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Attorneys for Plaintiff  
ZODIAC POOL SYSTEMS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ZODIAC POOL SYSTEMS, INC., a  
Delaware corporation,

Plaintiff,

v.

FIBROPOOL CO. LLC, a Mississippi  
limited liability company,

Defendant.

**'11CV2206 WQHNLS**

**COMPLAINT FOR:**

**(1) PATENT INFRINGEMENT (35  
U.S.C. §§ 1 *et seq.*, including 35  
U.S.C. § 271);**

**(2) INFRINGEMENT OF  
FEDERALLY REGISTERED  
TRADEMARKS (Lanham Act, 15  
U.S.C. § 1114);**

**(3) FALSE DESIGNATION OF  
ORIGIN AND UNFAIR  
COMPETITION UNDER  
FEDERAL LAW (Lanham Act, 15  
U.S.C. § 1125(a)); and**

**(4) CALIFORNIA UNFAIR  
COMPETITION (Cal. Bus. & Prof.  
Code § 17200, *et seq.*)**

**DEMAND FOR JURY TRIAL**

Plaintiff Zodiac Pool Systems, Inc., a Delaware corporation ("Zodiac"),  
hereby brings this complaint for patent and trademark infringement against  
Defendant Fibropool Co. LLC ("Fibropool"), a Mississippi limited liability  
company, and alleges as follows:

**PARTIES**

1. Plaintiff Zodiac is a Delaware corporation with its principal place of

1 business at 2620 Commerce Way, Vista, California 92081.

2 2. On information and belief, Defendant Fibropool is a Mississippi  
3 limited liability company with its principal place of business at 408 St. John St.,  
4 Bay Saint Louis, MS 39520. On information and belief, Fibropool's mailing  
5 address is listed as P.O. Box 2425, Bay Saint Louis, MS 39521.

6 3. On information and belief, Fibropool conducts its business throughout  
7 the United States and in this judicial district by offering for sale and selling  
8 swimming pool and spa products, including but not limited to the "Hovervac" and  
9 the "Vinnvac."

#### 10 JURISDICTION AND VENUE

11 4. This civil action is for patent infringement under the Patent Laws of  
12 the United States of America, 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. § 271;  
13 infringement of U.S. trademark registrations under 15 U.S.C. § 1114; false  
14 designation of origin under 15 U.S.C. § 1125(a); and unfair competition under  
15 California common law and California Business and Professions Code § 17200, *et*  
16 *seq.*

17 5. This Court has subject matter jurisdiction over this lawsuit pursuant to  
18 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, and pursuant to the Court's  
19 pendent jurisdiction under 28 U.S.C. § 1367.

20 6. This Court has personal jurisdiction over Fibropool. Among other  
21 reasons, Fibropool, through its advertising and sales to customers located in  
22 California and in this judicial district, is present in this judicial district, transacts  
23 business in this judicial district, and has committed and continues to commit acts of  
24 patent infringement and trademark infringement in this judicial district upon which  
25 the claims asserted in this lawsuit are based, and has harmed and continues to harm  
26 Zodiac in this judicial district by, among other things, using, selling, and offering  
27 for sale infringement swimming pool cleaner products, including but not limited to,  
28 the Hovervac and Vinnvac.

1           7. Venue is proper in this judicial district under the provisions of 28  
2 U.S.C. § 1391(b) and (c) and 1400(b) because, among other reasons, Fibropool is  
3 subject to personal jurisdiction and has committed acts of patent infringement and  
4 trademark infringement in this district.

5                                   **GENERAL ALLEGATIONS**

6           8. Zodiac is engaged in the business of designing, innovating, and  
7 manufacturing automatic swimming pool cleaners and related pool accessories.  
8 Zodiac distributes these products in this judicial district, in the state of California,  
9 and throughout the United States.

10           9. On June 6, 1995, United States Patent No. 5,421,054 (the "'054  
11 patent") was issued by the United States Patent and Trademark Office ("USPTO")  
12 for "Swimming Pool Cleaner Discs." A copy of the '054 patent is attached as  
13 Exhibit A.

14           10. Zodiac is the owner by assignment of the '054 patent and has the right  
15 to bring an action for infringement of the '054 patent.

16           11. On November 14, 1995, United States Patent No. 5,465,443 (the "'443  
17 patent") was issued by the USPTO for "Swimming Pool Cleaner Discs and  
18 Assemblies." A copy of the '443 patent is attached as Exhibit B.

19           12. Zodiac is the owner by assignment of the '443 patent and has the right  
20 to bring an action for infringement of the '443 patent.

21           13. On September 26, 2000, United States Patent No. 6,122,794 (the "'794  
22 patent") was issued by the USPTO for "Swimming Pool Cleaner Component." A  
23 copy of the '794 patent is attached as Exhibit C.

24           14. Zodiac is the owner by assignment of the '794 patent and has the right  
25 to bring an action for infringement of the '794 patent.

26           15. Among the pool cleaners designed, manufactured, marketed, and sold  
27 by Zodiac are the Polaris 480, 380, 360, 280, 180, and ATV automatic swimming  
28 pool cleaners.

1           16. Prior to the acts of Fibropool complained of herein, and for over 30  
2 years, Zodiac has marketed, distributed, advertised, and sold Polaris pool cleaners  
3 using a particular product configuration and trade dress that is unique in appearance  
4 and readily recognized among customers and members of the trade. Zodiac's  
5 unique and distinctive product configuration and trade dress are embodied in the  
6 Polaris 480, 380, 360, 280, 180, and ATV pool cleaners.

7           17. Zodiac's Polaris 480, 380, 360, 280, 180, and ATV pool cleaners have  
8 become and now are widely known and recognized by their distinctive appearance,  
9 which distinctive appearance is closely associated with said pool cleaners as a  
10 means by which they are known and their source or origin is identified.

11           18. By reason of the aforesaid, Zodiac's trade dress has become and is  
12 now Zodiac's trademark.

13           19. Zodiac is the registrant and exclusive owner of U.S. Trademark  
14 Registration No. 1,725,031 for a distinctive product configuration, granted October  
15 20, 1992, listed on the Principal Register of the U.S. Patent and Trademark Office,  
16 and used in connection with goods described as "automatic swimming pool  
17 cleaners designed to travel on and clean submerged surfaces of pool by a  
18 combination of jet action and vacuuming." A copy of the registration is attached  
19 hereto as Exhibit D.

20           20. Zodiac is the registrant and exclusive owner of U.S. Trademark  
21 Registration No. 2,141,759 for a distinctive product configuration, granted March  
22 10, 1998, listed on the Principal Register of the U.S. Patent and Trademark Office,  
23 and used in connection with goods described as "automatic swimming pool  
24 cleaner." A copy of the registration is attached hereto as Exhibit E.

25           21. Zodiac is the registrant and exclusive owner of U.S. Trademark  
26 Registration No. 2,846,565 for a distinctive product configuration, granted May 25,  
27 2004, listed on the Principal Register of the U.S. Patent and Trademark Office, and  
28 used in connection with goods described as "mechanical pool cleaning machines."

1 A copy of the registration is attached hereto as Exhibit F.

2 22. Zodiac is the registrant and exclusive owner of U.S. Trademark  
3 Registration No. 3,034,128 for a distinctive product configuration, granted  
4 December 27, 2005, listed on the Principal Register of the U.S. Patent and  
5 Trademark Office, and used in connection with goods described as “automatic  
6 swimming pool cleaners.” A copy of the registration is attached hereto as Exhibit  
7 G.

8 23. Fibropool is engaged in the business of designing and manufacturing  
9 automatic swimming pool cleaners and related pool accessories, and markets and  
10 distributes its products in this judicial district, in the state of California, and  
11 throughout the United States through certain channels, such as Fibropool’s website,  
12 found at [www.fibropool.com](http://www.fibropool.com).

13 24. Fibropool distributes advertising and promotional materials regarding  
14 its Hovervac and Vinnvac pool cleaners and related products in the regular course  
15 of business to existing and potential customers in this judicial district, in the state of  
16 California, and in interstate commerce.

17 25. Fibropool has transacted and is doing business within this judicial  
18 district by continuously directing advertising and sales of its Hovervac and Vinnvac  
19 to existing and potential customers who reside in this judicial district.

20 26. Fibropool markets and advertises, for purposes of distributing and  
21 selling, a pool cleaner under the name Vinnvac, using a particular product  
22 configuration and trade dress in the regular course of business in interstate  
23 commerce.

24 27. Fibropool’s Vinnvac pool cleaner is a reproduction, counterfeit, copy,  
25 and/or colorable imitation of Zodiac’s Polaris 480, 380, 360, 280, 180, and ATV  
26 pool cleaners. Because of such similarities, the product configuration and trade  
27 dress used by Fibropool for its Vinnvac pool cleaners is likely to cause confusion,  
28 mistake, and deception relative to Zodiac’s pool cleaners, the source of Zodiac’s

1 goods, and the distinctive product configuration and trade dress used by Zodiac.

2 28. Existing and potential customers, as well as members of the trade, will  
3 likely believe there is a sponsorship, affiliation, licensing, and/or other business  
4 relationship between Zodiac and Fibropool relative to pool cleaners and related  
5 goods and/or services.

6 29. On or about April 5, 2011, Zodiac sent Fibropool a cease and desist  
7 letter notifying Fibropool of its infringement of the '054, '443, and '794 patents  
8 through its manufacture and/or sale of its automatic swimming pool cleaner, the  
9 Hovervac. A copy of the cease and desist letter is attached hereto as Exhibit H.

10 30. On or about April 20, 2011, Yavuz Yavuzer, President of Fibropool  
11 ("Yavuzer"), and on behalf of Fibropool, sent email correspondence to Zodiac  
12 stating that Fibropool was researching Zodiac's patent infringement claims.  
13 Fibropool also stated that promotion, importation, offering, use and sales of the  
14 cleaner was stopped in the meantime. Fibropool further stated that the webmaster  
15 would place a note on Fibropool's website about Zodiac's patent infringement  
16 claims for the Hovervac. A copy of the email correspondence is attached hereto as  
17 Exhibit I.

18 31. On or about April 27, 2011, Yavuzer sent email correspondence to  
19 Zodiac stating that Fibropool's Hovervac does infringe Zodiac's patents, and that  
20 Fibropool has stopped the sale of the Hovervac cleaners. Fibropool further stated  
21 that an entry has been made on Fibropool's website stating the unavailability of the  
22 Hovervac. Fibropool also agreed to abstain from buying, selling, importing and  
23 promoting the Hovervac. *See* Exhibit I.

24 32. On or about May 3, 2011, Fibropool agreed to and executed the terms  
25 set forth in the April 5, 2011 cease and desist letter from Zodiac. A copy of the  
26 cover e-mail with the executed cease and desist letter is attached hereto as Exhibit J.

27 33. On information and belief, Fibropool is currently making, importing,  
28 offering to sell, selling, causing to be supplied, using and/or causing to be used the



1 Hovervac and Vinnvac.

2 **COUNT 1**

3 **PATENT INFRINGEMENT OF THE '054 PATENT BY FIBROPOOL**

4 **(35 U.S.C. § 271)**

5 34. Zodiac restates and incorporates by reference each of the allegations of  
6 Paragraphs 1 through 33 as if fully set forth herein.

7 35. Fibropool has infringed and continues to infringe -- directly,  
8 contributorily, and/or by active inducement -- one or more claims of the '054  
9 patent, by making, importing, offering to sell, selling, causing to be supplied, using  
10 and/or causing to be used, devices and/or systems and methods that embody or  
11 practice the inventions claimed in the '054 patent. Fibropool's products that  
12 embody or practice the inventions claimed in the '054 patent. Fibropool's products  
13 that embody or practice the inventions claimed in the '054 patent include the  
14 Hovervac and/or other swimming pool cleaner products since June 6, 1995.

15 36. On information and belief, Fibropool's infringement of the '054 patent  
16 has been knowing and willful.

17 37. Fibropool's infringement of the '054 patent has injured and continues  
18 to injure Zodiac, and will cause irreparable harm unless Zodiac's infringement is  
19 enjoined.

20 **COUNT 2**

21 **PATENT INFRINGEMENT OF THE '443 PATENT BY FIBROPOOL**

22 **(35 U.S.C. § 271)**

23 38. Zodiac restates and incorporates by reference each of the allegations of  
24 Paragraphs 1 through 37 as if fully set forth herein.

25 39. Fibropool has infringed and continues to infringe -- directly,  
26 contributorily, and/or by active inducement -- one or more claims of the '443  
27 patent, by making, importing, offering to sell, selling, causing to be supplied, using  
28 and/or causing to be used, devices and/or systems and methods that embody or

1 practice the inventions claimed in the '443 patent. Fibropool's products that  
2 embody or practice the inventions claimed in the '443 patent. Fibropool's products  
3 that embody or practice the inventions claimed in the '443 patent include the  
4 Hovervac and/or other swimming pool cleaner products since November 14, 1995.

5 40. On information and belief, Fibropool's infringement of the '443 patent  
6 has been knowing and willful.

7 41. Fibropool's infringement of the '443 patent has injured and continues  
8 to injure Zodiac, and will cause irreparable harm unless Zodiac's infringement is  
9 enjoined.

10 **COUNT 3**

11 **PATENT INFRINGEMENT OF THE '794 PATENT BY FIBROPOOL**

12 **(35 U.S.C. § 271)**

13 42. Zodiac restates and incorporates by reference each of the allegations of  
14 Paragraphs 1 through 41 as if fully set forth herein.

15 43. Fibropool has infringed and continues to infringe -- directly,  
16 contributorily, and/or by active inducement -- one or more claims of the '794  
17 patent, by making, importing, offering to sell, selling, causing to be supplied, using  
18 and/or causing to be used, devices and/or systems and methods that embody or  
19 practice the inventions claimed in the '794 patent. Fibropool's products that  
20 embody or practice the inventions claimed in the '794 patent. Fibropool's products  
21 that embody or practice the inventions claimed in the '794 patent include the  
22 Hovervac and/or other swimming pool cleaner products since September 26, 2000.

23 44. On information and belief, Fibropool's infringement of the '794 patent  
24 has been knowing and willful.

25 45. Fibropool's infringement of the '794 patent has injured and continues  
26 to injure Zodiac, and will cause irreparable harm unless Zodiac's infringement is  
27 enjoined.



**COUNT 4**

**INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARKS**

**(LANHAM ACT, 15 U.S.C. § 1114)**

46. Zodiac incorporates by reference the allegations of Paragraphs 1 through 45 as if fully set forth herein.

47. Past, present, and future commercial usage by Fibropool of the product configuration of its Vinnvac, as complained of herein, constitutes infringement of Zodiac's U.S. Trademark Registration No. 1,725,031, Registration No. 2,141,759, Registration No. 2,846,565, Registration No. 3,034,128, and related rights under U.S. trademark laws.

48. By reason of the above actions, Zodiac has suffered and will continue to suffer irreparable injury to its rights and suffer substantial loss of goodwill and reputation unless and until Fibropool is restrained from continuing its wrongful acts, and Zodiac has no adequate remedy at law.

49. By reason of the above actions, Zodiac has suffered monetary damages in an amount to be determined at trial.

50. By reason of the above actions, Zodiac is entitled to the full range of relief under the provisions of the Lanham Act and the U.S. laws relating to trademarks and unfair competition pursuant to 15 U.S.C. §§ 1114, 1116-1118.

**COUNT 5**

**FALSE DESIGNATION OF ORIGIN & UNFAIR COMPETITION UNDER**

**FEDERAL LAW**

**(LANHAM ACT, 15 U.S.C. § 1125(a))**

51. Zodiac incorporates by reference the allegations of Paragraphs 1 through 50 as if fully set forth herein.

52. The product configuration and trade dress used by Zodiac for its Polaris pool cleaners is a designation of origin, is a trademark, identifies Zodiac as the exclusive source, and distinguishes Zodiac's goods in the marketplace.

53. By displaying and using the product configuration and trade dress of its Vinnvac, which is confusingly similar to Zodiac's trade dress, Fibropool has falsely designated the origin of its pool cleaners, in violation of 15 U.S.C. § 1125(a).

54. By using the above-described false designations of origin, Fibropool has willfully passed off its pool cleaners and encouraged and induced third parties and others to pass off and substitute Fibropool's goods as Zodiac's goods, in violation of 15 U.S.C. § 1125(a).

55. The use of the above-described false designations of origin constitutes unfair competition pursuant to 15 U.S.C. § 1125(a) because the use of Zodiac's trade dress is likely to cause confusion, mistake, and deception among existing and potential customers, as well as members of the trade.

56. By reason of the above actions, Zodiac has suffered and will continue to suffer irreparable injury to its rights and suffer substantial loss of goodwill and reputation unless and until Fibropool is restrained from continuing its wrongful acts, and Zodiac has no adequate remedy at law.

57. By reason of the above actions, Zodiac has suffered monetary damages in an amount to be determined at trial.

58. By reason of the above actions, Zodiac is entitled to the full range of relief under the provisions of the Lanham Act and the U.S. laws relating to trademarks and unfair competition pursuant to 15 U.S.C. §§ 1125(a), 1116-1118.

## **COUNT 6**

### **CALIFORNIA UNFAIR COMPETITION**

#### **(CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200, *et seq.*)**

59. Zodiac incorporates by reference the allegations of Paragraphs 1 through 58 as if fully set forth herein.

60. Fibropool's above-described conduct constitutes unfair competition under the common law and the statutory laws of the State of California under

1 California Business and Professions Code § 17200, *et seq.*

2 61. By reason of the above actions, Zodiac has suffered and will continue  
3 to suffer irreparable injury to its rights and suffer substantial loss of goodwill and  
4 reputation unless and until Fibropool is restrained from continuing its wrongful  
5 acts, and Zodiac has no adequate remedy at law.

6 62. By reason of the above actions, Zodiac has suffered monetary damages  
7 in an amount to be determined at trial.

8 63. Pursuant to California Business and Professions Code § 17203, Zodiac  
9 is entitled to preliminary and permanent injunctive relief ordering Fibropool to  
10 cease this unfair competition, as well as disgorgement of all of Fibropool's profits  
11 associated with this unfair competition.

#### 12 **PRAYER FOR RELIEF**

13 WHEREFORE, Zodiac respectfully requests the following relief:

14 A. A declaration that Fibropool has infringed the '054, '443, and '794  
15 patents;

16 B. A declaration that Fibropool's infringement has been and is willful;

17 C. That Fibropool be adjudged to have infringed Zodiac's federally  
18 registered trademarks, Registration No. 1,725,031, Registration No. 2,141,759,  
19 Registration No. 2,846,565, and Registration No. 3,034,128, in violation of 15  
20 U.S.C. § 1114;

21 D. That Fibropool be adjudged to have violated the provisions of 15  
22 U.S.C. § 1125(a) in competing unfairly with Zodiac, by using a false designation of  
23 origin in the copying of the appearance and trade dress of Zodiac's automatic pool  
24 cleaners;

25 E. That Fibropool be adjudged to have unfairly competed with Zodiac in  
26 violation of the common law and statutory law of the State of California under  
27 California Business and Professions Code § 17200, *et seq.*

1 F. Preliminary and permanent injunctions pursuant to 15 U.S.C. § 1116,  
2 prohibiting Fibropool, its officers, directors, agents, principals, divisions,  
3 representatives, servants, employees, associates, subsidiaries, affiliates, attorneys,  
4 successors and assigns, and all persons acting by, through, under or in active  
5 concert or in participation with or controlled, either directly or indirectly, by any of  
6 them, from violating Zodiac's rights by way of:

- 7 1. Infringing directly or indirectly, inducing others to infringe,  
8 and/or contributing to the infringement of the '054, '443, and '794  
9 patents;
- 10 2. Using the product configuration and trade dress of the Vinnvac  
11 for or in connection with selling, marketing, advertising, promoting,  
12 and/or distributing pool cleaners and related products and/or  
13 services.
- 14 3. Using photographs, illustrations and other depictions of  
15 Zodiac's product configuration, trade dress, or commercial products  
16 for or in connection with selling, marketing, advertising, promoting,  
17 and/or distributing pool cleaners and related products and/or  
18 services.
- 19 4. Using any name, mark, designation, logo, slogan, product  
20 configuration, trade dress, or other material for or in connection  
21 with selling, marketing, advertising, promoting, and/or distributing  
22 pool cleaners and related products and/or services, which is likely to  
23 cause confusion, mistake, or deception as to the source relative to  
24 any of Zodiac's names, marks, designations, logos, slogans, product  
25 configurations, or trade dress, including Zodiac's product  
26 configurations and trade dress and its federal trademark  
27 registrations.
- 28 5. Passing off its goods and/or services as Zodiac's.

1           6.     Practicing any conduct aimed at or likely to result in diverting  
2                 business intended for Zodiac or injuring Zodiac's goodwill and  
3                 business reputation by way of imitation, misrepresentation, false  
4                 statements, advertising, fraud, and/or deception.

5           G.     An order from this Court requiring Fibropool to file with the Court and  
6                 serve on Zodiac within thirty (30) days after entry of the Injunction, a report in  
7                 writing under oath setting forth in detail the manner and form in which Defendant  
8                 has complied with the injunction;

9           H.     An order from this Court requiring Fibropool to mail notice letters at  
10                its expense to all distributors, dealers, accounts, salesmen, employees, jobbers, and  
11                suppliers, informing them that Fibropool has committed trademark and trade dress  
12                infringement and unfair competition against Zodiac and that it has no affiliation,  
13                connection, or other business relationship with Zodiac; requesting that they return  
14                to Fibropool for full credit or refund all Fibropool pool cleaners using the infringing  
15                product configuration and/or trade dress;

16          I.     An order from this Court requiring Fibropool to surrender to Zodiac  
17                for destruction all advertising, products, pool cleaners, labeling, packaging, sales  
18                literature, promotional literature, owner's manuals, catalogs, displays, and  
19                marketing materials within its possession or control which use or display the  
20                product configuration and/or trade dress used for Fibropool's Vinnvac pool cleaners  
21                pursuant to 15 U.S.C. § 1118 ;

22          J.     An accounting for all profits derived by Fibropool and its subsidiaries  
23                and affiliates from their unlawful acts;

24          K.     That Fibropool account for and pay Zodiac the damages necessary to  
25                compensate it for Fibropool's infringement of the '054, '443, and '794 patents  
26                pursuant to 35 U.S.C. § 284;

27          L.     An award to Zodiac of enhanced damages for the willful infringement  
28                of the '054, '443, and '794 patents pursuant to 35 U.S.C. § 284;

M. An award to Zodiac of its attorneys' fees, costs, expert witness fees, and expenses incurred by Zodiac in connection with this action under all appropriate statutes, including without limitation pursuant to 35 U.S.C. § 285;

N. An award of such monetary remedies in an amount sufficient to compensate Zodiac for losses it has sustained as a consequence of Fibropool's unlawful acts pursuant to 15 U.S.C. § 1117;

O. That the Court declare this to be an exceptional case and award Zodiac its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

P. An award of treble damages or other enhanced monetary remedies to Zodiac pursuant to 15 U.S.C. § 1117;

Q. Prejudgment and post-judgment interest; and

R. For any such further relief as the Court may deem just and appropriate.

**JURY DEMAND**

Zodiac hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: September 22, 2011

McDERMOTT WILL & EMERY LLP  
DANIEL R. FOSTER  
MANDY H. KIM

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