

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF LOUISIANA**

Divot Board, LLC,
Plaintiff

v.

Derealized LTD. d/b/a Golf Daddy,
Defendant

Civil Action No.:

Judge:

Magistrate:

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Divot Board, L.L.C. (“Divot Board”) files this Complaint for Patent Infringement against Derealized LTD. d/b/a Golf Daddy (“Golf Daddy”) and alleges as follows:

THE PARTIES

1. Divot Board is a Delaware limited liability company with its principal place of business at 31950 Cottonwood Drive, Temecula California 92592.
2. Golf Daddy is a British company with its principal place of business located at 160 City Road, London United Kingdom EC1V2NX.

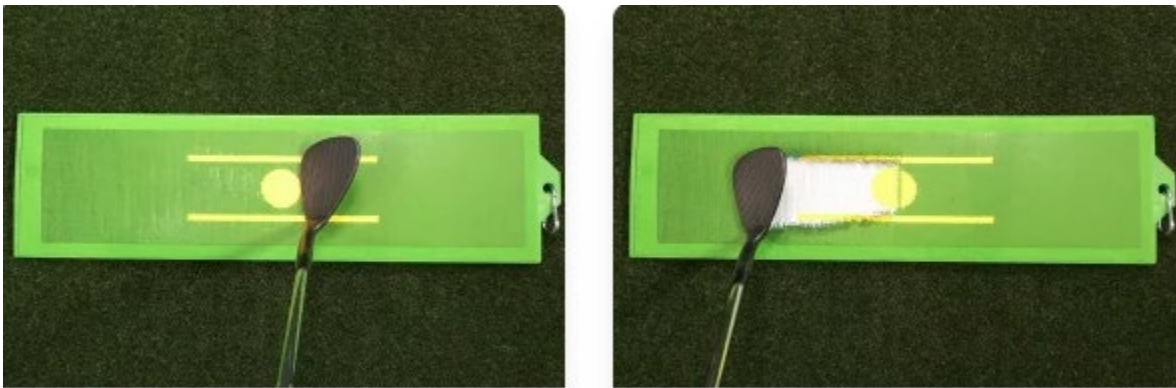
JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 USC §100 *et seq.* This Court has original jurisdiction over this controversy pursuant to 28 USC §1331 and §1338.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c)(3).
5. Golf Daddy is subject to personal jurisdiction in this district because it directs business activities towards and conducts business with consumers throughout the United States, including within the State of Louisiana and this district through at least its marketing campaigns and fully

interactive commercial Internet website (<https://golfdaddy.com>) (the “Website”), accessible in Louisiana.

DIVOT BOARD’S INNOVATIONS AND ASSERTED PATENT

6. Divot Board is engaged in the design, manufacture and sale of golf training aids. Divot Board is the designer, manufacturer and retailer of a golf training aid known as the “Divot Board,” a product shown below that provides instant feedback to a golfer on the contact point with the ball and the ground (hereinafter, the “Patented Device”).



7. On March 19, 2018, inventor, Robert Longo (“Longo”), owner of Divot Board, filed a provisional patent application under U.S. App. No. 62/645,076 covering the Patented Device with the United States Patent and Trademark Office (“USPTO”). Mr. Longo subsequently filed a non-provisional patent application on March 12, 2019 bearing U.S. App. No. 16/299,477, which later matured into U.S. Patent No. 10,639,539 (the “ ‘539 Patent”) on May 5, 2020 entitled “GOLF PRACTICE BOARD FOR IMPROVING GOLF SWING.” A true and correct copy of the ‘539 Patent is attached to this Complaint as Exhibit 1.

8. All rights, title, and interest in the ‘539 Patent have been assigned to Divot Board, who is the sole owner of the ‘539 Patent.

9. The ‘539 Patent is generally directed towards a golf practice board configured to indicate a club head’s path along a ground surface, which alerts the user to adjustments that can

be made to improve his or her swing. The invention generally includes a mat secured within a frame, a plurality of multi-colored discs pivotably attached to a top surface of the mat that pivot from a first orientation showing one colored surface of the disc to a second orientation showing a different color on the reverse side when contacted by a golf club, and a slip-resistant bottom surface comprising a plurality of mounting spikes configured to prevent the practice board from moving during use.

GOLF DADDY’S INFRINGEMENT OF THE ‘539 PATENT

10. Golf Daddy makes, uses, sells, and offers for sale golf training aids and accessories in direct competition with Divot Board.

11. Specifically, Golf Daddy has sold and continues to offer for sale a golf swing training board known as the Divot Daddy Pro (hereafter, the “Divot Daddy Pro”), which is shown below.



12. At a minimum, Golf Daddy markets, offers for sale, and sells the Divot Daddy Pro directly to consumers in the United States through its Website. See Exhibit 2, a printout of Golf Daddy Website product listing for Divot Daddy Pro.

13. As shown in the above pictures, the Divot Daddy Pro includes a golf practice board consisting of a mat secured within a frame with a plurality of multi-colored discs pivotably attached to a top surface of the mat that pivot from a first orientation showing one colored surface of the disc to a second orientation showing a different color on the reverse side when contacted by a golf club.

14. According to its website listing, the Divot Daddy Pro also includes a rubber sole that was “designed to create enough friction to prevent any moving” as well as the use of a stake to pin down the mat and secure it to the ground. See Exhibit 2.

15. The Divot Daddy Pro infringes one or more claims of the ‘539 Patent.

16. Upon information and belief, Golf Daddy was aware, prior to the release of the Divot Daddy Pro, and prior to this lawsuit, of Divot Board’s ‘539 Patent and its Patented Device.

17. Golf Daddy possesses the expertise required to understand the scope of claims in the ‘539 Patent.

18. Golf Daddy does not have a license to the ‘539 Patent.

19. Golf Daddy’s manufacture, use, sale and offer for sale of the Divot Daddy Pro constitutes infringement of at least one claim of the ‘539 Patent, either directly, indirectly, or under the doctrine of equivalents.

DIVOT BOARD’S NOTICE OF INFRINGEMENT TO GOLF DADDY

20. Despite Golf Daddy’s prior knowledge, Golf Daddy has continued its unauthorized infringing activity.

21. On November 22, 2022, after seeing Golf Daddy’s product listing of the Divot Daddy Pro on its Website, Divot Board promptly sent notice of Divot Board’s infringement claims along with a copy of the ‘539 Patent to Golf Daddy through the email address provided on its Website.

22. Golf Daddy retained patent counsel to evaluate Divot Board's claims of infringement. Counsel for Golf Daddy and Divot Board exchanged several phone calls and communications over the next few weeks but were unable to resolve the matter.

23. While Golf Daddy's counsel denied infringement, following the communications amongst counsel, Golf Daddy had taken steps to remove its listings of the Divot Daddy Pro. However, it now appears that the temporary hiatus in sales was because Golf Daddy was simply restocking its inventory to continue its infringing activity.

24. Golf Daddy has refused to cease its infringing activity. The Divot Daddy Pro continues to be offered for sale and sold directly to consumers throughout the United States.

**FIRST CAUSE OF ACTION
INFRINGEMENT OF THE '539 PATENT**

25. Paragraphs 1-24 are incorporated by reference as if set forth here in full.

26. Golf Daddy has made, used, sold, and offered for sale products in the United States, including the Divot Daddy Pro, which include all of the elements and limitations of one or more of the claims of the '539 Patent.

27. Golf Daddy has directly infringed and currently infringes the '539 Patent under 35 USC §271(a), literally and/or under the doctrine of equivalents, including at least claim 1 of the '539 Patent by making, using, selling and offering for sale the Divot Daddy Pro without Divot Board's permission.

28. The Divot Daddy Pro embodies the patented invention of the '539 Patent and infringes the '539 Patent because the product incorporates a golf practice board containing a mat set within a frame with a divot tracking system that includes multi-colored discs pivotally attached to the mat that pivot from a first position showing one surface to a second position showing the reverse

surface when contacted by the golf club. The Divot Daddy Pro further includes a slip resistant contoured bottom surface and stake that is configured to secure the board to the ground during use.

29. As a result of Golf Daddy's unlawful activities, Divot Board has suffered and will continue to suffer injury, including irreparable injury, as a result of Golf Daddy's infringement. Divot Board is therefore entitled to preliminary and permanent injunctive relief restraining and enjoining Golf Daddy from infringing the '539 Patent.

30. Golf Daddy's infringement of the '539 Patent has injured and continues to injure Divot Board in an amount to be proven at trial, but not less than a reasonable royalty.

31. Golf Daddy was aware of Divot Board's '539 Patent prior to releasing its Divot Daddy Pro. Despite having prior knowledge, Golf Daddy has sold and continues to sell the accused products in complete and reckless disregard of Divot Board's patent rights. As such, Golf Daddy has acted recklessly and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '539 Patent, justifying Divot Board to an award of increased damages under 35 U.S.C. §284, and attorneys' fees and cost incurred under 35 U.S.C. §285.

PRAYER FOR RELIEF

A. An entry of judgment holding that Golf Daddy has infringed and is infringing the '539 Patent;

B. A preliminary and permanent injunction against Golf Daddy and its officers, employees, agents, servants, attorneys, and those in privity with them, from infringing the '539 Patent, or inducing the infringement of the '539 Patent, and for all further and proper relief pursuant to 35 USC §283;

C. An award to Divot Board of past damages, not less than a reasonable royalty, as it shall prove at trial against Golf Daddy that is adequate to fully compensate Divot Board for Golf Daddy's infringement of the '539 Patent.

D. A determination that Golf Daddy's infringement has been willful, wanton, and deliberate and that the damages against it be trebled on this basis pursuant to 37 USC §284 or for any other basis in accordance with law;

E. A finding that this case is "exceptional" and an award to Divot Board of its costs and reasonable attorney fees, as provided by 37 USC §285;

F. An accounting of all infringing sales and revenues, together with post judgment interest and prejudgment interest from the first date of infringement of the '539 Patent; and

G. Such other and further relief as the Court may deem proper and just.

DEMAND FOR JURY TRIAL

Divot Board hereby demands a jury trial for all matters that may be tried to a jury.

Dated: January 18, 2023

Respectfully submitted,

/s/ Stephen M. Kepper

Stephen M. Kepper (LA Bar No. 34618)
Gregory D. Latham (LA Bar No. 25955)
INTELLECTUAL PROPERTY CONSULTING, LLC
400 Poydras St. Suite 400
New Orleans, LA 70130
Telephone: (504) 322-7166
Fax: (504) 322-7184
skepper@iplawocnsulting.com
glatham@iplawconsulting.com

Attorneys for Plaintiff Divot Board, L.L.C.