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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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NALU KAI INCORPORATED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

NALU KAI INCORPORATED,
Plaintiff,

v.

RIDE BEST, LLC dba BEST
KITEBOARDING,
Defendant.

CIVIL NO. **CV08 00549**
(Patent) **HG KSC**

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

COMPLAINT

Plaintiff NALU KAI INCORPORATED, a Delaware corporation, for its complaint against Defendant RIDE BEST, LLC dba. BEST KITEBOARDING, a Delaware limited liability company, 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 RIDE BEST, LLC dba. BEST KITEBOARDING (“Best”) is a Delaware limited liability company that is located and doing business at 1405 Poinsettia Drive, Suite 10, Delray Beach, Florida 33444.

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. Venue in this judicial district is proper in this Court 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

5. 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 Best’s continuing sales of kitesurfing products in this judicial district that infringe

on Plaintiff Nalu Kai's patented Invention, without the agreement or consent of Plaintiff.

III. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. 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 state 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").

7. 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").

8. 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.

9. 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.

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

11. 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.

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

13. 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.

14. 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.

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

16. On information and belief, Defendant Best 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.

17. On information and belief, Defendant Best 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.

18. On information and belief, Defendant Best 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.

19. On information and belief, one of Defendant's retailers through which it has sold and continues to sell kiteboarding products that infringe upon Plaintiff's Patent, is Hawaiian Island Surf & Sport located in Kahului, Maui.

20. On information and belief, Defendant Best also owns and operates an interactive website, www.bestkiteboarding.com, which allows Defendant to enter into contracts to sell its infringing products to residents within

this judicial district and elsewhere, and which involves the intentional and repeated transmission of computer files over the Internet.

21. On information and belief, Defendant Best has unlawfully profited from its infringement of Plaintiff Nalu Kai's Patent, and Plaintiff, who 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.

22. As a direct and proximate result of Defendant Best'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.

23. Pursuant to 35 U.S.C. § 154(d), quoted below, Plaintiff is entitled to obtain a reasonable royalty from Defendant calculated from the

International Publication Date of the International Patent Application to the date of issuance of the Patent.

(d) PROVISIONAL RIGHTS.-

(1) IN GENERAL.- In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b), or in the case of an international application filed under the treaty defined in section 351(a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued-

(A) (i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or (ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.- The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.- The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought

not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS-

(A) EFFECTIVE DATE.- The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of an international application designating the United States shall commence on the date of publication under the treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, on the date on which the Patent and Trademark Office receives a translation of the publication in the English language.

(B) COPIES.- The Director may require the applicant to provide a copy of the international application and a translation thereof.

COUNT ONE
Patent Infringement

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

25. On information and belief, Defendant Best has infringed the Patent by making, 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.

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

27. 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

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

29. 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 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.

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

31. 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 Defendants 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, December 5, 2008.

CADES SCHUTTE LLP
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