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U.S. DISTRICT COURT  
DISTRICT OF UTAH

Attorneys for Plaintiff  
Kyle Bateman and Action Target  
Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

KYLE BATEMAN, a resident of Utah, and  
ACTION TARGET, INC., a Utah  
corporation,

Case No. 2:04CV00240 <sup>PSC</sup>~~PSC~~

Plaintiffs,

**FIRST AMENDED COMPLAINT  
AND JURY DEMAND**

vs.

Judge Paul G. Cassell

BLACKWATER TARGET SYSTEMS, LLC,  
a Delaware Limited Liability Company,

Defendant.

COMES NOW Plaintiffs, Kyle Bateman and Action Target, Inc., complain against  
Defendant Blackwater Target Systems, LLC as follows:

**PARTIES, JURISDICTION & VENUE**

1. Plaintiff, Kyle Bateman ("Bateman") is an individual residing in Provo, Utah, and  
having a business address at P.O. Box 636, Provo, Utah 84603.

2. Plaintiff, Action Target, Inc. ("Action Target") is a Utah Corporation, having a principal place of business at P.O. Box 636, Provo, Utah 84603.

3. On information and belief, Defendant, Blackwater Target Systems, LLC ("Blackwater") is a limited liability company organized under the laws of the State of Delaware and having a business address at 850 Puddin Ridge Rd, Moyock NC 27958.

4. This action arises under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction over the patent claims under 28 U.S.C. §§ 1331 and 1338(a) and over the declaratory judgment claims under 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this district by virtue of Title 28 U.S.C. §§ 1391 & 1400 because Blackwater has subjected itself to personal jurisdiction in this District by soliciting business in this state, by offering the infringing product for sale in this state, and by making infringement allegations to residents of this state.

### **GENERAL ALLEGATIONS**

6. Bateman is the owner of United States Letters Patent No. 5,822,936 (the "'936 Patent), filed on January 20, 1995 and issued on, October 20, 1998, for an Interconnect System for Modularly Fabricated Traps. A copy of the '936 Patent is attached hereto and expressly incorporated as Exhibit A.

7. The '936 Patent relates to technology which facilitates the construction of modular bullet traps which are used by police officers and the like to hone their shooting skills and reflexes in situations which more closely resemble real life than a traditional target range.

8. In accordance with the invention disclosed in the '936 Patent, it was found that the manner in which the bullet stop was constructed could significantly improve safety by reducing the risk of bullet fragments passing through the bullet stop.

9. Action Target is a manufacturer of bullet traps and modular bullet stops and is the exclusive licensee of the '936 Patent.

10. Action Target earns considerable sums by building modular bullet stops in accordance with the invention disclosed in the '936 Patent.

11. On information and belief, Blackwater is aware of the '936 Patent.

12. Recently, Blackwater has begun to make, use, sell, or offer to sell a modular bullet stop which falls within the scope of the invention set forth and claimed in the '936 Patent and has made, used, sold or offered for sale the modular bullet stop within the State of Utah.

13. In addition to Blackwater's conduct, Blackwater has asserted to others that Action Target's Line of Fire target shooting system is infringing one of its patents.

14. On information and belief, Blackwater's comments have been made to persons in the industry, including to residents of Utah, with the intent to harm Action Target and interfere with Action Target's sales.

15. Action Target has asked for representatives of Blackwater to identify what patent Action Target is infringing, but the representatives have been unable to identify a patent number or title.

16. On information and belief, Blackwater is not the assignee or licensee of any patents that are infringed by any product of Action Target.

**FIRST CLAIM FOR RELIEF**  
**(Direct Infringement, 35 U.S.C. §271(a))**

17. Plaintiffs Bateman and Action Target, Inc. herein each and every allegation of paragraphs 1 through 16 of this Complaint.

18. The '936 Patent has at all times subsequent to its issue date been fully enforceable and is now fully enforceable.

19. Bateman is the owner of record and holds all rights under the '936 Patent, including the right to sue for infringement.

20. Action target is the exclusive licensee of the '936 Patent.

21. Blackwater has made, used, sold or offered to sell interconnect systems for modularly fabricating bullet stops that come within the scope of one or more claims of the '936 Patent.

22. Blackwater has within this District made, used, sold, or offered to sell modular bullet stops that come within a range of equivalents of the claims of the '936 Patent.

23. The making, using, or selling of infringing modular bullet stops by Blackwater has been without authority or license from Bateman and/or Action Target and in violation of Bateman's rights, thereby infringing the '936 Patent.

24. On information and belief, the making, using, selling or offering to sell modular bullet stops that fall within the scope of the '936 Patent by Blackwater has been with knowledge of the '936, and in disregard for the exclusive rights of Bateman.

25. The amount of money damages which Bateman and Action Target have suffered due to Blackwater's acts of infringement cannot be determined without an accounting, and is thus subject to proof at trial. Further, harm to Bateman and Action Target arising from Blackwater's

acts of infringement is not fully compensable by money damages. Rather, Bateman and Action Target have suffered, and continue to suffer, irreparable harm which has no adequate remedy at law and which will continue until Blackwater's conduct is enjoined.

**SECOND CLAIM FOR RELIEF**

**(Inducement, 35 U.S.C. §271(b))**

26. Bateman and Action Target incorporate herein each and every allegation of paragraphs 1 through 25 of this Complaint.

27. On information and belief, Blackwater has actively induced, and are now inducing, infringement of the '936 Patent.

28. Blackwater has unlawfully derived, and continues to unlawfully derive income and profits by inducing others to infringe the '936 Patent. Bateman and Action Target have suffered, and continue to suffer, damages as a result of Blackwater's inducement to infringe the '936 Patent.

29. Bateman and Action Target have suffered, and will continue to suffer irreparable damage for which there is no adequate remedy at law because of Blackwater's inducement of others to infringe, and will continue to be harmed unless Blackwater is enjoined from further acts of inducement.

**THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment of Non-Infringement)**

30. Bateman and Action Target incorporate herein each and every allegation of paragraphs 1 through 29 of this Complaint.

31. Blackwater has raised a case or controversy by making allegations against Action Target that Action Target is infringing Blackwater's patent.

32. On information and belief, Blackwater does not own or license any patents that may be infringed by Action Target.

33. Action Target, therefore, seeks a declaratory judgment that it has not infringed any patent owned or licensed by Blackwater.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Bateman and Action Target pray for judgement against Defendant Blackwater as follows:

A. The Court adjudge United States Letters Patent No. 5,822,936 valid and infringed by Blackwater;

B. For damages in an amount to be determined at trial, said damages being not less than a reasonable royalty;

C. For a finding that Blackwater acted willfully in its infringement of the '936 Patent, and for an award of treble damages pursuant to U.S.C. §284.

D. That Blackwater, its agents, servants, employees, directors, and those persons in active concert or participation with it be enjoined under 35. U.S.C. §283 from further violation of Bateman's patent rights or such terms as the Court deems reasonable;

E. That Blackwater be ordered to file with this Court and serve on Bateman and Action Target within thirty (30) days after service on Blackwater of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in

detail the manner and form in which Blackwater has complied with the injunction and order of the Court;

F. That Blackwater be order to pay Bateman's and Action Target's attorney's fees and its costs and disbursements for this action under 35 U.S.C. §285;

G. That Blackwater be required to pay pre-judgement and post-judgement interest until such awards are paid;

H. That the Court enter judgment declaring that Action Target has not infringed any patent owned by or licensed to Blackwater.

I. For a finding that Blackwater's meritless claims of patent infringement against Action Target constitute an exceptional case and for an award of attorney's fees and costs; and

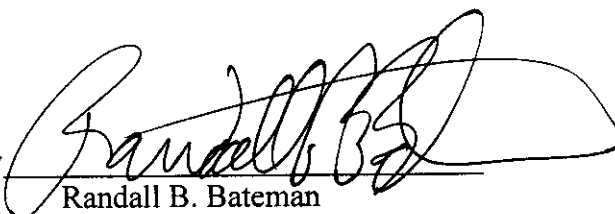
J. That Bateman and Action Target have such other and further relief as shall seem just and proper to the Court.

**DEMAND FOR JURY**

Plaintiffs Kyle Bateman and Action Target, Inc. hereby request a trial by jury in the above-captioned action.

Dated: May 11, 2004

BATEMAN IP LAW GROUP

By 

Randall B. Bateman  
Perry S. Clegg  
Attorneys for Plaintiffs  
Kyle Bateman and Action Target, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be delivered by the method indicated below a true and correct copy of the foregoing First Amended Complaint and Jury Demand, postage prepaid, this 11<sup>th</sup> day of May, 2004, to:

Laurin H. Mills  
NIXON PEABODY, LLP  
401 9th Street, N.W., Suite 900  
Washington, D.C. 20004-2128

  
Shannah Brown



Exhibits/  
Attachments  
to this document  
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scanned.

Please see the  
case file.