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COVARRUBIAS, SHANDONG INT'L and COMBAT OPTICAL, INC.

13
14 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 CARSON CHENG, an individual; NEW
CENTURY SCI & TECH, INC., a
17 California corporation,

18 Plaintiffs,

19 v.

20 AIM SPORTS, INC., a California
corporation; GUOPING CUI, an individual
21 also known as George Cui; YING CUI, an
individual also known as Amber Cui;
22 JUAN COVARRUBBIAS, an individual;
QINGDAO AMBER SPORTS CO., LTD.,
23 a Chinese registered company;
SHANDONG INTERNATIONAL
24 ECONOMIC & TECHNICAL
DEVELOPMENT CO., LTD., a Chinese
25 registered company; COMBAT OPTICAL,
INC., a California corporation; MICRO
26 WORLD CORP., a California corporation
doing business as BARSKA,

27 Defendants.

28 AND RELATED COUNTERCLAIMS.

) Civil Action No.
) CV 10-03814 PSG (PLAx)
) ~~PROPOSED~~ FINAL CONSENT
) JUDGMENT AND PERMANENT
) INJUNCTION

1 Plaintiffs Carson Cheng (“Cheng”) and New Century Sci & Tech, Inc.
2 (“NCS&T”) (collectively “Plaintiffs”) and Defendants AIM Sports, Inc. (“AIM
3 Sports”), Guoping Cui (“G. Cui”), Ying Cui (“Y. Cui”), Shandong International
4 Economic & Technical Development Co., Ltd. (“SIET”), Combat Optical, Inc.
5 (“Combat Optical”), and Juan Covarrubias (“Covarrubias”) (collectively
6 “Defendants”) hereby stipulate and jointly move for entry of final judgment as
7 follows:

8 WHEREAS, on September 4, 2012 (“Effective Date”) Plaintiffs and
9 Defendants entered into a Definitive Agreement of Settlement and Release
10 (“Settlement Agreement) that disposed of all claims in this Action; and
11

12 WHEREAS, pursuant to the Settlement Agreement, the parties have
13 agreed to entry of a Final Consent Judgment and Permanent Injunction as set
14 forth herein;
15

16 1. This Court has subject matter jurisdiction over this action as well as
17 personal jurisdiction over the parties.
18

19 2. Venue is proper in this judicial district.

20 3. Cheng is the owner of U.S. Design Patent No. D543,605 (“the ‘605
21 Patent”); U.S. Design Patent No. D542,880 (“the ‘880 Patent”); U.S. Design
22 Patent No. D555,750 (“the ‘750 Patent”); U.S. Design Patent No. D555,751
23 (“the ‘751 Patent”); U.S. Design Patent No. D555,455 (“the ‘455 Patent”); and
24 U.S. Design Patent No. D598,723 (“the ‘723 Patent”).
25
26

27 4. NCS&T is the owner of U.S. Patent No. 6,754,987 (“the ‘987
28 Patent”).

1 5. The claims of the '605 Patent, the '880 Patent, the '750 Patent, the
2 '751 Patent, the '455 Patent, the '723 Patent and the '987 Patent are valid and
3 enforceable.
4

5 6. The Court's summary judgment decision with respect to invalidity
6 of the '723 Patent is vacated.
7

8 7. The Court's Order Granting in Part and Denying in Part Plaintiffs'
9 Motion for Sanctions of August 23, 2011 (docket #191), and the Court's Order
10 Fixing Attorneys' Fees of October 31, 2011 (docket #289) (collectively
11 "Sanctions Orders") are both vacated (except to the extent already
12 consummated).
13

14 8. Plaintiffs have accused Defendants of willfully infringing the '751
15 Patent by their manufacture, sale, marketing and/or distribution of their Tri-rail
16 mount for the AK, AIM item no. MK001T and Combat Optical item no.
17 MK001T ("the '751 Accused Products").
18

19 9. Plaintiffs have accused Defendants of willfully infringing the '880
20 Patent by their manufacture, sale, marketing and/or distribution of their AR15
21 tri-mount flat top mount, AIM item no. MT008, and the 4x30 fiber optic sight
22 scope tri mount riser with LED flashlight 5mw laser sight, Combat Optical SKU
23 AR-S-C5 ("the '880 Accused Products").
24
25
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1 10. Plaintiffs have accused Defendants of willfully infringing the '605
2 Patent by their manufacture, sale, marketing and/or distribution of their SKS
3 tactical scope mount, AIM item no. MS001T ("the '605 Accused Products").
4

5 11. Plaintiffs have accused Defendants of willfully infringing the '750
6 Patent by their manufacture, sale, marketing and/or distribution of their AR15
7 carry handle tri-mount, AIM item no. MT009 and AR15 M4 detachable carry
8 handle red dot sight strobe flashlight green laser combo, Combat Optical SKU
9 AR-RD-C3 ("the '750 Accused Products").
10

11 12. Plaintiffs have accused Defendants of willfully infringing the '455
12 Patent by their manufacture, sale, marketing and/or distribution of their AIM
13 item no. ZJM-MK16, AIM item no. ZJM-MK1, and the MK-2 16 combo tool
14 ("the '455 Accused Products").
15

16 13. Plaintiffs have accused Defendants of willfully infringing the '987
17 Patent by their manufacture, sale, marketing and/or distribution of their AIM
18 item No. ZJM-ARLU magazine loader ("the '987 Accused Products").
19

20 14. Defendants deny all of Plaintiffs' allegations of wrongdoing,
21 including that the subject patents were willfully infringed. The Court makes no
22 finding of infringement.
23

24 15. The parties have entered into a settlement agreement to resolve
25 their dispute. Pursuant to the Patent Act, 35 U.S.C. § 283, Defendants and
26 each of them stipulate that Defendants, together with their officers, directors,
27
28

1 agents, servants, employees and affiliates thereof, representatives and attorneys,
2 and all persons acting or attempting to act in concert or participation with them,
3 are permanently enjoined and restrained from making, using, offering to sell,
4 selling, or distributing within the United States, its territories and possessions, or
5 by importing into the United States, its territories and possessions the following
6 products (referred collectively herein as “Covered Products”):
7
8

- 9 a. the ‘751 Accused Products or any other devices that are no more
10 than colorably different therefrom during the life of the ‘751
11 patent;
12
13 b. the ‘880 Accused Products or any other devices that are no more
14 than colorably different therefrom during the life of the ‘880
15 patent;
16
17 c. the ‘605 Accused Products or any other devices that are no more
18 than colorably different therefrom during the life of the ‘605
19 patent;
20
21 d. the ‘750 Accused Products or any other devices that are no more
22 than colorably different therefrom during the life of the ‘750
23 patent;
24
25 e. the ‘455 Accused Products or any other devices that are no more
26 than colorably different therefrom during the life of the ‘455
27 patent; and
28

1 f. the '987 Accused Products or any other devices that are no more
2 than colorably different therefrom during the life of the '987
3 patent.
4

5 16. This injunction shall take effect as of the Effective Date. The
6 prohibition of paragraph 15 shall remain in effect as long as the respective
7 patents remain unexpired.
8

9 17. Defendants shall identify to Plaintiffs all of their remaining
10 inventory of the Covered Products and shall either destroy said products or
11 tender them to Plaintiffs, within 15 days of the entry of this Final Consent
12 Judgment and Permanent Injunction. Within such time, Defendants shall
13 provide Plaintiffs with written certification under oath that all Covered Products
14 that were within their possession or control as of the date of entry of this order
15 have been destroyed or tendered to Plaintiffs in accordance with this provision.
16
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18 18. Plaintiffs will not pursue infringement allegations against
19 Defendants' customers for Covered Products sold prior to September 4, 2012.
20

21 19. Each party will bear its own costs and attorneys' fees for this
22 action.
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24 20. No other or further relief is granted to any party.

25 21. The parties advise that that they affirmatively waive any and all
26 rights to appeal this Final Consent Judgment and Permanent Injunction.
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