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9 Attorneys for Plaintiff Reddy Ice Corporation

10
11 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

12 Reddy Ice Corporation
a Nevada corporation,

13 Plaintiff,

14 vs.

15 Schur Marketing and Technologies
U.S.A. Inc., d/b/a Aqua Fill,
16 a California corporation,

17 Defendant.

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Civil Action No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT
(JURY TRIAL DEMANDED)**

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19 Plaintiff Reddy Ice Corporation (“Reddy Ice”) alleges the following in support of
20 its Complaint for Patent Infringement against Defendant Schur Marketing and
21 Technologies U.S.A. Inc., d/b/a Aqua Fill (“Aqua Fill”).
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THE PARTIES

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1. Reddy Ice is a Nevada corporation whose principal place of business is 8750 N. Central Expressway, Suite 1800, Dallas, Texas, 75231.

2. Reddy Ice manufactures and distributes packaged ice in the United States. It has an extensive network of 58 ice manufacturing plants and 67 distribution centers. Reddy Ice manufactures and distributes hundreds of tons of ice every day from its Arizona plants in Lake Havasu City, Page, Yuma, and Phoenix. Reddy Ice also distributes ice from four additional Arizona distribution centers in Kingman, Show Low, Prescott, and Tucson. Reddy Ice has and continues to employ hundreds of people at its facilities in Arizona.

3. In addition to its manufacturing plants, Reddy Ice also markets its proprietary and patented Ice Factory technology that allows it to manufacture ice at a customer's location. The Ice Factory is a standalone ice-making system that can be placed at a customer's business location, producing, packaging, and displaying the packaged ice product 24 hours a day. Reddy Ice has several thousand Ice Factory installations in retail establishments throughout the country including over a hundred in Arizona.

4. On information and belief, Schur Marketing and Technologies U.S.A. Inc. is a California corporation doing business as Aqua Fill. Aqua Fill's principal place of business is 572 Airport Road, Oceanside, California, 92058.

1 5. On information and belief, Aqua Fill is a joint venture between Robert G.
2 Miller and the Danish company Schur Technology a/s, a wholly owned subsidiary of
3 Schur International a/s.

4 6. On information and belief, Robert G. Miller is the CEO and majority
5 stakeholder of Aqua Fill. On information and belief, Robert G. Miller is a former
6 director and employee of a predecessor Reddy Ice. As a director, Robert G. Miller had
7 access and extensive knowledge of the business operations, including the Ice Factory
8 business, of the company now known as Reddy Ice.

9 7. On information and belief, Aqua Fill recently began manufacturing (or
10 having manufactured) and marketing a standalone ice-making system (“Ice Machine”)
11 the produces, packages, and displays packaged ice product at a customer’s business
12 location.

13 **NATURE OF THE ACTION**

14 8. This action is for patent infringement.

15 9. Aqua Fill has infringed and continues to infringe, contributes to the
16 infringement of, or actively induces others to infringe Reddy Ice’s U.S. Patent No.
17 5,109,651 (the “651 patent”).

18 **JURISDICTION AND VENUE**

19 10. This action for patent infringement arises under the laws of the United
20 States, including 35 U.S.C. § 101 et seq. This Court has subject matter jurisdiction over
21 this action under 28 U.S.C. §§ 1331 and 1338 (a).
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1 11. This Court has personal jurisdiction over Aqua Fill because Aqua Fill
2 conducts business in the State of Arizona and has infringed, contributed to the
3 infringement of, actively induced others to infringe, continues to infringe, continues to
4 contribute to the infringement of, or continues to actively induce others to infringe the
5 '651 patent as alleged below.

6 12. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400, because,
7 inter alia, Aqua Fill markets, offers, sells, or uses infringing products in this judicial
8 district.

9 **FACTUAL BACKGROUND**

10 13. Reddy Ice leads the packaged ice industry in innovation and development.
11 Reddy Ice owns several U.S. patents for inventions related to packaged ice
12 manufacturing.

13 14. U.S. Patent App. No. 07/593,046 was filed on October 5, 1990 and duly
14 and legally issued as U.S. Patent No. 5,109,651 on May 5, 1992 for the invention titled
15 ICE BAGGER. A true and correct copy of the '651 patent is attached as Exhibit A and
16 incorporated herein by reference. Reddy Ice owns all right, title, and interest in the '651
17 patent.

18 15. Reddy Ice provides ice to, among others, Fry's Food Stores ("Fry's"),
19 including in Phoenix, Arizona.

20 16. Beginning in June of 2009 and continuing into July of 2009, Aqua Fill has
21 replaced Reddy Ice as Fry's ice vendor by placing the infringing Ice Machines in five
22 different Phoenix-area Fry's locations: (1) Fry's No. 55, 1915 S. Power Road, Mesa, AZ;

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1 (2) Fry's No. 56, 9043 W. Olive Ave., Peoria, AZ; (3) Fry's No. 87, 5140 W. Baseline
2 Rd., Laveen, AZ; (4) Fry's No. 89, 11425 W. Buckeye Rd., Avondale, AZ; and (5) Fry's
3 No. 675, 1300 S. Watson, Buckeye, AZ. The loss of these locations has cost Reddy Ice
4 an income stream of more than \$100,000 per year.

5 17. On or about June 23, 2009, a Reddy Ice employee observed a technician
6 service an Aqua Fill Ice Machine at a Fry's No. 89, 11425 W. Buckeye Rd., Avondale,
7 AZ. The employee was able to observe the working mechanisms inside the Ice Machine
8 and photograph several key components as the technician removed them.

9 18. Based upon the Reddy Ice employee's description of the Ice Machine, and
10 the photographs, Reddy Ice patent counsel construed the claims of the Reddy Ice patents,
11 compared them to the Aqua Fill Ice Machine and concluded that the Ice Machine
12 infringed at least claim six of the '651 patent, and potentially other claims of the '651
13 patent.

14 19. In a telephone conversation on or about June 25, 2009, Reddy Ice informed
15 Aqua Fill CEO Robert G. Miller of Aqua Fill's infringement. Reddy Ice told Aqua Fill to
16 expect a letter from Reddy Ice's counsel informing Aqua Fill of its infringement and
17 requesting information, if any, that Aqua Fill could provide to establish that it was not
18 infringing.

19 20. On or about June 25, 2009, Reddy Ice counsel sent a letter to Robert G.
20 Miller, CEO of Aqua Fill. Reddy Ice informed Mr. Miller as follows:

21 It has come to our attention that Aqua Fill is delivering a new type of ice
22 bagging and merchandising device to Fry's Food Stores that is very similar
23 to Reddy Ice's devices. From what we can observe, we have reason to
believe that your device infringes one or more patents owned by Reddy Ice,

1 namely U.S. Patent Nos. 5,109,651; 5,440,863; 5,458,851; 5,581,982;
2 5,630,310; 5,822,955; and Des. 407,092, copies of which are enclosed.
3 Moreover, we have reason to believe that your device also reads on one or
4 more claims set forth in Reddy Ice's U.S. Patent Application Publication
5 No. 2008/0295462 A1, a copy of which is also enclosed.

6 If you believe that your device does not infringe upon any of the enclosed
7 patents or read on any claims in the enclosed patent application, then we
8 look forward to receiving from you a detailed explanation of how you
9 believe your device operates in a non-infringing manner. Alternatively,
10 please feel free to propose terms to obtain a license to one or more of
11 Reddy Ice's patents.

12 In the absence of any reply, we will of course be forced to assume that you
13 are acting in willful disregard of Reddy Ice's patent rights, or worse, that
14 you actually have reason to believe that your device does infringe upon our
15 client's rights.

16 It should take you no more than two (2) weeks to review this matter and
17 respond to this letter, thus we look forward to receiving your reply by July
18 7, 2009. If we can be of any assistance in the meantime, however, please
19 let us know.

20 21. Anne Ramskov, counsel for Schur Technology a/s, responded on July 1,
21 2009, stating that they had received the June 25 letter but, because of the Danish holiday
22 season, would be unable to consider the matter until sometime in August.

23 22. On July 8, Reddy Ice reluctantly agreed to extend the deadline for Aqua
Fill's response until July 20. Reddy Ice asked Ms. Ramskov whether she was
representing Aqua Fill and whether the Ice Machine was imported into the U.S. by Schur
Technology a/s.

24 23. Ms. Ramskov replied on July 9, 2009 that her firm represented Aqua Fill
25 and that they would "revert to this case by July 20." Ms. Ramskov did not deny that
Schur Technology a/s imported the Ice Machine into the U.S.

1 24. In a July 9, 2009 conversation with Aqua Fill's U.S. counsel, Richard
2 Sparber, Reddy Ice requested an opportunity to inspect the inner workings of the Ice
3 Machine to confirm the infringement prior to filing suit.

4 25. On or about July 15, 2009 Reddy Ice learned that Fry's Food Store #55
5 replaced Reddy Ice with Aqua Fill's infringing Ice Machine. This replacement was the
6 fifth Fry's location to do so.

7 26. In a letter from Aqua Fill counsel Richard Campbell, dated July 20, 2009
8 Aqua Fill noted that its "brief preliminary investigation indicates conclusively" that Aqua
9 Fill's Ice Machine does not infringe any of the patents identified in Reddy Ice's June 25,
10 2009 letter. Aqua Fill stated that its Ice Machine was new technology and was the
11 subject of one issued patent and a number of patent applications but failed to identify the
12 patent or application. Noting that Reddy Ice's request was "nothing more than a 'fishing
13 expedition,'" Aqua Fill stated that it would file a request of reexamination of the '651
14 Patent but failed to identify the prior-art basis for the reexamination.

15 27. Reddy Ice responded to Aqua Fill on July 23, 2009, requesting: (1) copies
16 of the threatened invalidating prior art, (2) the Ice Machine patents and patent
17 applications, and, again, (3) an opportunity to examine the Ice Machine. Reddy Ice asked
18 Aqua Fill to respond to these requests by July 30, 2009.

19 28. On July 30, 2009 Aqua Fill replied that because of the Danish holiday
20 season, Aqua Fill's "process to prepare a response to [Reddy Ice's] further request for
21 information will begin after the first week of August."
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FIRST CAUSE OF ACTION

(Infringement of U.S. Patent No. 5,109,651)

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3 29. Paragraphs 1-28 above are incorporated herein by reference.

4 30. On information and belief, Aqua Fill has infringed at least claim 6 of the
5 '651 patent by, without authority, (1) making, using, selling, or offering for sale in the
6 United States or importing products, including without limitation the Aqua Fill Ice
7 Machine, that infringe one or more claims of the '651 patent, or (2) actively inducing or
8 contributing to others' infringement of the '651 patent.

9 31. Aqua Fill has had actual and constructive knowledge of the '651 patent,
10 and Aqua Fill's infringement of the '651 patent has been and is willful, deliberate, and
11 will continue unless enjoined by this Court. Under 35 U.S.C. § 284, Reddy Ice is entitled
12 to damages for infringement and enhanced damages.

13 32. Aqua Fill's infringement of the '651 patent has been without license from
14 Reddy Ice and in violation of Reddy Ice's patent rights. Reddy Ice has provided multiple
15 notices to Aqua Fill of its infringing activities. Undaunted by the notices, Aqua Fill has
16 not taken any actions to remove or discontinue use of its Ice Machines. It is believed that
17 Aqua Fill will continue to infringe Reddy Ice's patent rights unless enjoined by this
18 Court.

19 33. Aqua Fill's infringement of the '651 patent has caused and will continue to
20 cause Reddy Ice irreparable harm, for which there is no adequate remedy at law. Under
21 35 U.S.C. § 283, Reddy Ice is entitled to a preliminary injunction against imminent
22 further infringement.
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7. Awarding Reddy Ice such other and further relief as the Court deems just

and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Reddy Ice demand a jury trial on all issues triable

to a jury.

Dated: August 12, 2009

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF,
REDDY ICE CORPORATION