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ATTORNEYS FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Daniel D. Evans,
Plaintiff,
v.
Michaels of Oregon Co.,
Defendant.

No: _____

**COMPLAINT
(JURY DEMAND)**

Plaintiff Daniel D. Evans (hereinafter "Evans"), for his Complaint against Defendant Michaels of Oregon Co. (hereinafter "Defendant"), alleges as follows:

SUMMARY OF CLAIMS

This is a civil action for infringement of United States Patent Numbers 5,661,920 and 5,850,706 in which damages and injunctive and other equitable relief are sought.

PARTIES

1. Plaintiff Evans is an individual residing in Phoenix, Arizona.
2. Defendant Michaels of Oregon is an Oregon corporation with its principal place of business in Oregon City, Oregon.

JURISDICTION AND VENUE

3. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338 because this action, at least in part, is for patent infringement and arises

1 under the Patent Laws of the United States, Title 35 of the United States Code.
 2 Jurisdiction also exists pursuant to 28 U.S.C. § 1332(a) because complete diversity of
 3 citizenship exists between the parties and the amount in controversy exceeds the sum or
 4 value of \$75,000, exclusive of interest and costs.

5 4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c), and
 6 1400(b) because, *inter alia*, one or more of the acts of infringement complained of took
 7 place in this district and have had or will have had effect in this judicial district.
 8 Furthermore, Defendant has established sufficient contacts with the State of Arizona to
 9 subject itself to jurisdiction and venue in this district.

10 **GENERAL AVERMENTS**

11 **Background**

12 5. Evans invented various scope covers for protecting scope for firearms.

13 6. To protect his investment in the scope cover technology, Evans filed
 14 patent applications relating to the scope cover technology.

15 7. On September 2, 1997, United States Patent No. 5,661,920 (“the ‘920
 16 Patent”) was duly and legally issued to Daniel D. Evans. A true and correct copy of the
 17 ‘920 Patent is attached as Exhibit A. Evans owns all substantial rights in the ‘920 Patent.

18 8. On December 22, 1998, United States Patent No. 5,850,706 (the “‘706
 19 Patent”) was duly and legally issued to Daniel D. Evans. A true and correct copy of the
 20 ‘706 Patent is attached as Exhibit B. Evans owns all substantial rights in the ‘706 Patent.

21 **Defendant and the Infringing Activity**

22 9. Defendant has sold, made, imported, and/or used infringing scope cover
 23 products (hereinafter referred to as the “Infringing Scope Cover Products”).

24 10. Defendant sells the Infringing Scope Cover Products in a wide range of
 25 locations. Defendant seeks generally to sell the Infringing Scope Cover Products to
 26 retailers, distributors, dealers, and/or the general public.

27 11. Defendant has been aware of the infringing nature of Defendant’s
 28 activities since at least as early January 24, 2001.

12. The activities of the Defendant with regard to its sales, importation, manufacture and/or use of the Infringing Scope Cover Products, are and have been without authorization from Evans.

COUNT I
PATENT INFRINGEMENT

13. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

14. Evans repeats and realleges each and every allegation contained in the above Paragraphs of this Complaint as if fully set forth again here.

15. Defendant has infringed the '920 and '760 Patents under 35 U.S.C. § 271 *et seq.* Upon information and belief, this infringement was intentional and willful.

16. Defendant continues to infringe the '920 and '760 Patents under 35 U.S.C. § 271 *et seq.* Upon information and belief, these ongoing acts of infringement are intentional and willful.

17. Defendant, acting through and by its respective officers and owners, has, without authority, consent, right or license, and in direct infringement of the '920 and '760 Patents, imported, made, used, and/or sold the Infringing Scope Cover Products in this country, and such Infringing Scope Cover Products have been sold and used in this jurisdiction and district. Defendant's infringing conduct is intentional, willful, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT II
INJUNCTIVE RELIEF

18. Evans repeats and realleges each and every allegation contained in the above Paragraphs of this Complaint as if fully set forth again here.

19. Defendant's wrongful conduct has caused and threatens to cause irreparable harm to Evans that is incapable of being adequately determined and adequately remedied by money damages.

20. Evans will continue to suffer irreparable harm unless Defendant is enjoined from continuing improper acts, including but not limited to, wrongfully

1 infringing the '920 and '760 Patents. Congress, in recognition of this fact, has enacted 35
 2 U.S.C. § 283, expressly authorizing injunctive relief against patent infringement in order
 3 to preserve the federally mandated monopoly created by federal law for the benefit of the
 4 patent holder.

5 21. The issuance of injunctive relief will not disserve the public interest. To
 6 the contrary, granting the injunctive relief sought will serve the express policy of protecting
 7 federally created patent rights

8 22. Accordingly, Evans is entitled to a preliminary injunction and a permanent
 9 injunction, prohibiting Defendant from making, using, selling, offering for sale, importing
 10 and offering to import any and all Infringing Scope Cover Products.

11 23. A preliminary injunction is appropriate in this matter because: (a) Plaintiff
 12 has a likelihood of success on the merits; (b) Plaintiff faces immediate and irreparable
 13 harm due to Defendant's acts and conduct; (c) there is a special urgency warranting the
 14 grant of injunctive relief; and (d) the balance of hardship tips in favor of Plaintiff.

15 DAMAGES

16 24. Evans has suffered, is suffering, and will continue to suffer irreparable
 17 harm and injury as a result of Defendant's aforesaid activities. Defendant will, unless
 18 restrained and enjoined, continue to act in the unlawful manner complained of herein, all
 19 to Evans' irreparable damage. Evans' remedy at law is not adequate to compensate it for
 20 the injuries suffered and threatened.

21 25. By reason of Defendant's acts complained of herein, Evans has suffered
 22 monetary damages in an amount that has not yet been determined, but upon information
 23 and belief, is substantially in excess of the sum or value of \$75,000, exclusive of interest
 24 and costs.

25 26. Pursuant to 35 U.S.C. § 284, Evans is entitled to: an accounting by
 26 Defendant of all revenues received through the commercial exploitation of the Infringing
 27 Scope Cover Products; the imposition of a constructive trust for the benefit of Evans
 28

upon all such funds in the custody or control of Defendant; and to such other damages to which Evans may be determined to be entitled.

REQUEST FOR JURY TRIAL

27. Evans hereby demands that this cause be tried by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Evans prays as follows:

A. That judgment be entered that Defendant has infringed United States Letters Patent Nos. 5,661,920 and 5,850,706.

B. That Defendant, its agents, officers, directors, employees, servants, attorneys, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with it, be enjoined and restrained, immediately and preliminarily, during the pendency of this action and permanently thereafter from:

(1) making, using, selling and/or importing the Infringing Scope Cover Products, to include any colorable imitation thereof; and

(2) otherwise infringing upon Evans' patents.

C. That this Court order Defendant, and its officers, agents, servants and employees, to deliver up to this Court, and to permit the seizure by Officers appointed by the Court of all articles and materials infringing upon the rights of Evans, and particularly, without limitation, all products or other merchandise which embodies or includes the Infringing Scope Cover Products, and to be delivered up for destruction on the issuance of a final Order in this action, including all Infringing Scope Cover Products, and all equipment, molds, patterns, and other matter for reproducing such Infringing Scope Cover Products, and Defendant submit in writing, under oath, a description of all actions each has taken to comply with this portion of the Order.

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D. That Defendant be required to file with the Court within thirty (30) days after entry of final judgment of this cause a written statement under oath setting forth the manner in which Defendant has complied with the final judgment.

E. That Defendant be required to pay to Evans such damages as Evans has sustained in consequence of Defendant's infringement of the '920 and '760 Patents.

F. That, in the alternative, a reasonable royalty be awarded to Evans pursuant to 35. U.S.C. § 284.

G. That Defendant be ordered to account for and pay over to Evans all its respective gains, profits and advantages derived from the infringement of Evans' Patents or such damages as to the Court shall appear proper within the Patent Laws.

H. That Defendant be ordered to pay to Evans the costs of this action, prejudgment interest, and post-judgment interest

I. Due inter alia to Defendant's willful infringement of Evans' patent rights, that Defendant be ordered to pay Evans enhanced damages (e.g., treble damages).

J. Due inter alia to Defendant's willful and flagrant disregard of Evans' patent rights, that this case be found to be exceptional and that Defendant be ordered to pay Evans' reasonable attorneys' fees and experts' fees.

K. That Evans have such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this _____ day of May, 2006.

ISRAEL & GERITY, PLLC

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