



3. As Schaffer Performance Archery was administratively dissolved by the Minnesota Secretary of State on March 24, 2003, at all times relevant in this Complaint, Defendant John Schaffer, as Schaffer Performance Archery's owner, agent, and Chief Executive Officer, was personally liable for the actions he purported to take on behalf of Schaffer Performance Archery. Defendant John Schaffer is an individual and, upon information and belief, is a resident of Hennepin County, Minnesota.

### **JURISDICTION & VENUE**

4. This Action arises under the patent laws of the United States, Title 35, U.S. Code, including, among others, 35 U.S.C. § 271 entitled, "Infringement of Patent," as well as 35 U.S.C. §§ 281, 283-285.

5. This Court has subject matter jurisdiction of this Action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), and 35 U.S.C. § 281.

6. Defendants have committed acts of patent infringement, have regularly conducted business in this Judicial District, and regularly sell infringing products in the Judicial District in which this Court sits, both via the Internet and via multiple authorized dealer locations within said Judicial District. Therefore, under 28 U.S.C. §1391 and 28 U.S.C. § 1400(b), venue is properly laid in this Court, and additionally, the Court has personal jurisdiction over both Defendants.

### **PATENT INFRINGEMENT**

7. Plaintiff is the original inventor of the "Shaft Clamping Arrow Rest" (the "Invention"), which is an archery device that attaches to an archer's bow and permits an arrow to be held securely in place when the bow is in a resting position, but once the drawn bow is released by the archer, allows the arrow to fly unimpeded towards the

target, which is particularly useful while bow hunting. The Invention is described in greater detail as follows:

An Archery accessory which is a fall away arrow rest with a built in arrow retainer that biases away as the bow releases the arrow, this makes the arrow rest incorporate 2 positions, one position to support the shaft of the arrow and another position to get out of the way of the arrow. The actuation process is possible with a linkage mechanism coupling the arrow rest to cable of the bow, as the bow is pulled and released and the cable of the bow moves, the linkage mechanism actuates the operation of the archery accessory.

8. On September 27, 2005, United States Patent No. 6,948,488 was duly and legally issued to Plaintiff for the above-described Invention, and since that time, Plaintiff has been, and still is, its sole owner. Plaintiff's Patent No. 6,948,488 was re-examined and upheld on April 14, 2009, with some minor revisions and twelve (12) additional Claims. A copy of Patent No. 6,948,488 (and Reexamination Certificate) is attached hereto and incorporated herein by reference as Exhibit "A."

9. Starting in approximately 2009, Schaffer Performance Archery has been, and still is, infringing Plaintiff's Patent No. 6,948,488 by making, displaying, advertising, marketing, selling, repairing, shipping, and using Schaffer Performance Archery's "Opposition arrow rest" product, which, as described in greater detail below, has features exactly like those specified in Plaintiff's above-described Patent. A picture of the Schaffer Performance Archery's "Opposition arrow rest" product is attached hereto and incorporated herein by reference as Exhibit "B."

10. Claim 25 of Plaintiff's Patent No. 6,948,488 has been, and will continue to be, directly infringed, literally and/or under the Doctrine of Equivalents, by Schaffer

Performance Archery's "Opposition arrow rest." Specifically, Claim 25 (as amended per Reexamination Certificate) states:

25. An apparatus for supporting an arrow relative to a bow, comprising:
- [1] a mounting member for coupling to a bow;
  - [2] an arrow rest coupled to said mounting member and being movable relative thereto between a first resting position and a second position, said arrow rest configured for supporting a shaft of an arrow relative thereto;
  - [3] at least one shaft retaining member coupled to said arrow rest and extending above the shaft of the arrow when said arrow rest is in said first resting position for preventing the shaft of the arrow from falling from said arrow rest when said arrow rest is in said first resting position, said at least one shaft retaining member being biased away from the shaft of an arrow; and
  - [4] a linkage mechanism coupled between said arrow rest and a cable of a bow for actuating said arrow rest between said first resting position and said second position.

(Brackets added).

11. As reflected in the labels on Exhibit "B," all four (4) of the elements of Claim 25 in Plaintiff's Patent No. 6,948,488 are present in Schaffer Performance Archery's "Opposition arrow rest," and it performs exactly the same function as Plaintiff's patented invention.

12. Schaffer Performance Archery's "Opposition arrow rest" also reads upon and directly infringes, literally and/or under the Doctrine of Equivalents, the dependent Claims 32, 35, and 36 of Plaintiff's Patent No. 6,948,488, which all incorporate Claim 25. (See Exhibit "A," pp. 19-20).

13. In approximately mid-January 2010 at the annual 2010 Archery Trade Association (ATA) Trade Show, Plaintiff approached John Schaffer and notified him

of Schaffer Performance Archery's above-described infringement in accordance with 35 U.S.C. § 287, and further, demanded that such infringement cease unless Schaffer Performance Archery agreed to pay Plaintiff royalty payments on its sales of the "Opposition arrow rest."

14. Upon information and belief, the above-described infringement is, and at all times mentioned herein after the notice of infringement to Schaffer Performance Archery described in Paragraph 13, has been, deliberate, willful, intentional, and with full knowledge of the existence and validity of Plaintiff's Patent No. 6,948,488, authorizing treble damages for infringement against Schaffer Performance Archery pursuant to 35 U.S.C. §284.

15. In addition to the above-described infringement, as reflected on the License Agreement attached hereto and incorporated herein as Exhibit "C," Plaintiff has a non-exclusive licensing arrangement with VitalX Outfitters Inc., a Delaware corporation, under which Plaintiff receives a 20% royalty for net sales stemming from products utilizing Plaintiff's Patents per the License Agreement, which includes Plaintiff's Patent No. 6,948,488. (See Exhibit "C," p. 2-3.)

16. VitalX Outfitters Inc. sells (1) Kazaway and (2) Magnix arrow rests, which both utilize Plaintiff's Patent No. 6,948,488 per the License Agreement attached as Exhibit "C" and which products directly compete with Schaffer Performance Archery's "Opposition arrow rest." Schaffer Performance Archery's infringement on one or more Claims of Plaintiff's Patent No. 6,948,488 via marketing and sales of Schaffer Performance Archery's "Opposition arrow rest" have resulted in reduced sales of VitalX Outfitters Inc.'s Kazaway and Magnix arrow rests, and thereby, reduced royalty

payments due Plaintiff per the License Agreement, resulting in further damage to Plaintiff.

17. VitalX Outfitters Inc.'s Magnix arrow rest has contained patent markings in accordance with 35 U.S.C. § 287 since September 2011, which provided additional constructive notice of Schaffer Performance Archery's infringement of Plaintiff's Patent No. 6,948,488 in addition to the above-described actual notice given by Plaintiff to Defendants in mid-January 2010 at the annual 2010 Archery Trade Association (ATA) Trade Show.

18. As a direct and proximate consequence of the acts and practices of the Defendants, Plaintiff has been, is being, and unless such acts and practices are enjoined by the court, will continue to be, injured in his business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which he is entitled to relief under 35 U.S.C. § 284.

19. As a direct and proximate consequence of the acts and practices of the Defendants, Defendants have also caused, are causing, and, unless such acts and practices are enjoined by the court, will continue to cause, irreparable harm to Plaintiff, for which there is no adequate remedy at law, and for which the Plaintiff is entitled to injunctive relief under 35 U.S.C. § 283.

20. That because of the Minnesota Secretary of State's administrative dissolution of Schaffer Performance Archery in 2003, Defendant John Schaffer is personally liable for Schaffer Performance Archery's infringement of one or more Claims of Plaintiff's Patent No. 6,948,488, and also personally liable for any and all amounts Schaffer Performance Archery is liable to Plaintiff by virtue of said infringement.

WHEREFORE, the Plaintiff prays as follows:

A. For a Judgment holding that Plaintiff's Patent No. 6,948,488 was duly and legally issued, is valid, and is enforceable.

B. For a Judgment that one or more Claims of Plaintiff's Patent No. 6,948,488 have been infringed by Defendants;

C. That Defendants, as well as any of their respective subsidiaries, officers, employees, agents, or servants, be preliminarily and permanently enjoining from further infringing Plaintiff's Patent No. 6,948,488, including, but not limited to, enjoining the sale, marketing, and manufacturing of Schaffer Performance Archery's "Opposition arrow rest;"

D. For an Order that all devices and/or products in the possession of, or subject to the control of, Defendants, or any respective subsidiaries, officers, employees, agents, or servants thereof, infringing upon one or more Claims of Plaintiff's Patent No. 6,948,488 be delivered to Plaintiff, destroyed, or altered to eliminate any possibility of further infringement;

E. That Defendants be required to account for their profits related to sales of Schaffer Performance Archery's "Opposition arrow rest," and any other device that infringes upon one or more Claims of Plaintiff's Patent No. 6,948,488;

F. For a Judgment awarding Plaintiff damages against Defendants in an amount adequate to compensate Plaintiff for patent infringement, and not less than a reasonable royalty, for the use made of Plaintiff's Invention and infringement of one or more Claims of Patent No. 6,948,488 by Defendants, together with interest and costs as fixed by the Court, as provided by 35 U.S.C. § 284.

G. That Plaintiff be awarded treble damages on account of the willful and intentional character of Defendants' infringing acts, as provided by 35 U.S.C. §284;

H. That this be deemed an "exceptional" case within the meaning of 35 U.S.C. § 285, entitling Plaintiff to an award of its reasonable attorney fees, expenses, and costs in this action; and

I. For any and all other relief to which Plaintiff may be entitled.

Plaintiff requests a jury for all issues so triable.

Respectfully submitted,

SHEVLIN LAW OFFICE, PSC

*/s/ Brendan J. Shevlin*

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