

HOLME ROBERTS & OWEN, LLP
Thomas J. Rossa, #2806
Craig Buschmann, #10,696
299 South Main Street, Suite 1800
Salt Lake City, UT 84111-2263
Telephone: (801) 521-5800
Facsimile: (801) 521-9639
Attorneys for Plaintiff Seirus Innovative
Accessories, Inc

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

SEIRUS INNOVATIVE
ACCESSORIES, INC., a Utah corporation,

v.

BULA AMERICA, Inc., a Delaware
corporation, Filmar Corporation, a Canadian
Business entity, and BULA, Inc., a Barbados
corporation,

COMPLAINT

Case No.: 2:08 CV 843

Judge Tena Campbell

For causes of action against Defendant BULA AMERICA, Inc., FILMAR Corporation,
and BULA, Inc., Plaintiff SEIRUS INNOVATIVE ACCESSORIES, INC. hereby alleges as
follows:

1. This is an action for patent infringement under the laws of the United States, 35
U.S.C. §271 *et seq.*; for palming off, passing off and misrepresenting the source of goods, all in
violation 15 U.S.C. § 1125 (a) of the Lanham Act; for contempt of court (e.g., 18 U.S.C. § 401)

for violating the terms of a prior CONSENT DECREE; for breach of prior AGREEMENT of the parties dated December 17, 2004; and for violation of the Utah Unfair Competition Act, U.C.A. §§ 13-5A-102 and 103.

PARTIES

2. Plaintiff Seirus Innovative Accessories, Inc. (“SEIRUS”) is a Utah corporation with a place of business at 3675 W. California Avenue, Salt Lake City, Utah 84104 and with its principal place of business at 13975 Danielson Street, Poway, California 92064.

3. Upon information and belief, defendant BULA AMERICA, Inc. (hereinafter referred to as “BULA USA”), is a business entity owned and/or controlled by BULA CANADA, with a place of business at 16 Arrowhead Court, Dillon, Colorado 80435; and was a foreign corporation with its Colorado authority revoked as of December 14, 2003 and was asserted to be a Delaware corporation with a principal office at 200 Spruce Street, Suite 201, Denver, Colorado 80230, but which is now, upon information and belief, at 16 Arrowhead Court, Dillon, Colorado 80435.

4. Defendant FILMAR Corporation (hereinafter referred to as “BULA CANADA”) is a Canadian business entity with a principal place of business at 5445 De Gaspe, Suite 800, Montreal, Quebec H2T 3B2, Canada.

5. Upon information and belief, defendant BULA, Inc. (hereinafter referred to as “BULA BARBADOS”) is a Barbados business entity with a principal place of business at 5445 De Gaspe, Suite 800, Montreal, Quebec H2T 3B2, Canada.

JURISDICTION AND VENUE

6. This civil action for patent infringement arises under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.* This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

7. This civil action for unfair competition, palming off and passing off and arises under the Lanham Act and, more specifically, under the provisions of 15 U.S.C. § 1125 (a). The court also has jurisdiction under 15 U.S.C. §1121(a) and 28 U.S.C. § 1338 (a) and (b).

8. This is an action for contempt of court and, more particularly, for violation of the CONSENT DECREE of the court dated December 21, 2004. This Court thus has jurisdiction of the parties under at least 28 U.S.C. § 1651 and 18 U.S.C. § 401.

9. This is an action for breach of the AGREEMENT of December 17, 2004 between the parties. In turn, this court has jurisdiction over the parties under 28 U.S.C. § 1367.

10. SEIRUS herein alleges breach of the AGREEMENT of December 17, 2004 by each of the BULA GROUP, separately and together. Pursuant to paragraph 22 of the AGREEMENT, each member of the BULA GROUP affirmatively consented to jurisdiction in Salt Lake City, Utah in connection with disputes relating to breach of the AGREEMENT. Therefore, this court has jurisdiction over the parties and the subject matter of this action by agreement of the parties.

11. BULA BARBADOS has availed itself of the benefits of the laws of the United States and claims trademark rights enforceable in the State of Utah as evidenced by its United States Trademark Registration Number 1,577,358 (the “358 BULA MARK”) for the trademark BULA for goods including “. . . hats, earmuffs, headbands, visors, mittens. . .” with a date of first use of April 1, 1984. BULA BARBADOS recorded the assignment of the ‘358

BULA MARK to itself with the United States Patent and Trademark Office (“PTO”) on July 21, 2004. A copy of information pages regarding the ’358 BULA MARK trademark from the website of the PTO are attached as Exhibit 1. The BULA mark is being used in the state of Utah in connection with the sale of goods that are unlawfully infringing the rights of SEIRUS.

12. Each of the BULA GROUP is transacting business within the State of Utah and is otherwise committing unlawful, unauthorized, and tortious acts of patent infringement; contributory patent infringement and inducement to infringe patents; palming off and passing off and infringement of the trade dress of SEIRUS; as well as acts of unfair competition, thereby causing harm to SEIRUS in the State of Utah. Further, the each of BULA GROUP has consented to jurisdiction in the state of Utah. Therefore, this court has personal jurisdiction over BULA GROUP under Utah's long arm statute, U.C.A. §78-27-24 (1) and (3).

13. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b).

PATENTS IN SUIT

14. SEIRUS is the owner of United States Letters Patent No. 5,214,804 (the “’804 PATENT”) which issued on June 1, 1993 and is titled “PROTECTIVE MASK WITH SCARF.” A copy of the ’804 PATENT is attached as Exhibit 2.

15. SEIRUS is the owner of United States Letters Patent No. 6,272,690 (the “’690 PATENT”) which issued on August 14, 2001 and is titled “HEAD COVERING.” A copy of the ’690 PATENT is attached as Exhibit 3.

TRADE DRESS RIGHTS OF SEIRUS

16. By virtue of the extensive, use, sale and advertising by SEIRUS and others on behalf of SEIRUS, the shape, form and appearance in use and, when presented to customers, (hereinafter the “SEIRUS TRADE DRESS”) of the *MASQUE*TM face protector; the

NEOFLEECE® COMFORT MASQUE™ face protector; the *NEOFLEECE® EXTREME MASQUE™* neck and face protector; the *NEOFLEECE® COMBO SCARF™* face and neck protector; the *WEATHER SHIELD™* face and neck protector; the *COMBO CLAVA®* head, face and neck protector; the *ULTRA CLAVA®* head, face and neck protector; the *MICRO COMBO HEADLINER™* face, head and neck protector; *NEOFLEECE® TNT™ HEADLINER* head, face and neck protector; and the *NEOFLEECE® HEADLINER™* head, face and neck protector (the “SEIRUS PROTECTOR LINE”), are inherently distinctive and have acquired distinctiveness and secondary meaning to signify SEIRUS as the manufacturer and the source of goods. Exhibit 4 is a copy of selected pages of the 2008-09 Catalog of SEIRUS depicting the SEIRUS PROTECTOR LINE.

PRIOR SETTLEMENT AND CONSENT DECREE

17. SEIRUS brought an action in this Court styled SEIRUS INNOVATIVE ACCESSORIES, INC. v. BULA AMERICA, INC. Civil No. 2:03CV00526 (hereinafter the “PRIOR SUIT”). In the PRIOR SUIT, SEIRUS charged BULA USA, *inter alia*, with infringement of the ’804 PATENT and the ’690 PATENT.

18. The PRIOR SUIT was resolved by an AGREEMENT dated December 17, 2004 (hereinafter the “AGREEMENT”) in which BULA USA and its parent, BULA CANADA and a related company, BULA BARBADOS (hereinafter the “BULA GROUP”), were signatories. A copy of the AGREEMENT is attached as Exhibit 5.

19. The PRIOR SUIT was ended when the Court entered a CONSENT DECREE on December 21, 2004 (a copy of which is attached as Exhibit 6) by which BULA USA was enjoined in substance and effect from infringing the ’804 PATENT and the ’690 PATENT. The CONSENT DECREE also expressly adjudicated that both the ’804 PATENT and the ’690

PATENT are not invalid and enforceable, which adjudications are binding upon each of the BULA USA, BULA CANADA, and BULA BARBADOS. BULA USA as well as its related companies, BULA CANADA and BULA BARBADOS, had and have knowledge of the CONSENT DECREE.

CONTEMPT OF COURT

20. BULA USA with knowledge of the CONSENT DECREE violated the letter and/or the spirit of the CONSENT DECREE and thus is in contempt of this court by advertising for sale, and, upon information and belief, selling, products in the United States including the Kids Neoprene Gator (Model No. 8KUGAT); the Kids Neoprene Neck Mask (Model No. 8KUNECK); the Kids Neoprene Fitted Balaclava (Model No. 8KUFIT); the Neoprene Fitted Balaclava (Model No. 8OUFIT); the Neoprene Gator (Model No. 8OUGAT); and the Neoprene Neck Mask (Model No. 8OUNECK), all of which, upon information and belief, infringe the '804 PATENT and the '690 PATENT and which are substantially the same as the *OU NECK* and the *OU LINE* products that BULA USA was and is enjoined from selling under the CONSENT DECREE.

21. BULA CANADA with knowledge of the CONSENT DECREE has directed, induced, aided, and abetted BULA USA to violate the letter and/or the spirit of the CONSENT DECREE by causing and urging BULA USA to advertise for sale and, upon information and belief, sell, products in the United States including the Kids Neoprene Gator (Model No. 8KUGAT); the Kids Neoprene Neck Mask (Model No. 8KUNECK); the Kids Neoprene Fitted Balaclava (Model No. 8KUFIT); the Neoprene Fitted Balaclava (Model No. 8OUFIT); the Neoprene Gator (Model No. 8OUGAT); and, the Neoprene Neck Mask (Model No. 8OUNECK), all of which, upon information and belief, infringe the '804 PATENT and the

'690 PATENT and which are substantially the same as the *OU NECK* and the *OU LINE* products that BULA USA was and is enjoined from selling under the CONSENT DECREE; and BULA CANADA is thus in contempt of this Court.

PATENT INFRINGEMENT

22. BULA USA is offering for sale and, upon information and belief, has sold in Utah and elsewhere throughout the United States under the registered trademark BULA the following products each of which is asserted to fall within the scope of at least one claim of the '804 PATENT: the Kids Neoprene Face Mask (Model No. 8KGUAR); the Kids Neoprene Gator (Model No. 8KUGAT); the Kids Neoprene Neck Mask (Model No. 8KUNECK); the Neoprene Gator (Model No. 8OUGAT); the Neoprene Face Mask (Model No. 8OUGUAR); and, the Neoprene Neck Mask (Model No. 8OUNECK) (collectively the '804 ACCUSED PRODUCTS). The '804 ACCUSED PRODUCTS are depicted in excerpts of BULA GROUP's catalog attached as Exhibit 7 and in excerpts of its website attached as Exhibit 8. Upon further information and belief, each of the '804 ACCUSED PRODUCTS infringes one or more claims of the '804 PATENT. Therefore, BULA GROUP is committing acts of unlawful patent infringement within the State of Utah and elsewhere throughout the United States.

23. BULA USA is inducing others to infringe and contributorily infringing, literally or under the doctrine of equivalents by using, offering for sale and, upon information and belief, selling in Utah and elsewhere throughout the United States under its registered trademark BULA the following products each of which is asserted to fall within the scope of the claim of the '690 PATENT: the Kids Neoprene Gator/Balaclava (Model No. 8KUCLAV); the Kids Neoprene Fitted Balaclava (Model No. 8KUFIT); the Neoprene Gator/Balaclava (Model No. 8OUCLAV); the Neoprene Fitted Balaclava (Model No. 8OUFIT) (collectively the

'690 ACCUSED PRODUCTS) as depicted in excerpts of BULA GROUP's catalog attached as Exhibit 7 and in excerpts of its website attached as Exhibit 8. Upon further information and belief, each of the '690 ACCUSED PRODUCTS infringe the claim of the '690 PATENT. Therefore, BULA GROUP is committing acts of unlawful patent infringement within the State of Utah and elsewhere throughout the United States.

24. BULA CANADA and BULA BARBADOS, separately and together, are contributing to and inducing, and aiding and abetting BULA USA to infringe the '804 PATENT and the '690 PATENT, all in violation of 35 U.S.C. § 271(b) and (c);.

TRADE DRESS INFRINGEMENT

25. BULA USA is unlawfully palming off, passing off and misrepresenting the source of the following products: the Kids Neoprene Face Mask (Model No. 8KGUAR); the Kids Neoprene Gator (Model No. 8KUGAT); the Kids Neoprene Neck Mask (Model No. 8KUNECK); the Neoprene Gator (Model No. 8OUGAT); the Neoprene Face Mask (Model No. 8OUGUAR); and, the Neoprene Neck Mask (Model No. 8OUNECK); the Kids Neoprene Gator/Balaclava (Model No. 8KUCLAV); the Kids Neoprene Fitted Balaclava (Model No. 8KUFIT); the Neoprene Gator/Balaclava (Model No. 8OUCLAV); the Neoprene Fitted Balaclava (Model No. 8OUFIT); and the Seamless Face Mask (Model No. 8OUTHER) (collectively the ACCUSED TRADE DRESS PRODUCTS), all as depicted in excerpts of BULA GROUP's catalog attached as Exhibit 7 and excerpts of its website attached as Exhibit 8. The ACCUSED TRADE DRESS PRODUCTS are being sold in Utah and elsewhere throughout the United States and, therefore, BULA USA is unlawfully committing acts of unfair competition within the state of Utah and elsewhere throughout the United States in

violation of 15 U.S.C. § 1125 (a) so that this Court has jurisdiction over BULA USA under 28 U.S.C. § 1338 (b)

26. BULA CANADA and BULA BARBADOS are contributing to and inducing, and aiding and abetting BULA USA to palm off and pass off and infringe the SEIRUS TRADE DRESS and, in turn, unfairly compete in violation of 15 U.S.C. § 1125(a); and, in turn, this Court has Jurisdiction over BULA CANADA and BULA BARBADOS and this action under 28 U.S.C. § 1338 (a) and (b).

BREACH OF CONTRACT

27. Paragraph 1(b) of the AGREEMENT obligated each of the BULA GROUP to make reports none of which were made within the ten days specified and only one of which was ever made.

28. Paragraph 4(a) of the AGREEMENT obligated each of the BULA GROUP to mark all of its catalogs to indicate that certain products are not available. The catalog of the BULA GROUP (Exhibit 7) is not so marked, and thus the BULA GROUP is in breach of paragraph 4(a) of the AGREEMENT

29. Paragraph 4(b) of the AGREEMENT obligates each of the BULA GROUP to not present a certain product in side profile, and it did so on page 67 of Exhibit 7. Thus, the BULA GROUP is in breach of paragraph 4(b) of the AGREEMENT.

30. Paragraph 5 of the AGREEMENT obligates each of the BULA GROUP to eliminate the *OU SCARF* and *OU LINE* products from its new or replacement catalogs. However, they appear, among other places, on pages 65 and 67 of Exhibit 7. The BULA GROUP is thus in breach of paragraph 5 of the AGREEMENT.

31. Paragraph 6 of the AGREEMENT obligates each of the BULA GROUP to present products commercially in a manner other than in side profile. The BULA GROUP has shown products in a side profile on pages 65 and 67 of Exhibit 7. The BULA GROUP is thus in breach of paragraph 6 of the AGREEMENT.

32. Paragraph 8 of the AGREEMENT prohibited the BULA GROUP from selling its inventory in 2004 if it did not meet certain conditions. The BULA GROUP nonetheless sold its inventory in breach of paragraph 8 of the AGREEMENT and also without authority and license so that such is a contempt of this court in contravention of the CONSENT DECREE.

33. Under paragraph 12 of the AGREEMENT, the BULA GROUP agreed to not make and sell within Canada any products that fall within the scope of the claims of Canadian Letters Patent 2,121,867. Upon information and belief, the BULA GROUP has done so in breach of paragraph 12 of the AGREEMENT.

34. Under paragraph 17 of the AGREEMENT, the BULA GROUP is obligated to mark certain products with patent numbers and, upon information and belief, the BULA GROUP has not marked any products as required by paragraph 17 of the AGREEMENT and, in turn, is in breach thereof.

COUNT ONE
(CONTEMPT OF COURT)

For a cause of action against each of BULA GROUP, SEIRUS further alleges as follows:

35. The allegations of paragraphs 1 through 15 and 17 through 21 are incorporated by this reference the same as if each were fully set forth herein.

36. Each of the BULA GROUP is in unlawful and unauthorized contempt of this Court by offering for sale and, upon information and belief, by selling the 8OUFIT, 8KUFIT,

the 8OUGAT, the 8KUGAT, the 8OUNECK, and the 8KUNECK that are substantially the same as the *OU NECK* and *OU LINE* products, all in direct violation of the injunctions set forth in the CONSENT DECREE.

37. SEIRUS is entitled to recover all of the profits of the BULA GROUP in connection with the sale of any product sold by each of the BULA GROUP that is deemed to be in violation of any restraint imposed by the CONSENT DECREE.

38. SEIRUS is entitled to recover its damages associated with the sale of any product sold by each of the BULA GROUP that is deemed to be in violation of any restraint imposed by the CONSENT DECREE.

39. SEIRUS shall be awarded all of its costs and attorneys' fees attendant hereto

40. Each member of the BULA GROUP shall pay a fine to the court in an amount to be set by the Court which SEIRUS asserts should be an amount no less than \$100,000.00 for each member of the BULA GROUP. All fines paid shall be awarded to SEIRUS.

41. All inventory of products deemed to be in violation of the restraints and injunctions of the CONSENT DECREE, including, specifically, the 8OUFIT, 8KUFIT, the 8OUGAT, the 8KUGAT, the 8OUNECK, and the 8KUNECK, shall be surrendered to the court for destruction.

42. Each member of the BULA GROUP shall be enjoined from further acts of infringing any one or more claims of the '804 PATENT for the remaining term thereof without license or authority.

43. Each member of the BULA GROUP shall be enjoined from further acts of infringing the claim of the '690 PATENT for the remaining term thereof without license or authority.

COUNT TWO
('804 PATENT INFRINGEMENT)
(U.S. Patent 5,214,804)

44. The allegations of paragraphs 1 through 14, 17 through 19, and 22 are incorporated by this reference the same as if each were fully set forth herein.

45. Upon information and belief, BULA GROUP has been and is now unlawfully infringing, literally or under the doctrine of equivalents, one or more claims of the '804 PATENT by using, offering to sell, advertising for sale, and selling the '804 ACCUSED PRODUCTS in the State of Utah and throughout the United States as follows:

PRODUCT	PRODUCT NUMBER
Kids Neoprene Gator	8KUGAT
Kids Neoprene Face Mask	8KGUAR
Kids Neoprene Neck Mask	8KUNECK
Neoprene Gator	8OUGAT
Neoprene Face Mask	8OUGUAR
Neoprene Neck Mask	8OUNECK

46. SEIRUS is marking its products that fall within the scope of at least one of the claims of the '804 PATENT as required by 35 U.S.C. § 287; and BULA GROUP has otherwise had knowledge and notice of the '804 PATENT, including through the AGREEMENT, and that its activities constitute knowing and willful patent infringement.

47. Upon information and belief, SEIRUS has suffered and continues to suffer lost sales and, in turn, damages as a direct result of the unlawful infringements of the '804 PATENT by BULA GROUP. Under 35 U.S.C. § 284, SEIRUS is entitled to damages to be established at trial or upon an accounting adequate to compensate for the infringement, including lost profits, but not less than a reasonable royalty.

48. On information and belief, BULA GROUP's infringement of the '804 PATENT is willful and wanton and with an intent to harm SEIRUS or in reckless disregard for the rights of SEIRUS. Therefore, this is an exceptional case and SEIRUS is therefore entitled to enhanced and increased damages under 35 U.S.C. § 284.

49. This is an exceptional case under 35 U.S.C. § 285 entitling SEIRUS to its reasonable attorneys' fees.

50. SEIRUS has been and continues to be damaged by the unlawful infringing activities of BULA GROUP and will be irreparably harmed unless the unlawful infringing activities of each of the BULA GROUP are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. § 283.

**COUNT THREE
('690 PATENT INFRINGEMENT)
(U.S. Patent 6,272,690)**

51. The allegations of paragraphs 1 through 13, 15, 17 through 19, and 23 are incorporated by this reference the same as if each were fully set forth herein.

52. Upon information and belief, BULA GROUP has been and is now unlawfully inducing others to infringe and contributorily infringing, literally or under the doctrine of equivalents, the claim of the '690 PATENT by using, offering to sell, advertising for sale and selling the '690 ACCUSED PRODUCTS in the State of Utah and throughout the United States as follows:

PRODUCT	PRODUCT NUMBER
Kids Neoprene Gator/Balaclava	8KUCLAV
Kids Neoprene Fitted Balaclava	8KUFIT
Neoprene Gator/Balaclava	8OUCLAV
Neoprene Fitted Balaclava	8OUFIT

53. SEIRUS is marking its products that fall within the scope of the '690 PATENT as required by 35 U.S.C. § 287; and BULA GROUP has otherwise had knowledge and notice of the '690 PATENT, including through the AGREEMENT, and that its activities constitute knowing and willful patent infringement.

54. Upon information and belief, SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful infringement of the '690 PATENT by BULA GROUP. Under 35 U.S.C. § 284, SEIRUS is entitled to damages to be established at trial or upon an accounting adequate to compensate for the infringement, including lost profits, but not less than a reasonable royalty.

55. On information and belief, BULA GROUP's infringement of the '690 PATENT is willful and wanton and with an intent to harm SEIRUS or in reckless disregard for the rights of SEIRUS. Therefore, this is an exceptional case; and SEIRUS is in turn entitled to enhanced damages under 35 U.S.C. § 284.

56. This is an exceptional case under 35 U.S.C. § 285 entitling SEIRUS to its reasonable attorneys' fees.

57. SEIRUS has been and continues to be damaged by the unlawful infringing activities of BULA GROUP and will be irreparably harmed unless the unlawful infringing activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. § 283.

COUNT FOUR
(STATUTORY UNFAIR COMPETITION)
(Lanham Act)

58. The allegations of paragraphs 1 through 13 and 16, 25, and 26 are incorporated by this reference the same as if each were fully set forth herein.

59. SEIRUS manufactures and sells, *inter alia*, the SEIRUS PROTECTOR LINE and by virtue of the extensive, use, sale and advertising by SEIRUS, the associated SEIRUS TRADE DRESS has become inherently distinctive and has acquired distinctiveness, secondary meaning, and sufficient fame to signify SEIRUS as the manufacturer and originator.

60. Upon information and belief, BULA GROUP has unlawfully and without license or right copied, imitated, and otherwise created a collection of ACCUSED TRADE DRESS PRODUCTS all of which emulate, imitate, palm off as, pass off as and copy the SEIRUS TRADE DRESS of the SEIRUS PROTECTOR LINE to thereby emulate, imitate, palm off as, and pass off the ACCUSED TRADE DRESS PRODUCTS as a member of the family of products that are the SEIRUS FACE PROTECTOR LINE.

61. The activities of BULA GROUP in advertising, selling and offering to sell each of the ACCUSED TRADE DRESS PRODUCTS, separately and together, is likely to cause confusion, mistake, and deception as to the source and origin thereof so that purchasers thereof and others will likely be confused and believe the ACCUSED TRADE DRESS PRODUCTS are part of the SEIRUS FACE PROTECTOR LINE. In turn, BULA GROUP is unfairly competing and misrepresenting its products to be those of SEIRUS in violation of 15 U.S.C. § 1125(a).

62. The activities of BULA GROUP in advertising for sale, offering for sale, and selling the ACCUSED TRADE DRESS PRODUCTS constitute unlawful and tortious unfair competition, palming off and passing off, and misrepresentation as to the source of goods in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a)(1).

63. SEIRUS believes it has suffered and continues to suffer lost sales and, in turn, damages as a direct result of the unlawful and unfair competition of BULA GROUP. Under 15

U.S.C. § 1117, SEIRUS is entitled to damages, including lost profits and the costs of this action, to be shown at trial or upon an accounting.

64. On information and belief, BULA GROUP's unfair competition in violation of 15 U.S.C. § 1125 (a) (1) is willful and wanton and with an intent to harm SEIRUS or in reckless disregard for the rights of SEIRUS such that SEIRUS is entitled to triple damages under 15 U.S.C. § 1117(b).

65. Under 15 U.S.C. § 1117(b), SEIRUS is entitled to recover its attorneys' fees.

66. SEIRUS has been and continues to be damaged by the unlawful unfair competition of BULA GROUP and will be irreparably harmed unless the unlawful infringing activities are permanently enjoined by this Court under the provisions of 15 U.S.C. § 1116. SEIRUS is entitled to an injunction enjoining and restraining each of the BULA GROUP from further acts of unfair competition.

COUNT FIVE
(BREACH OF CONTRACT)

67. The allegations of paragraphs 1 through 19 and 27 through 34 are incorporated by this reference the same as if each were fully set forth herein.

68. Each of BULA GROUP has unlawfully breached the AGREEMENT.

69. SEIRUS is entitled to all damages to be shown at trial arising from the various breaches.

70. Each of BULA GROUP has willfully breached the AGREEMENT or proceeded with reckless disregard for the rights of SEIRUS and thus SEIRUS is entitled to recover increased damages plus all of its attorneys' fees arising from this action.

71. SEIRUS will be irreparably harmed by the continued breach of the AGREEMENT and thus SEIRUS is entitled to an injunction prohibiting each of BULA GROUP from further breaches and an order directing BULA GROUP to comply and perform.

COUNT SIX
**(VIOLATION OF UTAH UNFAIR COMPETITION ACT,
UTAH CODE ANN. §§ 13-5A-102 AND 103)**

72. The allegations of paragraphs 1 through 13 and 16, 25, and 26 are incorporated by this reference the same as if each were fully set forth herein.

73. The activities of BULA GROUP in advertising, selling, and offering to sell each of the ACCUSED TRADE DRESS PRODUCTS, separately and together, are likely to cause confusion, mistake, and deception as to the source and origin thereof so that purchasers thereof and others will be confused and will likely be confused and believe the ACCUSED TRADE DRESS PRODUCTS are the products of SEIRUS.

74. The activities of BULA GROUP in advertising for sale, offering for sale, and selling constitute unfair competition under U.C.A. § 13-5a-102(4)(a) and in violation of U.C.A. § 13-5a-103(1).

75. SEIRUS has suffered and continues to suffer lost sales and in turn damages as a direct result of the unlawful and unfair competition of BULA GROUP. SEIRUS is thereby entitled to damages including lost profits to be shown at trial under U.C.A. § 13-5a-103(1)(b) .

76. On information and belief, BULA GROUP's unfair competition in violation of the Utah Unfair Competition Act is willful and wanton and with an intent to harm SEIRUS or in reckless disregard for the rights of SEIRUS. SEIRUS is thus entitled to punitive and exemplary damages in the amount of no less than \$200,000.00 to be set by the court under U.C.A. § 13-5a-103(1) (b)(iii).

77. SEIRUS is entitled to recover its attorneys' fees and costs under U.C.A. § 13-5a-103(1)(b)(ii).

78. SEIRUS has been and continues to be damaged by the unlawful unfair competition of BULA GROUP and will be irreparably harmed unless the unlawful infringing activities are permanently enjoined by this Court.

JURY DEMAND

79. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, SEIRUS requests a jury trial of all issues that may be tried to a jury in this action.

REQUESTED RELIEF

SEIRUS respectfully prays and requests that the Court enter a judgment in favor of SEIRUS and against each of BULA GROUP, jointly and severally, as follows:

A. Jurisdiction

1. The Court has jurisdiction over the causes set forth herein and the parties hereto.
2. SEIRUS is the owner of the '804 PATENT and the '690 PATENT and has the right to sue to recover damages for infringement of each.
3. Venue is in this court.

B. Contempt of Court

1. Each of BULA GROUP is in contempt of court for violating the CONSENT DECREE.
2. SEIRUS recover all of the profits of BULA GROUP in connection with the sale of any product sold by each of BULA GROUP that is deemed to be in violation of any restraint imposed by the CONSENT DECREE.

3. SEIRUS recover its damages associated with the sale of any product sold by each of BULA GROUP that is deemed to be in violation of any restraint imposed by the CONSENT DECREE.

4. SEIRUS shall be awarded all of its costs and attorneys' fees attendant hereto.

5. Each member of BULA GROUP shall pay a fine to the court in an amount to be set by the Court in an amount no less than \$100,000.00 for each member of BULA GROUP, which fines are to be awarded to SEIRUS.

6. Each member of BULA GROUP be enjoined from further acts of infringing any one or more claims of the '804 PATENT for the remaining term thereof without license or authority.

7. Each member of BULA GROUP be enjoined from further acts of infringing the claim of the '690 PATENT for the remaining term thereof without license or authority.

8. All inventory of products deemed to be in violation of the restraints and injunctions of the CONSENT DECREE, including, specifically, the 8OUFIT, 8KUFIT, the 8OUGAT, the 8KUGAT, the 8OUNECK, and the 8KUNECK, shall be surrendered to the court for destruction.

C. '804 Patent Infringement

1. The '804 PATENT is not invalid in law and is enforceable.

2. Each of BULA GROUP has infringed, contributorily infringed and/or induced the infringement, of at least one claim of the '804 PATENT.

3. SEIRUS recover damages, jointly and severally, against each of BULA GROUP under 35 U.S.C. § 284 in an amount to be determined at trial or by accounting for the lost

profits, but no less than a reasonable royalty, on all sales of each the '804 ACCUSED PRODUCTS, plus pre-judgment interest and post-judgment interest.

4. The damages awarded pursuant to the preceding paragraph 3 be increased to three times the amount awarded because this is an exceptional case under 35 U.S.C. § 284.

5. This is an exceptional case and SEIRUS be awarded all the attorneys' fees in connection with this matter under 35 U.S.C. § 285.

6. Defendants, their officers, agents, servants, employees and those persons in active concert or participation with any of them, be further permanently enjoined from further acts of infringement for the remaining life of the '804 PATENT under 35 U.S.C. § 283.

D. '690 Patent Infringement

1. The '690 PATENT is not invalid in law and is enforceable.

2. Each of BULA GROUP has infringed, contributorily infringed and/or induced the infringement of the claim of the '690 PATENT.

3. SEIRUS is entitled to recover damages, jointly and severally, against each of BULA GROUP under 35 U.S.C. § 284 in an amount to be determined at trial or by accounting for the lost profits, but no less than a reasonable royalty, on all sales of each '690 ACCUSED PRODUCTS, plus pre-judgment interest and post-judgment interest.

4. The damages be awarded pursuant to the preceding paragraph 3 shall be increased to three times the amount awarded because this is an exceptional case under 35 U.S.C. § 284.

5. This is an exceptional case and SEIRUS be awarded all its actual attorneys' fees in connection with this matter under 35 U.S.C. § 285.

6. BULA GROUP, its officers, agents, servants, employees and those persons in active concert or participation with any of them, be further permanently enjoined from further acts of infringement for the remaining life of the '690 Patent under 35 U.S.C. §283.

E. Lanham Act

1. SEIRUS be awarded damages under 15 U.S.C. § 1117 for all of its lost profits, the profits of each of BULA GROUP, and the costs of this action.

2. The damages awarded under the preceding paragraph 1 are to be increased to three times the amount awarded under 15 U.S.C. § 1117(b).

3. Under 15 U.S.C. § 1117(b), SEIRUS is to recover its attorneys' fees.

4. BULA GROUP, its officers, agents, servants, employees and those persons in active concert or participation with any of them, be permanently enjoined from further acts of unfair competition in violation of 15 U.S.C. § 1125(a) (1).

F. Breach of Contract

1. SEIRUS is entitled to all damages to be shown at trial arising from the various breaches.

2. Because each of BULA GROUP has willfully breached the AGREEMENT or proceeded with reckless disregard for the rights of SEIRUS, SEIRUS is entitled to recover no less than \$100,000 in exemplary and punitive damages, plus all of its attorneys' fees arising from this action.

3. Because SEIRUS will be irreparably harmed by the continued breach of the AGREEMENT, SEIRUS is entitled to an injunction prohibiting each of BULA GROUP from further breaches.

4. SEIRUS is entitled to an order directing each of BULA GROUP to comply and perform all the terms of the AGREEMENT.

G. Other

1. To the extent not otherwise awarded, all costs of this action.
2. Such other and further relief as this court may deem just and proper.

DATED: this 31st day of October, 2008.

HOLME ROBERTS & OWEN LLP

By /s/ Thomas J. Rossa
Craig Buschmann
Thomas J. Rossa
*Attorneys for Seirus Innovative
Accessories, Inc.*

Address of Plaintiff:

SEIRUS INNOVATIVE ACCESSORIES, INC.
3675 W. California Avenue
Salt Lake City, UT 84104

and

13975 Danielson Street
Poway, California 92064.