER SPORTS, INC. dba LIQUID FORCE KITEBOARDING (“Liquid Force”) is a Washington corporation that is located and doing business at 14615 NE 91st Street, Redmond, Washington 98012.
3. This Court has original and exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 28 U.S.C. § 1367(a), in that this is an action relating to patents, and all other claims are related to Plaintiff’s claim for patent infringement and are therefore proper under this Court’s supplemental jurisdiction.
4. This Court has personal jurisdiction over Defendant Liquid Force pursuant to Haw. Rev. Stat. § 634-35 because, on information and belief,

Liquid Force, directly or indirectly, transacts business within this judicial district and/or has committed tortious acts within this judicial district.

5. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b), as all or a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

II. NATURE OF THE CASE

6. This is an action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. §§ 271 and 281, based on Defendant Liquid Force's sale or offering to sell, directly or indirectly, kitesurfing products in this judicial district that infringe on Plaintiff Nalu Kai's patented Invention (as defined below), without the agreement or consent of Plaintiff, causing substantial damage and injury to Plaintiff, who is located and does business in the State of Hawaii.

III. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. On or about May 14, 2003, Nalu Kai, Christopher Carswell Barrs, Donald Lewis Montague and Alexander Pouchkarev filed or caused to be filed with the United States Patent and Trademark Office International Patent Application PCT/US03/15433 entitled "Push Release Loop" (the "International Patent Application") which entered the national stage in the United States as U.S.

Patent Application 10/432,466 entitled “Push Release Loop” (the invention disclosed in such application is herein referred to as the “Invention”).

8. On or about May 13, 2003, May 12, 2003 and May 14, 2003, respectively, Christopher Carswell Barrs, Donald Lewis Montague and Alexander Pouchkarev assigned the full and exclusive right, title, and interest to the Invention to Plaintiff Nalu Kai (the “2003 Assignment”).

9. On or about May 14, 2003, Christopher Carswell Barrs, Donald Lewis Montague and Alexander Pouchkarev caused the 2003 Assignment to be recorded in the United States Patent and Trademark Office.

10. Since the 2003 Assignment, Plaintiff Nalu Kai has been, and continues to be, the owner of all right, title, and interest in and to the Invention.

11. On or about November 20, 2003, the International Patent Application was published under the Patent Cooperation Treaty.

12. On or about January 24, 2006, United States Patent No. 6,988,694 (the “Patent”) issued to Plaintiff Nalu Kai, as assignee. A true and correct copy of the Patent is attached hereto as Exhibit “A” and incorporated herein by reference.

13. The Patent claims priority to United States provisional patent application 60/380,777 (the “PPA”), filed May 14, 2002.

14. On or about August 10, 2006, an ex parte Request for Reexamination of the Patent was filed with the U.S. Patent and Trademark Office.

15. On or about September 9, 2008, the U.S. Patent and Trademark Office issued an Ex Parte Reexamination Certificate (6427th) of the Patent, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. As a result of the reexamination, (a) the patentability of claims 1, 2, 6, 8, 9, and 13 of the Patent was confirmed; (b) the patentability of claim 10 was confirmed, as amended; (c) claim 3 was cancelled; and (d) newly presented claim 14 was added and determined to be patentable.

16. Under 35 U.S.C. § 282, the Patent is presumed valid.

17. On information and belief, Defendant Liquid Force has made, used, offered to sell, sold or imported, kiteboarding products that infringe on the claims of the Patent, either literally or under the doctrine of equivalents, and has thereby infringed said Patent within this judicial district and elsewhere in the United States within the meaning of 35 U.S.C. § 271(a), all of which was done willfully and without the consent of Plaintiff Nalu Kai.

18. On information and belief, Defendant Liquid Force, directly or indirectly, has offered to sell or sold within this judicial district or has imported an apparatus for use in practicing a patented process, and has thereby infringed

Plaintiff's Patent within the meaning of 35 U.S.C. § 271(c), all of which was done willfully and without the consent of Plaintiff Nalu Kai.

19. On information and belief, Defendant Liquid Force is doing business and engaging in the above-stated acts of patent infringement in this judicial district, including but not limited to the direct or indirect sale or offering for sale of kiteboarding products that infringe upon Plaintiff's Patent.

20. On information and belief, Defendant Liquid Force owns and operates a website, www.liquidforcekites.com, which advertises kiteboarding products that infringe upon Plaintiff's Patent and which identifies various dealers in the State of Hawaii, including Hawaiian Water Sports (854 Hahani Street, Kailua, Hawaii 96734), HWS Diamond Head Location (415 Kapahulu Avenue, Honolulu, Hawaii 96815), and Off Da Lip (P.O. Box 26133, Honolulu, Hawaii 96825).

21. On information and belief, Defendant Liquid Force currently distributes, sells, or offers to sell, kiteboarding products that infringe upon Plaintiff's Patent, through retailers located within this judicial district including without limitation Hawaiian Water Sports (854 Hahani Street, Kailua, Hawaii 96734), HWS Diamond Head Location (415 Kapahulu Avenue, Honolulu, Hawaii 96815), and Off Da Lip (P.O. Box 26133, Honolulu, Hawaii 96825).

22. On information and belief, Defendant's infringing products are sold or are offered for sale to residents within this judicial district and elsewhere through its interactive website, www.liquidforcekites.com, which involves the intentional and repeated transmission of computer files over the Internet.

23. On information and belief, Defendant's website at www.liquidforcekites.com displays a video-recording showing and referring to its "center line push release" with "chicken loop", which is a kiteboarding device that performs substantially the same function in substantially the same way to achieve substantially the same result as Plaintiff's patented Invention.

24. On information and belief, Defendant Liquid Force has unlawfully profited from its infringement of Plaintiff Nalu Kai's Patent, and Plaintiff, who is located and does business within this judicial district, has been deprived thereby of rights and profits which would otherwise come to Plaintiff. The infringing activities of Defendant have significantly diminished the commercial value of Plaintiff's Invention and have materially damaged Plaintiff's business. Defendant has thereby caused Plaintiff monetary damage in an amount to be determined, and threatens to continue to cause Plaintiff irreparable damage unless injunctive relief is granted by this Court.

25. As a direct and proximate result of Defendant Liquid Force's conduct, Plaintiff has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. Plaintiff has also been damaged and, until an injunction issues, will continue to be damaged in its business and reputation in an amount yet to be determined. The willful nature of Defendant's infringement entitles Plaintiff to treble damages, as well as its attorneys' fees and litigation costs.

COUNT ONE
Patent Infringement

26. Plaintiff hereby realleges and incorporates the allegations set forth in the preceding paragraphs as though set forth fully herein.

27. On information and belief, Defendant Liquid Force has infringed the Patent by making, using, selling, offering for sale or importing, either directly or indirectly, infringing kiteboarding products covered by the claims of the Patent (and/or an apparatus for use in practicing a patented process), either literally or under the doctrine of equivalents, in this judicial district and elsewhere in the United States, and will continue such infringement unless enjoined by this Court.

28. As a result of Defendant's acts, Plaintiff has been damaged.

29. On information and belief, unless enjoined by this Court, Defendant will continue to infringe the Patent, and Plaintiff will suffer irreparable harm for which there is no adequate remedy at law, and therefore Plaintiff is

entitled to preliminary and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

COUNT TWO
Willful Patent Infringement

30. Plaintiff hereby realleges and incorporates the allegations set forth in the preceding paragraphs as though set forth fully herein.

31. On information and belief, Defendant has willfully infringed the Patent by making, using, selling, offering for sale or importing, either directly or indirectly, infringing products covered by the Patent (and/or an apparatus for use in practicing a patented process), either literally or under the doctrine of equivalents, in this judicial district and elsewhere in the United States, and will continue such infringement unless enjoined by this Court.

32. As a result of Defendant's acts, Plaintiff has been damaged.

33. On information and belief, unless enjoined by this Court, Defendant will continue to infringe the Patent, and Plaintiff will suffer irreparable harm for which there is no adequate remedy at law, and therefore Plaintiff is entitled to preliminary and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

WHEREFORE, Plaintiff respectfully requests entry of judgment in its favor and against Defendant, as follows:

A. A finding that Defendant has, and is, infringing the Patent, which is valid and enforceable;

B. A finding that Defendant's infringement of the Patent was willful;

C. An award against Defendant for the damages suffered by Plaintiff as a result of Defendant's acts of infringement, including (without limitation) a reasonable royalty and prejudgment interest, in an amount to be determined;

D. An order enjoining Defendant, its officers, directors, shareholders, agents, servants, employees, attorneys and all entities and individuals acting in concert or participation with Defendant or on Defendant's behalf, from infringing the Patent in accordance with 35 U.S.C. § 283;


E. Judgment in favor of Plaintiff for damages suffered according to proof, trebled;

F. An award to Plaintiff of its reasonable attorneys' fees, costs and expenses in this action; and

G. Such other and further relief as the Court may deem just and equitable as the circumstances warrant.

DATED: Honolulu, Hawaii, February 25, 2010.

CADES SCHUTTE LLP
A Limited Liability Law Partnership



MARTIN E. HSIA
COLIN O. MIWA
MEGAN S. JOHNSON
Attorneys for Plaintiff
NALU KAI INCORPORATED