

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

Malibu Boats, LLC,

Plaintiff,

v.

MasterCraft Boat Company, LLC,

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Malibu Boats, LLC (“Malibu” or “Plaintiff”) hereby alleges as its Complaint against Defendant MasterCraft Boat Company, LLC (“MasterCraft” or “Defendant”) as follows:

INTRODUCTION

1. Malibu is the market share leader in the inboard sport boat industry. In recent years, Malibu has defended its position from its direct competitors, like MasterCraft, through the development and application of Malibu’s patented and award-winning innovations, including its wake surf technology known as SURF GATE®. Seeking to regain market share that Malibu has gained and defended through its SURF GATE® technology, MasterCraft introduced its Gen 2 Surf System and the NXT Surf System, both of which infringe Malibu’s intellectual property. These infringing systems have been and continue to be installed by MasterCraft on thousands of boats, which MasterCraft, through its affiliated dealers, have sold and continue to sell to consumers in the inboard sport boat industry. Malibu is entitled to millions of dollars in compensation for MasterCraft’s infringement and to an injunction precluding MasterCraft from selling boats or features that infringe Malibu’s valuable intellectual property.

2. Plaintiff Malibu is a pioneer and industry leader in the design, manufacture, and marketing of high performance inboard water sports boats. Among Malibu’s many innovations is its revolutionary SURF GATE® technology, for which it has been awarded several United States patents. This technology modifies the wake formed by a boat travelling through water,

which, in part, creates a better quality surf wake and enables users to surf on either side of the boat's wake at the push of a button. Further, Malibu's SURF GATE® technology has revolutionized the manner in which users who engage in wake surfing are able to utilize their boats. Before the development of SURF GATE® technology, a boater who sought to engage in wake surfing was required to empty ballast tanks or bags on one side of his or her boat, fill ballast tanks or bags with hundreds of pounds of water on the opposite side of the boat, and shift passengers to the weighted side of the boat. This caused the boat to lean or list significantly, which created a larger, more pronounced, surf-quality wake on the weighted side of the boat only. For a boater to switch the surf wave from one side to the other, he or she would have to transfer substantially all ballast and passengers to the other side of the boat — a process that takes a substantial amount of time. Malibu's patented SURF GATE® technology alleviates the time-consuming and cumbersome process. Boats manufactured by Malibu that utilize patented SURF GATE® technology allow boaters, at the touch of a button, to create a better quality surf wave on either side of the boat in a matter of seconds without having to shift passengers or weight from one side to the other. Accordingly, Malibu's SURF GATE® allows users to more easily engage in wake surfing and to switch a surf wave from one side of the boat to the other without stopping, which allows users to perform previously impossible moves.

3. Malibu offers its proprietary wake surf technology under the name SURF GATE® as a feature on many of its boat models. Malibu's introduction of SURF GATE® garnered significant public attention, and SURF GATE® won the Watersports Industry Association's Innovation of the Year award in 2013. Malibu's SURF GATE® system has also enjoyed tremendous commercial success. Malibu currently sells thousands of boats equipped with SURF GATE® systems per year, and the take rate of Malibu's optional SURF GATE® system is nearly 100% among Malibu buyers.

4. MasterCraft reacted with great concern to Malibu's introduction of SURF GATE® technology. MasterCraft has recognized in its own training/promotional materials that “[t]he market is focused on surfing like never before” and that its competitors have “shifted the

conversation” to surf wake technologies, including SURF GATE®. MasterCraft noted that SURF GATE® had “captured consumer attention” and “given competitors something to talk about: wiz-bang technology, port and starboard wakes, ease of deployment.” As a result, MasterCraft acknowledged that some of its dealers had “los[t] confidence.” MasterCraft reacted by introducing its own wake surf systems, including the Gen 2 Surf System and the NXT Surf System, which have been and continue to be marketed directly against Malibu’s SURF GATE® system. Both of MasterCraft’s systems infringe Malibu’s intellectual property rights.

PARTIES

5. Malibu is a Delaware corporation with its principal place of business at 5075 Kimberly Way, Loudon, Tennessee 37774-6469.

6. MasterCraft is a Delaware corporation with its principal place of business at 100 Cherokee Cove Road, Vonore, Tennessee 37885-2129.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, Title 35 of the United States Code, including, but not limited to, 35 U.S.C. § 271.

8. This court has original jurisdiction over patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

9. Personal jurisdiction is proper over MasterCraft because MasterCraft is domiciled, conducts business, and has committed acts of patent infringement in Tennessee.

10. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because MasterCraft resides, has committed acts of infringement, and has a regular and established place of business in this judicial district.

RELATED CASE

11. In an earlier case in this district, Case No. 3:13-CV-00656 (the “*Nautique* case”), Malibu asserted a claim for infringement of the same patent that is the subject of this case (U.S. Patent No. 8,578,873 (the “873 Patent”)) against a different defendant, Nautique Boat Company, Inc. The *Nautique* case was filed on October 31, 2013. Malibu amended its

complaint to add a claim for infringement of the '873 Patent on December 13, 2013. The *Nautique* case was dismissed by stipulation of the parties on February 17, 2015.

GENERAL ALLEGATIONS

12. Malibu designs, manufactures, and markets high performance inboard sport boats, and has had the leading (and growing) market share position in the United States since 2010. Since the company was founded in 1982, Malibu has been a consistent innovator in the inboard sport boat industry, designing products that appeal to an expanding range of recreational boaters and water sports enthusiasts whose passion for boating and water sports is a key aspect of their lifestyle. Malibu's innovations, such as its award-winning SURF GATE® technology, expand the market for its products by introducing consumers to new and exciting recreational activities and enhancing their experience of a day on the water with family and friends. Malibu has secured numerous patents that cover its innovations.

13. United States Patent No. 8,578,873 is titled "Surf Wake System for a Watercraft" and issued November 12, 2013. A copy of the '873 Patent is attached as Exhibit A.

14. Malibu owns all rights, title, and interest in the '873 Patent.

15. MasterCraft manufactures, offers for sale, and sells within the United States inboard water-sport boats. MasterCraft has equipped and continues to equip at least some of its inboard water-sport boats with its own surf system systems, including the Gen 2 Surf System and/or the NXT Surf System. MasterCraft offers the Gen 2 Surf System and/or NXT Surf System as equipment on at least the following models of inboard water-sport boats: X2, X10, X20, X23, X25, X30, X46, X55, XStar, NXT 20, and NXT 22.

16. MasterCraft is presently advertising and offering for sale in the United States inboard water-sport boats equipped with the Gen 2 Surf System and/or NXT Surf System.

17. On information and belief, MasterCraft learned of the '873 Patent on or before March 14, 2014, when, in connection with the prosecution of a patent application, MasterCraft submitted an Information Disclosure Statement to the United States Patent and Trademark Office

that included a filing from the *Nautique* case that discussed the '873 Patent and its prosecution history.

18. Despite knowing of the '873 Patent and its relevance to MasterCraft's products, MasterCraft has and continues to infringe the '873 Patent.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,578,873

19. Malibu repeats and realleges each and every allegation contained in the preceding paragraphs with the same force and effect as if repeated in full here.

20. The '873 Patent provides a system for generating a surf wake behind a watercraft travelling through the water.

21. MasterCraft infringes the '873 Patent by, *inter alia*, making, using, selling, and/or offering for sale within the United States, and/or importing into the United States, products and/or components covered by one or more claims of the '873 Patent. MasterCraft has acted without authority or license from Malibu, in violation of 35 U.S.C. § 271(a).

22. MasterCraft induces others to infringe one or more claims of the '873 Patent in violation of 35 U.S.C. § 271(b). At least as early as March 14, 2014 and no later than the date of service of this Complaint, MasterCraft has knowingly or with willful blindness induced its customers and potential customers to infringe the '873 Patent with the specific intent to induce such infringement, by among other things, encouraging infringing use of its above-described surf systems through advertisements and marketing material and by providing an owner's manual that instructs customers in operating products and components provided by MasterCraft in an infringing manner.

23. MasterCraft contributorily infringes one or more claims of the '873 Patent in violation of 35 U.S.C. § 271(c). MasterCraft sells and offers to sell products and components knowing that they, alone or as material components in combination with other components, infringe the '873 Patent and thereby contribute to others' infringement of the '873 Patent. At least as early as March 14, 2014, and no later than the date of service of this Complaint, MasterCraft knew that its products and components are especially made or especially adapted for

use in creating a surf wake in a manner that infringes the '873 Patent and are not a staple item article or commodity of commerce suitable for substantial noninfringing use.

24. On information and belief, MasterCraft infringes the '873 Patent by supplying or causing to be supplied in and from the United States all or a substantial portion of the components of surf systems, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, and/or by supplying or causing to be supplied in and from the United States one or more components that are especially made or especially adapted for use in infringing surf systems and that are not staple articles or commodity of commerce suitable for substantial noninfringing use, where such components are uncombined in whole or in part, knowing that such components are so made or adapted and intending that such component will be combined outside of the United States, in a manner that would infringe the patent if such combination occurred within the United States. MasterCraft has acted without authority or license from Malibu, in violation of 35 U.S.C. § 271(f).

25. Malibu has suffered damages as a result of MasterCraft's infringement of the '873 Patent.

26. MasterCraft's infringement, inducement of infringement, and contributory infringement is literal infringement or, in the alternative, infringement under the doctrine of equivalents.

27. MasterCraft will continue to infringe, induce others to infringe, and/or engage in contributory infringement of the '873 Patent unless enjoined by the Court.

28. MasterCraft's acts of infringement have caused and, unless enjoined by this Court, will continue to cause Malibu to sustain irreparable damage, loss, and injury, for which Malibu has no adequate remedy at law.

29. MasterCraft will continue to derive and receive advantages, gains, and profits from its infringement in an amount that is not presently known to Malibu.

30. Upon information and belief, MasterCraft's infringement of the '873 Patent has been and continues to be deliberate and willful.

PRAYER FOR RELIEF

WHEREFORE, Malibu prays for judgment against MasterCraft as follows:

1. Judgment in favor of Malibu that MasterCraft has infringed the '873 Patent;
2. Preliminarily and permanently enjoining MasterCraft, its officers, agents, servants, and employees, and all persons acting in concert with them, and each of them, from infringing, inducing others to infringe, and/or engaging in contributory infringement of the '873 Patent.
3. Awarding Malibu damages based on MasterCraft's infringement of the '873 Patent in an amount according to proof and trebling same by reason of the willful, wanton, and deliberate nature of such infringement;
4. Declaring that this is an exceptional case under 35 U.S.C. § 285 and awarding Malibu its attorneys' fees and costs in this action;
5. Assessing prejudgment interest on damages; and
6. Awarding Malibu such other and further relief as the Court deems just and equitable.

Dated: June 29, 2015

s/ John P. Konvalinka

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Malibu Boats, LLC hereby demands a trial by jury on all issues so triable.

Dated: June 29, 2015

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