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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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

GARY ELBERS AND
INNOVATIVE MARINE
TECHNOLOGIES, INC.,)

Plaintiffs,)

vs.)

LIQUID AUDIO SOUNDS, INC.,)
AND THOMAS A. BIR,)

Defendants.)

CASE NO.: 10-12-cv-933-OR-366JK

COMPLAINT

(Jury Trial Demanded)

Plaintiffs Gary Elbers and Innovative Marine Technologies, Inc. (collectively "Plaintiffs"), through their undersigned counsel, file this Complaint against Defendants Liquid Audio Sounds, Inc., and Thomas A. Bir and state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Gary Elbers is the inventor of the automatic boat cover disclosed and claimed in U.S. Patent No. 6,786, 171 B1 (the "'171 Patent").

2. Plaintiff Innovative Marine Technologies, Inc. ("Innovative Marine") is a Florida corporation with an address of 6450 University Boulevard, Suite 1, Winter Park, Florida 32792, and is the owner of the '171 Patent by assignment from Gary Elbers dated August 9, 2011.

3. Defendant Liquid Audio Sounds, Inc., is, upon information and belief, a North Carolina corporation doing business as Liquid Audio Sounds (“Liquid Audio”).

4. Liquid Audio sells and offers for sale products in the United States, including within this division of the Middle District of Florida.

5. On information and belief, Thomas A. Bir is the owner of Liquid Audio, directly infringes and/or directs the infringing activities of Liquid Audio and financially benefits therefrom.

6. On further information and belief, Thomas A. Bir may also be engaging in infringement through other entities as yet unknown to Plaintiffs. If such entities are discovered, Plaintiffs will amend the Complaint to assert claims against those entities.

7. Defendants infringe Innovative Marine’s patent in the United States, including in the Middle District of Florida.

8. This Court has jurisdiction over the subject matter of this action as to Defendants pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has *in personam* jurisdiction over Defendants because they are subject to general and specific jurisdiction in this State. Additionally, upon information and belief, Defendants sell and offer to sell products that infringe one or more claims of the ‘171 Patent in Florida or places such products in the stream of commerce with the knowledge that the infringing products will be sold in Florida.

10. Defendants sell and offer for sale products on their website and through ebay.com to international and domestic consumers, including consumers in Florida.

11. Because the State of Florida is one of the largest recreational boating markets in the United States with many lakes and the second largest coastline in the United States, Defendants did or reasonably should have anticipated that their advertising and marketing would result in business in the State of Florida.

12. On information and belief, actual sales to consumers in Florida have occurred, including transactions with a customer on Lake Conway in Orlando.

13. Upon information and belief, with knowledge that their product was infringing Plaintiff's '171 Patent, Defendants continued to engage in sales directed at the State of Florida.

14. Venue properly lies within this judicial district and division, pursuant to 28 U.S.C. §§1391(c) and 1400(b).

STATEMENT OF FACTS

15. By written assignment, Innovative Marine is the sole and exclusive owner of the '171 Patent"), a valid and enforceable U.S. Patent, which is attached hereto as Exhibit A.

16. Innovative Marine is a leading innovator and manufacturer in boat cover technology and has developed a boat cover that can be raised and lowered without any manual assistance. This automatic boat cover is a dramatic improvement over all previous boat cover technology and is highly sought after by boat owners.

17. On information and belief, Defendant Thomas Bir closely inspected and then intentionally copied Plaintiffs' automatic boat cover for purposes of selling a product as closely modeled on it as possible.

18. True and correct photographs of the Defendants' boat covers are attached hereto as Exhibit B.

19. Upon information and belief, Defendants have sold and offered for sale in the United States and in the Middle District of Florida, automatic boat covers that directly or indirectly infringe upon one or more claims of the '171 Patent.

20. Through counsel, Gary Elbers wrote to Liquid Audio and its president, Thomas Bir, demanding that they cease and desist from infringing the '171 Patent. In response, Liquid Audio and Mr. Bir acknowledged their products infringed the '171 Patent and promised to change the design of those products in a manner that would be non-infringing.

21. The promised design changes were not made, and Liquid Audio and Mr. Bir continue to sell products that infringe the '171 Patent. Their actions in doing so constitute willful patent infringement that subject Mr. Bir and his company to treble damages for patent infringement and an award of Plaintiffs' attorneys' fees and costs.

22. Innovative Marine has not granted Liquid Audio any license to practice the '171 Patent.

COUNT I
Action for Infringement of the '171 Patent

23. Count I is an action by Plaintiffs against Defendants for monetary damages and injunctive relief for Defendants' infringement of the '171 Patent.

24. Plaintiffs herein restate and reincorporate into this Count the allegations of Paragraphs 1 through 22 herein.

25. Upon information and belief, Defendants have made, offered for sale, sold and distributed products that infringe directly, by inducement and/or contributorily, one or more claims of the '171 Patent.

26. Plaintiffs are entitled to compensatory damages and injunctive relief for Defendants' infringing activities.

27. Upon information and belief, Defendants lack justifiable belief that there is no infringement or that the infringed claims are invalid and have acted with knowledge or, at a minimum, objective recklessness in their infringing activity.

28. Defendants' infringement is therefore willful, and Plaintiffs are entitled to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

29. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray this Honorable Court enter such preliminary and final orders and judgments as are necessary to provide Innovative with the following requested relief:

A. A permanent injunction enjoining Defendants, their officers, agents, servants, affiliates, employees, attorneys and representatives, and all those in privity or acting in concert with them, and each and all of them, from infringing the '171 Patent;

B. An award of damages against Defendants under 35 U.S.C. §284 in an amount adequate to compensate Plaintiffs for Defendants' infringement, but in no event less than a reasonable royalty for the use made by Defendants of the inventions set forth in the '171 Patent;

C. An award against Defendants of exemplary damages, attorneys' fees, and costs under 35 U.S.C. § 285;

D. An award requiring Defendants to pay to Innovative Marine all of its litigation expenses, including reasonable attorneys' fees and the costs of this action; and

E. Such other and further relief as the Court deems just and proper.

JURY TRIAL REQUEST

Plaintiffs request a trial by jury as to all matters so triable.

Respectfully submitted this 20th day of June 2012.

/s/Stephen H. Luther
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