

**FILED**

4-14-03

Date

Time

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

**CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA**

CORRECT CRAFT, INC., a Florida corporation,

Plaintiff,

**CASE NO. 6:02-CV-1017-ORL-28JGG**

vs.

X-IT SPORTS, INC., d/b/a PHAT BUDDE,

Defendant.

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**AMENDED COMPLAINT  
JURY TRIAL AND INJUNCTIVE RELIEF REQUESTED**

COMES NOW Plaintiff Correct Craft, Inc. ("Plaintiff") through its undersigned counsel, and for its Amended Complaint against Defendant X-It Sports, Inc., d/b/a Phat Budde, ("Defendant") states:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is a Florida corporation with its principal place of business within this Judicial District and Division .
2. Upon information and belief, Defendant is a corporation organized and doing business under the laws of a State other than the State of Florida, and which has its principal place of business in Riverside, California.
3. Upon information and belief, Defendant offers for sale throughout the United States, including within this Judicial District and Division, wakeboard towers

32

which infringe Plaintiff's United States Patents RE37,823, 6,374,762, and/or 6,192,819. Upon further information, these activities are carried out by Defendant through an internet web site, through offers for sale and sales through advertisements distributed throughout the United States, through offers for sale at trade shows throughout the United States and/or direct sales to customers throughout the United States.

4. As is also set out in greater detail below in Count III, this Complaint asserts a claim against Defendant for violations of 15 U.S.C. § 1125(a), via the interstate distribution throughout the United States of information falsely asserting that Defendant is licensed under Plaintiff's U.S. Patents No. RE37,823, 6,374,762, and/or 6,192,819.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a), and has *in personam* jurisdiction over the parties. Venue properly lies in this Judicial District and Division under 28 U.S.C. § 1391(c).

#### **STATEMENT OF FACTS**

6. "Wakeboarding" is a recreational boating activity in which a participant standing upon a wakeboard is pulled behind a recreational tow boat and attempts to perform tricks across the wake of the boat.

7. On September 3, 2002, the United States Commissioner of Patents and Trademarks issued United States Patent RE37,823 to Plaintiff for "Water Sport Towing Apparatus and Method". A true and correct copy of the '823 Patent is

appended as Exhibit A.

8. The '823 Patent has been assigned to Plaintiff.

9. On April 23, 2002, the United States Commissioner of Patents and Trademarks issued United States Patent 6,374,762. A true and correct copy of the '762 Patent is appended as Exhibit B.

10. The '762 Patent has been assigned to Plaintiff.

11. On February 27, 2001, the United States Commissioner of Patents and Trademarks issued United States Patent No. 6,192,819. A true and correct copy of the '819 Patent is appended hereto as Exhibit C.

12. The '819 Patent has been assigned to Plaintiff.

13. While Defendant executed a license under Plaintiff's '823 and '762, Defendant has failed to comply with licensing terms, conditions, and requirements and does not now have a license under these Patents.

**COUNT ONE**  
**Action For Infringement of the '823 Patent**

14. This Count One is an action by Plaintiff against Defendant to obtain monetary damages and injunctive relief for Defendant's infringement of the '823 Patent.

15. Plaintiff here restates and incorporates by reference into this Count One the allegations of ¶¶1-13 above, inclusive.

16. Upon information and belief, Defendant has offered for sale, sold and/or distributed tower products designed specifically for wakeboard use, and

which infringe Plaintiff's '823 Patent.

17. The infringing activities of Defendant as outlined in this Count One have been engaged in without authorization by Plaintiff.

18. Plaintiff is entitled to compensatory damages and injunctive relief for Defendant's infringing activities outlined in this Count One.

19. Upon information and belief, the activities of Defendant outlined in this Count I have been engaged in without a justifiable belief by Defendant that all of the relevant claims of the '823 Patent are invalid or have not been infringed. Therefore, Plaintiff is entitled to an award of exemplary damages, attorneys' fees and costs of this action.

## **COUNT TWO**

### **Action against Defendant for Infringements of the '762 Patent**

20. This Count Two is an action by Plaintiff against Defendant to obtain monetary damages and injunctive relief for Defendant's infringement of the '762 Patent.

21. Plaintiff here restates and incorporates by reference into this Count Two the allegations of ¶¶1-13 above, inclusive.

22. Upon information and belief, Defendant has offered for sale, sold and/or distributed tower products designed specifically for wakeboard use, and which infringe the '762 Patent.

23. Defendant's infringing activities outlined in this Count Two have been engaged in without authorization by Plaintiff.

24. Plaintiff is entitled to compensatory damages and injunctive relief for the infringing activities outlined in this Count Two.

25. Upon information and belief, the activities of Defendant outlined in this Count Two have been engaged in without a justifiable belief by Defendant that all of the relevant claims of the '762 Patent are invalid or are not infringed. Therefore, Plaintiff is entitled to an award of exemplary damages, attorneys' fees and costs of this action.

**COUNT THREE**  
**Action against Defendant for Violations of 15 U.S.C. §1125(a)**

26. This Count Three is an action by Plaintiff against Defendant to obtain monetary damages and injunctive relief for Defendant's violations of 15 U.S.C. §1125(a).

27. Plaintiff here restates and incorporates by reference into this Count Three the allegations of ¶¶1-13 above, inclusive.

28. Upon information and belief, Defendant is advertising, offering for sale, selling and/or distributing wakeboard towers using the internet web site pages and price lists appended hereto as Exhibit D.

29. While Defendant does not enjoy a license under any Correct Craft intellectual property, Defendant's advertisement containing a price list, shown in Exhibit D, improperly suggests that Defendant has a license under Correct Craft's Patents.

30. The suggestion of its status as a licensee of Plaintiff's Patents set forth

in Defendant's advertising, Exhibit D, constitutes a false designation, a false or misleading description of fact, or a false or misleading representation of fact which is likely to cause confusion, or to cause mistake, or to deceive potential purchasers of Defendant's product as to an affiliation, connection, association or license with Plaintiff, or that Defendant's wakeboard towers have been approved or licensed by Plaintiff.

31. The advertising of Defendant outlined in this Count Three constitutes violations of 15 U.S.C. § 1125(a).

32. Plaintiff is entitled to compensatory damages and injunctive relief for the violations of 15 U.S.C. § 1125(a) outlined in this Count Three.

33. Upon information and belief, the activities of Defendant outlined in this Count Three have been engaged in without a justifiable factual basis, so as to entitle Plaintiff to an award of exemplary damages, attorneys' fees and costs of this action.

**COUNT FOUR**  
**Breach of Contract**

34. This Count Four is an action by Plaintiff against Defendant for breach of contract.

35. Plaintiff here restates and incorporates by reference into this Count Three the allegations of ¶¶1-13 above, inclusive.

36. On or about July 1, 2001, Plaintiff and Defendant entered into a Non-Exclusive License Under Wakeboard Patents, a true and correct copy of which is

attached hereto as Exhibit E.

37. Pursuant to the terms of the License, Defendant was required to pay minimum annual royalties and provide Plaintiff with monthly royalty payments and reports.

38. Defendant breached the terms of the License Agreement.

39. Defendant elected to terminate the License Agreement as Defendant attempted to re-negotiate material terms

40. All conditions precedent to bringing this claim have been met, are excused or waived.

41. Defendant is contractually bound to cease manufacturing, using, selling or offering for sale licensed tower units, but has failed to adhere to the contractual terms.

42. Plaintiff is entitled to an accounting of any and all towers allegedly sold before, during, and after the license agreement was in effect.

43. Plaintiff is entitled to an injunction to enforce the terms of the license agreement.

44. Plaintiff has suffered substantial monetary damages as a result of the breach of the License Agreement.

#### **COUNT FIVE**

#### **Action against Defendant for Infringements of '819 Patent**

45. This Count Five is an action by Plaintiff against Defendant to obtain monetary damages and injunctive relief for Defendant's infringement of the '819

Patent.

46. Plaintiff here restates and incorporates by reference into this Count Five the allegations of ¶¶1-13 above.

47. Upon information and belief, Defendant has offered for sale, sold and/or distributed tower products designed specifically for wakeboard use, and which infringe the '819 Patent.

48. Defendant's infringing activities outlined in this Count Five have been engaged without authorization by Plaintiff.

49. Plaintiff is entitled to compensatory damages and injunctive relief for the infringing activities outlined in this Count Five.

50. Upon information and belief, the activities of Defendant outlined in this Count Five have been engaged in without a justifiable belief by Defendant that all of the relevant claims of the '819 Patent are invalid or are not infringed.

Therefore, Plaintiff is entitled to an award of exemplary damages, attorneys' fees and costs in this action.

**DEMAND FOR JURY TRIAL**

Plaintiff requests a jury trial for all matters triable to a jury.


**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Honorable Court enter such preliminary and final Orders and Judgments as are necessary to provide Plaintiff with the following relief:



- a. Under Counts One and Two, a preliminary and then permanent injunction enjoining Defendant from infringing one or all of U.S. Patents RE37,823, 6,374,762 and/or 6,192,819;
- b. Under Counts One, Two and Five, an award of damages under 35 U.S.C. § 284 in an amount adequate to compensate for Defendant's infringements but in no event less than a reasonable royalty for the use made by Defendant of the inventions set forth in Plaintiff's Patents.
- c. Under Counts One, Two and Five, an award of exemplary damages, attorneys' fees and costs under 35 U.S.C. § 285.
- d. Under Count Three, a preliminary and then a permanent injunction enjoining Defendant from violating 15 U.S.C. §1125(a) by fraudulently holding itself out as licensed under Plaintiff's Patents.
- e. An award of damages under 35 U.S.C. § 1117 in an amount adequate to compensate for Defendant's wrongful conduct.
- f. Under Count Three, an award of attorneys' fees and costs under 15 U.S.C. §1117.
- g. Under Count Four, an accounting of sums due Plaintiff, monetary damages, injunctive relief pursuant to the terms of the parties' License Agreement and attorneys fees.
- h. Such other relief as the Court deems appropriate.

Date: January 27, 2003

  
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**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served by hand delivery on this 27<sup>th</sup> day of January, 2003, to the following Attorneys for Defendant:

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**ADDITIONAL  
ATTACHMENTS  
NOT  
SCANNED**

**\*\* REFER TO COURT FILE \*\***