

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**BIG AIR PYLONS, INC.,
an Oklahoma corporation,**

Plaintiff,

v.

**CORRECT CRAFT, INC.,
a Florida Profit Corporation, and**

**CORRECT CRAFT IP HOLDINGS, LLC,
a Florida limited liability company,**

Defendants.

Case No. 5:12-cv-00068

Judge David L Russell

AMENDED DECLARATORY JUDGMENT COMPLAINT

COMES NOW, Plaintiff, Big Air Pylons, Inc. (“Plaintiff”), by its attorneys, and as and for its Complaint against Defendants, Correct Craft, Inc. (“Correct Craft”) and Correct Craft IP Holdings, LLC (“CCIP”), states and alleges as follows:

Nature of the Action

1. This is an action for a declaratory judgment of invalidity, non-infringement and unenforceability.

The Parties

2. Plaintiff is a corporation organized under the laws of Oklahoma, and has its principal place of business in Duncan, Oklahoma, within this judicial district and division.

3. Correct Craft is, upon information and belief, a for profit corporation organized under the laws of Florida, and has its principal place of business in Orlando, Florida.

4. CCIP is, upon information and belief, a limited liability company organized under the laws of Florida, and has its principal place of business in Orlando, Florida.

5. CCIP is, upon information and belief, wholly-owned by its parent company Correct Craft.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction over this action under at least 28 U.S.C. §§ 1338 and 2201.

7. Correct Craft is subject to personal jurisdiction in this Court being registered to do business in Oklahoma, as well as, having an Oklahoma dealer on its website, www.nautique.com. The Oklahoma dealer is Wilson Watersports of Edmond, Oklahoma. Wilson Watersports sells Correct Craft's Nautique products.

8. Upon information and belief, CCIP is subject to personal jurisdiction in this Court based on CCIP being a wholly-owned subsidiary of Correct Craft, the licensing of products sold by Correct Craft in the Western District of Oklahoma, the sending of a series of letters to Plaintiff regarding Plaintiff's alleged patent infringement, and the sending of an unfiled complaint to Plaintiff by CCIP counsel.

9. Venue is appropriate in this district and division pursuant 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims occurred in this district and division.

Background

10. Correct Craft is a U.S. based builder of powerboats primarily for ski and waterboard use sold under the “Nautique” trademark. Some boats include wakeboard towers.

11. CCIP is an intellectual property holding company that owns various patents related to wakeboard towers. CCIP, upon information and belief, is wholly owned by its parent company Correct Craft.

12. Upon information and belief, CCIP is the owner by assignment from Correct Craft of each of the following United States Letters Patents (“the Correct Craft patents”):

a. On September 3, 2002, the United States Commissioner of Patents and Trademarks reissued United States Patent No. 5,979,350 (the ‘350 patent) to Correct Craft, Inc. as United States Patent No. RE37,823 for an alleged invention in “Water Sport Towing Apparatus and Method” (“the ‘823 Patent”). The ‘823 patent was assigned by Correct Craft to CCIP on February 5, 2008.

b. On December 23, 2003, the United States Commissioner of Patents and Trademarks issued United States Patent No. 6,666,159 for an alleged invention in “Water Sport Towing Apparatus” (“the ‘159 Patent”). The ‘159 patent was assigned by Correct Craft to CCIP on February 5, 2008.

c. On April 4, 2000, the United States Commissioner of Patents and Trademarks issued United States Patent No. 6,044,788 for an alleged

invention in “Water Sports Performance System and Method” (“the ‘788 Patent”). The ‘788 patent was assigned by Correct Craft to CCIP on February 5, 2008.

d. On February 27, 2001, the United States Commissioner of Patents and Trademarks issued United States Patent No. 6,192,819 for an alleged invention in “Water Sport Towing Apparatus” (“the ‘819 Patent”). The ‘819 patent was assigned by Correct Craft to CCIP on February 5, 2008.

e. On April 23, 2002, the United States Commissioner of Patents and Trademarks issued United States Patent No. 6,374,762 for an alleged invention in “Water Sport Towing Apparatus” (“the ‘762 Patent”). The ‘762 patent was assigned by Correct Craft to CCIP on February 5, 2008.

f. On November 27, 2007, the United States Commissioner of Patents and Trademarks issued United States Patent No. 7,299,761 for an alleged invention in “Water Sport Towing Apparatus” (“the ‘761 Patent”). The ‘761 patent was assigned by Correct Craft to CCIP on February 5, 2008.

13. Upon information and belief, CCIP has licensed the Correct Craft patents back to Correct Craft.

14. Plaintiff has at all times relevant hereto manufactured and sold products of the type accused of infringement by CCIP, and continues to manufacture and sell such devices. CCIP’s conduct has created on the part of Plaintiff a reasonable apprehension that Plaintiff is faced with an infringement suit if it continues to manufacture and/or sell

products, without taking a license from Defendants under one or more of the Correct Craft patents.

15. Upon information and belief, CCIP and CCIP's parent company, Correct Craft, prior owners of the Correct Craft patents, have been aware of Plaintiff's company for at least eleven (11) years.

16. Defendants' conduct includes, inter alia, the sending of a series of letters to Plaintiff regarding Plaintiff's alleged infringement of the Correct Craft patents.

17. On January 20, 2000, Correct Craft, LLC, the prior owner of the Correct Craft patents, offered a license to the Plaintiff regarding the '350 patent.

18. Communication went back and forth between Plaintiff and Correct Craft, between 2000 and 2002 in which the Plaintiff refused to take a license and denied infringing the '350 patent/'823 patent.

19. After nine years, on September 16, 2011, Plaintiff received a letter from Allen, Dyer, Dopplet, Milbrath & Gilchrist on behalf of CCIP with a copy of an unfiled complaint against Plaintiff by CCIP listing the Correct Craft patents and asserting infringement of the Correct Craft patents by Plaintiff.

20. Plaintiff has informed CCIP that it has no intention of taking a license under any of the Correct Craft patents, as each of the Correct Craft patents is not infringed by Plaintiff's products, and/or is invalid or otherwise unenforceable. Plaintiff has a current, real apprehension and belief that CCIP will bring suit for patent infringement.

21. Plaintiff has not infringed and is not now infringing any of the Correct Craft patents of CCIP.

22. Each of the Correct Craft patents is invalid because the alleged invention fails to satisfy the conditions for patentability specified in Title 35, United States Code, including §§ 102, 103 and/or 112 thereof.

23. CCIP is barred from enforcing the Correct Craft patents, or otherwise barred from obtaining damages for any alleged infringement of the Correct Craft patents.

24. As a result of the acts described in the foregoing paragraphs, an actual controversy exists between the parties hereto regarding the validity, enforceability and infringement of the Correct Craft patents of sufficient immediacy and realty to warrant the issuance of a declaratory judgment.

25. A judicial declaration is necessary and appropriate so that Plaintiff, Big Air Pylons, Inc., may ascertain its rights regarding Defendants', Correct Craft's and CCIP's, ability to enforce the Correct Craft patents, or otherwise recover for any alleged infringement of the Correct Craft patents.

WHEREFORE, Plaintiff, Big Air Pylons, Inc., prays:

(a) that this Court enter an Order declaring that Big Air Pylons, Inc. has not infringed, either directly or indirectly, any of the Correct Craft patents;

(b) that this Court enter an Order declaring that each and every one of the Correct Craft patents is invalid, void and without force and effect;

(c) that this Court enter an Order declaring that any damages the Correct Craft and/or CCIP claims are barred in whole or in part by the doctrine of laches;

(d) that this Court award Plaintiff its attorneys' fees, costs and expenses in this action; and

(e) that this Court grant such other and further relief as this Court may deem just and proper.

Dated: April 27, 2012

Respectfully submitted,

/s/ Phillip L. Free, Jr.

Phillip L. Free, Jr., OBA #15765
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By: 100 North Broadway, Suite 2900
Oklahoma City, OK 73102-8865
Telephone: (405) 553-2828
Facsimile: (405) 553-2855
pfree@hallestill.com

**ATTORNEY FOR PLAINTIFF,
BIG AIR PYLONS, INC.**

CERTIFICATE OF SERVICE

I certify that on April 27, 2012, a true and correct copy of the foregoing electronically filed document was served on the parties listed below via first class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party:

Spencer Smith
Jeremiah L. Buettner
MCAFEE & TAFT PC
Two Leadership Square, Tenth Floor
211 North Robinson Avenue
Oklahoma City, OK 73102
spencer.smith@mcafeetaft.com
jeremiah.buettner@mcafeetaft.com
Telephone: 405.235.9621
Facsimile: 405.235.0439

Brian R. Gilchrist
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
255 South Orange Avenue, Suite 1401
Post Office Box 3791
Orlando, FL 32802-3791
bgilchrist@addmg.com
Telephone: 407.841.2330
Facsimile: 407.841.2343

/s/ Phillip L. Free, Jr.

Phillip L. Free, Jr.

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