

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

MHL CUSTOM, INC.,)	
)	
Plaintiff,)	
vs.)	
)	Civil Action No. _____
FOIL BOARDING COMPANY,)	
INC., d/b/a FOIL, f/k/a GET FOIL,)	JURY TRIAL DEMANDED
a Florida corporation,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, MHL Custom, Inc. (“MHL” or “Plaintiff”), by counsel, for its Complaint against Defendant Foil Boarding Company, Inc. (“Foil Boarding” or “Defendant”), complains and alleges as follows:

INTRODUCTION

1. This is an action for infringement of United States Patent No. 9,359,044 entitled Weight-Shift Controlled Personal Hydrofoil Watercraft (“the ‘044 Patent”) and United States Patent No. 9,586,659 entitled Powered Hydrofoil Board (“the ‘659 Patent”) (collectively, “the Patents-in-Suit”), which arises under the patent laws of the United States. This Complaint comprises causes of action for patent infringement, wherein Defendant has engaged, and continues to engage, in willful infringement of the Patents-In-Suit. Plaintiff seeks injunctive relief; all damages sustained by Plaintiff as a result of the infringement; enhanced damages; and all

costs and fees, including reasonable attorneys' fees, incurred by Plaintiff in this action.

THE PARTIES

2. Plaintiff, MHL, is a corporation organized and existing under the laws of Puerto Rico, having its principal place of business at 500 Barrio Bajuras, Isabela, Puerto Rico 00662.

3. Defendant, Foil Boarding is a Florida corporation with an address at 890 E. Heinberg Street, Pensacola, Florida 32502. The registered agent for Defendant is Kyle Roarke, with an address at 890 E. Heinberg Street, Pensacola, Florida 32502.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue properly resides in the United States District Court for the Northern District of Florida, pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b), because Defendant has a place of business and has committed acts giving rise to Plaintiff's claims within this judicial district.

6. There is personal jurisdiction over Defendant because Defendant is a Florida corporation with a place of business in Pensacola, Florida and, upon information and belief, because Defendant conducts substantial business in this

judicial district, including regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from individuals and entities in Florida and in the United States.

THE PATENTS-IN-SUIT

7. MHL is the assignee and owner of the '044 Patent, which was issued by the United States Patent and Trademark Office ("PTO") on June 7, 2016. The '044 Patent issued from Application Serial No. 14/509,289, having a filing date of October 8, 2014. The '044 Patent claims priority to Provisional Application No. 61/889,071, filed on October 10, 2013 ("the '071 Provisional Application"). A copy of the '044 Patent is attached hereto as **Exhibit A** and is incorporated herein by reference.

8. MHL is the assignee and owner of the '659 Patent, which was issued by the PTO on March 7, 2017. The '659 Patent issued from Application Serial No. 15/064,521, having a filing date of March 8, 2016. The '659 Patent claims priority to the '044 Patent and the '071 Provisional Application. A copy of the '659 Patent is attached hereto as **Exhibit B** and is incorporated herein by reference.

9. By virtue of its rights in the Patents-In-Suit, MHL has the right to exclude others from practicing the inventions claimed in the Patents-In-Suit and/or from manufacturing, using, selling, offering to sell, or importing into the United States the inventions claimed in the Patents-In-Suit. MHL has not authorized

Defendants to make, use, sell, offer to sell, or import into the United States any invention under the Patents-In-Suit.

THE ACCUSED PRODUCTS AND NOTICE OF INFRINGEMENT

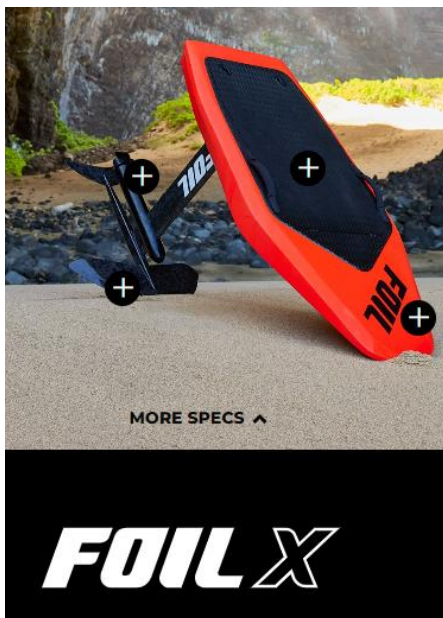
10. Defendant makes, uses, offers for sale, sells, and/or imports into the United States personal hydrofoil watercraft, including, without limitation, the “Foil”, “Foil X” and the “Foil R” watercraft (collectively, “the Accused Products”):



Foil



Foil



Foil X



Foil R

11. On September 20, 2019, MHL sent Defendant a cease and desist letter notifying Defendant that the Accused Products infringe the Patents-In-Suit. MHL sent a follow up letter on October 22, 2019, following a response sent by Defendant. Copies of these letters are attached hereto as **Exhibit C** and are incorporated herein by reference.

MHL'S COMMERCIAL EMBODIMENT

12. MHL sells several models of a personal hydrofoil watercraft called the "Lift eFoil" (example depicted below):



13. The Lift eFoil products are covered by the Patents-In-Suit.

14. MHL virtually marks its Lift eFoil products with the Patents-In-Suit in accordance with 35 U.S.C. § 287.

COUNT I
PATENT INFRINGEMENT
Infringement of the '044 Patent

15. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 14 of the Complaint, and further states:

16. Upon information and belief, Defendant has engaged, and/or is engaging, either directly or indirectly, in infringement of the '044 Patent with knowledge of MHL's exclusive rights in the '044 Patent.

17. For example, and without limitation, Defendant, upon information and belief, directly infringes the '044 Patent by manufacturing, using, offering to sell, selling, and/or importing into the United States, without permission or authority from MHL, the Accused Products, including the *Foil*, *Foil R* and the *Foil X*.

18. Upon information and belief, the Accused Products meet, either literally or under the doctrine of equivalents, every limitation of one or more claims of the '044 Patent in violation of 35 U.S.C. § 271.

19. Upon information and belief, the Accused Products infringe at least Claim 1 of the '044 Patent, either literally or under the doctrine of equivalents. Features of the Accused Products, including their infringing features, can be seen in the images referenced in paragraph 10, above.

20. Claim 1 of the '044 Patent reads as follows:

1. A passively stable, weight-shift controlled personal hydrofoil watercraft, comprising:
 - a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section, and the flotation device being controlled via weight shift of the user;
 - a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device;
 - a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface and designed to provide passive static stability controlled solely by weight shift of the user;
 - a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and
 - the watercraft having no movable steering system.

21. Upon information and belief, the Accused Products are passively stable, weight-shift controlled personal hydrofoil watercraft, the watercraft having a flotation device (i.e. the board) having a fore-aft length greater than its lateral width and a top and bottom surface wherein the user can be on the top surface in a prone, kneeling, or standing position; the flotation device has a forward, middle, and rear section; the flotation device is controlled via weight shift of the user.

22. Upon information and belief, the Accused Products also have a strut with an upper and lower end wherein the upper end is fixedly interconnected with the flotation device between the middle and rear section of the flotation device.

23. Upon information and belief, the Accused Products also have a hydrofoil fixedly interconnected with the lower end of the strut without any movable

surface and designed to provide passive static stability controlled solely by weight shift of the user.

24. Upon information and belief, the Accused Products also have a propulsion system connected to the hydrofoil for propelling the watercraft in a body of water.

25. Upon information and belief, the Accused Products also have no movable steering system.

26. Therefore, upon information and belief, the Accused Products meet each and every limitation of Claim 1, either literally or under the doctrine of equivalents.

27. Further, upon information and belief, Defendant's acts of infringement are willful and/or done with knowledge, or deliberate indifference to the existence, of the '044 Patent because (a) MHL's patented products are virtually marked, in compliance with 35 U.S.C. § 287, to provide constructive notice of the '044 Patent, and (b) MHL sent Defendant cease and desist letters (**Exhibit C**) alerting Defendant to the '044 Patent and Defendant's infringement, with which Defendant has not complied.

28. Upon information and belief, Defendant has unlawfully derived, received, and will derive and receive from the aforesaid infringement of the '044 Patent, substantial gains, profits, and advantages. As a direct and proximate result

of the aforesaid infringement, MHL has been, and will be, irreparably harmed and has been, and will be, greatly damaged and deprived and prevented from receiving, if such further infringement is not restrained and enjoined by this Court, all the gains and profits to which it is lawfully entitled and which it would have derived and received, but for the aforesaid infringement by Defendant.

29. By virtue of the foregoing infringement of the '044 Patent, MHL is entitled to recover damages as set forth in 35 U.S.C. § 284, in such amount as may be established at trial of this action, including enhanced damages, and attorney fees as set forth in 35 U.S.C. § 285.

COUNT II
PATENT INFRINGEMENT
Infringement of the '659 Patent

30. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 of the Complaint, and further states:

31. Upon information and belief, Defendant has engaged, and/or is engaging, either directly or indirectly, in infringement of the '659 Patent with knowledge of MHL's exclusive rights in the '659 Patent.

32. For example, and without limitation, Defendant directly infringes the '659 Patent by manufacturing, using, offering to sell, selling, and/or importing into the United States, without permission or authority from MHL, the Accused Products, including the *Foil*, *Foil X* and the *Foil R*.

33. Upon information and belief, the Accused Products meet, either literally or under the doctrine of equivalents, every limitation of one or more claims of the '659 Patent in violation of 35 U.S.C. § 271.

34. Upon information and belief, the Accused Products infringe at least Claim 1 of the '659 Patent, either literally or under the doctrine of equivalents. Features of the Accused Products, including their infringing features, can be seen in the images depicted in paragraph 10, above.

35. Claim 1 of the '659 Patent reads as follows:

1. A passively stable, weight-shift controlled personal hydrofoil watercraft, comprising:
 - a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section;
 - a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device;
 - a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface;
 - a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and
 - the watercraft having no movable steering system.

36. Upon information and belief, the Accused Products are passively stable, weight-shift controlled personal hydrofoil watercraft, the watercraft having a flotation device (i.e. the board) that has a fore-aft length greater than its lateral width and a top and bottom surface wherein the user can be on the top surface in a prone,

kneeling, or standing position; the flotation device has a forward, middle, and rear section.

37. Upon information and belief, the Accused Products also have a strut with an upper and lower end wherein the upper end is fixedly interconnected with the flotation device between the middle and rear section of the flotation device.

38. Upon information and belief, the Accused Products also have a hydrofoil fixedly interconnected with the lower end of the strut without any movable surface.

39. Upon information and belief, the Accused Products also have a propulsion system connected to the hydrofoil for propelling the watercraft in a body of water.

40. Upon information and belief, the Accused Products also have no movable steering system.

41. Therefore, upon information and belief, the Accused Products meet each and every limitation of Claim 1, either literally or under the doctrine of equivalents.

42. Further, upon information and belief, Defendant's acts of infringement are willful and/or done with knowledge, or deliberate indifference to the existence, of the '659 Patent because (a) MHL's patented products are virtually marked, in compliance with 35 U.S.C. § 287, to provide constructive notice of the '659 Patent,

and (b) MHL sent Defendant cease and desist letters (**Exhibit C**) alerting Defendant to the '659 Patent and Defendant's infringement, with which Defendant has not complied.

43. Upon information and belief, Defendant has unlawfully derived, received, and will derive and receive from the aforesaid infringement of the '659 Patent, substantial gains, profits, and advantages. As a direct and proximate result of the aforesaid infringement, MHL has been, and will be, irreparably harmed and has been, and will be, greatly damaged and deprived and prevented from receiving, if such further infringement is not restrained and enjoined by this Court, all the gains and profits to which it is lawfully entitled and which it would have derived and received, but for the aforesaid infringement by Defendant.

44. By virtue of the foregoing infringement of the '659 Patent, MHL is entitled to recover damages as set forth in 35 U.S.C. § 284, in such amount as may be established at trial of this action, including enhanced damages, and attorney fees as set forth in 35 U.S.C. § 285.

JURY TRIAL DEMANDED

45. Plaintiff demands a jury trial on all appropriate issues.

WHEREFORE, Plaintiff, MHL, respectfully prays for the following relief:

A. An adjudication that the Patents-In-Suit are infringed by Defendant and that Defendant's infringement is willful;

B. Pursuant to 35 U.S.C. § 283, an injunction restraining and enjoining Defendant, and their respective subsidiaries, parents, directors, officers, agents, servants and employees, and all persons in active concert and participation with it, from directly or indirectly infringing the Patents-In-Suit;

C. A judgment entered for Plaintiff and against Defendant for such damages recoverable under 35 U.S.C. § 284 and/or as have actually been sustained by Plaintiff as a result of said infringement of the Patents-in-Suit by Defendant, and that Defendant be ordered to pay such damages to Plaintiff;

D. That the Court treble all damages awarded to Plaintiff, pursuant to 35 U.S.C. § 284, and that Defendant be ordered to pay such trebled damages to Plaintiff;

E. That Plaintiff recover prejudgment and post-judgment interest from Defendant on damages awarded to Plaintiff;

F. That Defendant be ordered to pay to Plaintiff its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

G. That Plaintiff recover all other costs and disbursements that may be incurred by it in this action;

H. That Plaintiff has a trial by jury on all issues so triable; and

I. That the Court grant Plaintiff such other and further relief as it may deem just, proper, and equitable.

Respectfully submitted this 21st day of October, 2022,

/s/ John R. Zoesch III
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-and-

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Brian P. McGraw (KY 90447, *pro hac vice to be filed*)

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