

1 MICHAEL J. SULLIVAN (SBN 264695)
2 LAW OFFICE OF MICHAEL J. SULLIVAN
3 111 N. Market St., Suite 300
4 San Jose, CA 95113
5 Telephone: (408) 628-8882
6 Facsimile: (408) 625-1148
7 E-mail: msullivan@mikesullivanlaw.com

8 Attorney for Plaintiff
9 FOUNTAIN, INC.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 FOUNTAIN, INC., a California
13 corporation,

14 Plaintiff,

15 vs.

16 ULTRALUX, LLC, a Florida limited
17 liability company,

18 Defendant.

) CASE NO.

) **COMPLAINT FOR INFRINGEMENT**
) **OF U.S. PATENT NO. 9,077,877**

19 Plaintiff Fountain, Inc., by its attorney, for its Complaint, alleges as follows:

20 **JURISDICTION AND VENUE**

21 1. This is an action for patent infringement arising under the laws of the United
22 States, 35 U.S.C. § 1, *et seq.* This Court has original jurisdiction over the subject matter of this
23 action pursuant to 28 U.S.C. § 1338(a).

24 2. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391(c) and
25 1400(b).

1 3. Personal jurisdiction over the Defendant is proper in this judicial district because,
2 on information and belief, the Defendant has committed numerous acts of infringement in this
3 judicial district.

4 **PARTIES**

5 4. Plaintiff Fountain, Inc. is a California corporation with its principal place of
6 business at 6145 Shoup Ave., #58, Woodland Hills, California 91367.

7 5. On information and belief, Defendant Ultralux, LLC (“Ultralux”) is a Florida
8 limited liability company with its principal place of business at 1155 NW 159th Dr., Miami,
9 FL 33169, and is managed by Dario Nul. This information is provided on the Florida
10 Department of State, Division of Corporations website, and a copy of the Ultralux corporate
11 information provided by the State of Florida is attached as Plaintiff’s Exhibit 1.

12 **BACKGROUND**

13 6. On information and belief, the GoMax GoPro Scuba Diving Mask is the name of
14 a diving mask designed to be attached to a camera, such as a GoPro (the “GoMax diving
15 mask”). The GoMax diving mask is advertised, *inter alia*, on the website located at
16 www.gomaxworld.com and at www.amazon.com. A copy of www.gomaxworld.com is
17 attached as Plaintiff’s Exhibit 2. A copy of the amazon.com webpage advertising the GoMax
18 diving mask is attached as Plaintiff’s Exhibit 3.

19 7. On information and belief, Dario Nul is the owner of Ultralux, and the domain
20 name for Ultralux is ultraluxllc.com. Attached is a copy of a LinkedIn page for “Dario Nul,
21 MBA” as Plaintiff’s Exhibit 4. This LinkedIn page lists Dario Nul as the Founder and CEO of
22 Ultralux, LLC and the domain name for Ultralux as ultraluxllc.com.

23 8. On information and belief, the domain name gomaxworld.com has been
24 registered to and owned by Ultralux since at least December 2013. An archived copy of the
25 domain name registration from December 3, 2013 lists the contact name as Dario Nul, the
26 contact email as dn@ultraluxllc.com, and the street address as 1155 NW 159th Dr., Miami, FL
27 33169. A copy of this archived domain name registration is attached as Plaintiff’s Exhibit 5.
28

1 The current domain name registration lists the contact name as Gabe Karna; however the
2 contact email is still listed as dn@ultraluxllc.com, and the street address is still listed as 1155
3 NW 159th Dr., Miami, FL 33169. A copy of the current domain name registration is attached
4 as Plaintiff's Exhibit 6.

5 9. In email correspondence directed to info@gomaxworld.com, the street address
6 for GoMax is repeatedly listed in replies from info@gomaxworld.com as 1155 NW 159th Dr.,
7 Miami, FL 33169. A copy of this email correspondence is attached as Plaintiff's Exhibit 7.

8 10. On information and belief, the GoMax diving mask is manufactured and sold by
9 Ultralux, as a) gomaxworld.com is the domain name associated with the GoMax diving mask;
10 b) the earliest known contact person listed on that domain name's registration is Dario Nul, the
11 owner of Ultralux; c) the contact email listed on that domain name's registration is
12 dn@ultraluxllc.com, which email address uses the domain name associated with Ultralux; and
13 d) the street address on the domain name registration and used in correspondence by
14 info@gomaxworld.com is the same street address used by Ultralux.

15 11. On July 10, 2013, inventor Thomas Lee Fountain filed U.S. Patent Application
16 No. 13/987,215 entitled "Active Headwear for Detachably Mounting an Imaging Device" ("the
17 '215 application"). The '215 application was subsequently published by the U.S. Patent and
18 Trademark Office on January 30, 2014 as U.S. Patent Application Publication No.
19 2014/0027591 ("the '591 published application"). A copy of the '591 published application is
20 attached as Plaintiff's Exhibit 8.

21 12. On February 19, 2014, a copy of the '591 published application was sent to the
22 attention of Gabe Karna at GoMaxWorld along with a letter inviting GoMaxWorld to license
23 the invention in the '591 published application. A U.S. Postal Service ("USPS") certified mail
24 return receipt accepting delivery of the invitation to license and copy of the '591 published
25 application was returned; on information and belief, the writing on this return receipt shows it
26 was signed by James Hu. The tracking history for this certified letter shows it was delivered on
27
28

1 February 26, 2014. A copy of the February 26, 2014 invitation to license letter, signed certified
2 mail return receipt, and USPS tracking history is attached as Plaintiff's Exhibit 9.

3 13. On information and belief, Ultralux received the invitation to license letter dated
4 February 19, 2014 and copy of the '591 published application.

5 14. On information and belief, Ultralux has manufactured and sold the GoMax
6 diving mask from at least January 30, 2014 to the present.

7 15. On July 7, 2015 (the "Issue Date"), U.S. Patent No. 9,077,877 ("the '877
8 patent") entitled "Active Headwear for Detachably Mounting an Imaging Device" was duly
9 and legally issued to named inventor Thomas Lee Fountain, with an assignment recorded to
10 Fountain, Inc., which still owns the rights, title, and interest to the '877 patent. A copy of the
11 '877 patent is attached as Plaintiff's Exhibit 10. The invention claimed in the '877 patent is
12 substantially identical to the invention claimed in the '591 published application.

13 16. Fountain, Inc. has manufactured and sold, and continues to manufacture and sell,
14 the Octomask, a product line of diving masks designed to be attached to a camera, such as a
15 GoPro, using the technology claimed in the '877 patent.

16 **CLAIM FOR RELIEF OF INFRINGEMENT**

17 17. On information and belief, Ultralux has made, used, sold, and/or offered to sell
18 the GoMax diving mask from at least January 30, 2014 despite actual notice of the '591
19 published application. Each model variant of the GoMax diving mask falls within the scope of
20 the claims of the '877 patent. On information and belief, the accused GoMax diving mask was
21 and is sold to distributors, retailers and/or customers who resell and/or use the GoMax diving
22 mask throughout the United States, including in the State of California, including in this
23 judicial district.

24 18. Ultralux's acts prior to the Issue Date in making, using, offering to sell, and/or
25 selling, within the State of California and elsewhere in the United States the GoMax diving
26 mask without any resulting payments to Fountain, Inc. are in violation of Fountain, Inc.'s
27 rights under the '877 patent to receive a reasonable royalty pursuant to 35 U.S.C. § 154(d).
28

1 19. Ultralux’s acts on and after the Issue Date in making, using, offering to sell,
2 and/or selling, within the State of California and elsewhere in the United States the GoMax
3 diving mask infringe, induce others to infringe, and/or contributorily infringe the claims of the
4 ‘877 patent under 35 U.S.C. § 271 without authority to do so.

5 20. On information and belief, the Ultralux’s infringement of the ‘877 patent has
6 been willful, deliberate and in conscious disregard of Fountain, Inc.’s rights. By designing,
7 making, marketing, and selling the GoMax diving mask, Ultralux presumptively knew or
8 should have known that Fountain, Inc. had patent rights infringed by the GoMax diving mask.

9 21. Fountain, Inc. has suffered damages, including loss of sales and profits, as a
10 result of Ultralux’s infringing activities.

11 22. As a result of Ultralux’s infringing activities, Fountain, Inc. has suffered and will
12 continue to suffer irreparable injury, unless Ultralux is permanently enjoined by this Court.

13 23. This case is exceptional and, therefore, Fountain, Inc. is entitled to an award of
14 its expenses, costs, and attorneys’ fees in accordance with 35 U.S.C. § 285 and Fed. R. Civ. P.
15 54(d).

16
17 **DEMAND FOR JUDGMENT**

18 **WHEREFORE**, Fountain, Inc. requests the following relief:

- 19 1. A judgment that Ultralux’s making, using, offering to sell, and/or selling, within the
20 State of California and elsewhere in the United States the GoMax diving mask
21 infringes, actively induces others to infringe, and/or contributorily infringes the ‘877
22 patent;
- 23 2. A judgment permanently enjoining Ultralux’s infringing activities pursuant to 35
24 U.S.C. § 283;
- 25 3. A judgment awarding Fountain, Inc. the damages to which it is entitled for Ultralux’s
26 willful acts of infringement complained of herein, including a reasonable royalty
27 pursuant to 35 U.S.C. § 154(d) for acts of infringement prior to the Issue Date, an
28

1 award of damages and trebling of that award pursuant to 35 U.S.C. § 284 for acts of
2 infringement on and after the Issue Date, together with pre-judgment and post-
3 judgment interest;

4 4. A judgment declaring that this case is exceptional and awarding Fountain, Inc. its
5 expenses, costs, and attorneys' fees in accordance with 35 U.S.C. § 285 and Fed. R.
6 Civ. P. 54(d); and

7 5. Such other further relief as the Court deems just and proper.
8

9
10 Respectfully submitted,

11 DATED: September 16, 2015

/s/Michael J. Sullivan

Michael J. Sullivan

(SBN 264695)

LAW OFFICE OF MICHAEL J. SULLIVAN

111 N. Market St., Suite 300

San Jose, CA 95113

Telephone: (408) 628-8882

Facsimile: (408) 625-1148

E-mail: msullivan@mikesullivanlaw.com

17 Attorney for Plaintiff

18 FOUNTAIN, INC.
19
20
21
22
23
24
25
26
27
28