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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JIMMY LEWIS and FUACATA SPORTS  
LLC,

Plaintiffs,

vs.

TRIDENT PERFORMANCE SPORTS,  
INC., STARBOARD WORLD LIMITED,  
and SKY HI DISTRIBUTING,

Defendants.

No.

**COMPLAINT  
and  
JURY TRIAL DEMAND**

Plaintiffs Jimmy Lewis (“Jimmy Lewis”) and Fuacata Sports LLC (“Fuacata”) (collectively “Plaintiffs”), as and for their Complaint against Defendants Trident Performance Sports, Inc., Starboard World Limited and Sky Hi Distributing (collectively, the “Defendants”), allege upon personal knowledge as to their own acts and as to events taking place in their presence, and upon information and belief as to all other facts, as follows:

**NATURE OF THIS ACTION**

1. This is an action for: (i) false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (ii) common law unfair competition, (iii) violation of the Washington Consumer Protection Act, RCW 19.86.010 *et seq.*; and (iv)

1 unjust enrichment. Defendants have deliberately engaged in acts of false and misleading  
2 commercial advertising in connection with Defendant Starboard's stand-up paddleboard  
3 ("SUPS") sales. Defendant Starboard World Limited created a 2011 Starboard SUP  
4 product catalogue which incorporates a picture of a Starboard-sponsored athlete riding a  
5 Jimmy Lewis custom "gun" board in extremely challenging Maui surf conditions. *See*  
6 Exhibit 1. This photograph was placed on the same page as the Starboard Pro Wave  
7 "gun" board, which was a new edition to the Starboard SUP product line. *Id.* The  
8 photograph, found on page 52 of the 2011 Starboard SUP catalogue, was digitally altered  
9 to add Starboard Pro Wave pin stripping, carbon brush markings and a faint impression  
10 of the Starboard logo in order to lead consumers to believe the Jimmy Lewis custom  
11 board was the 2011 Starboard Pro Wave board. *Id.* The depicted board was undeniably  
12 custom made by Jimmy Lewis and delivered as a blank board to the Starboard team rider.  
13 *See* Exhibit 2.

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17 2. In order to maximize revenue potential using this picture, Starboard with  
18 the consent and assistance of its two United States distributors, Defendant Trident  
19 Performance Sports, Inc., and Defendant Sky Hi Distributing, designed a national  
20 advertising campaign utilizing a similar "high performance" photograph featuring a  
21 Jimmy Lewis board. *See* Exhibit 3. Indeed, Defendant Trident Performance Sports, Inc.'s  
22 name appears in the advertisements. *See* Exhibit 4.

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25 3. Defendants' conduct constitutes "reverse passing off" in violation of  
26 Section 43(a) of the Lanham Act by falsely representing in its own product catalogue and  
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1 advertisements that the depicted Jimmy Lewis board is a Starboard product. This  
2 purpose and effect of the unlawful use of this “crown jewel” advertising campaign has  
3 been to lead consumers to believe that Starboard SUPs are superior products to those  
4 designed, manufactured and sold by competitors such as Jimmy Lewis and to drive sales  
5 to Starboard across the entire Starboard SUP product line. Despite repeated requests to  
6 cease and desist commercial use of such pictures in connection with Starboard  
7 advertising, pictures featuring the Jimmy Lewis board have been used in other Starboard  
8 commercial advertisements in United States SUP magazines. *See* Exhibits 3 & 5. As a  
9 direct and proximate result of this unlawful conduct, Plaintiff Jimmy Lewis, and his  
10 United States distributor Fuacata Sports LLC, who directly compete with Defendants in  
11 the United States SUP market, have been injured in their business and property. Unless  
12 Defendants are enjoined by this Court, there is a strong likelihood that Defendants will  
13 continue this unlawful advertising practice and create additional consumer confusion  
14 based upon these false and deceptive advertisements, thereby irreparably injuring  
15 Plaintiffs Jimmy Lewis and Fuacata Sports, LLC. This action seeks permanent injunctive  
16 relief and damages for Defendants’ willful infringement of Jimmy Lewis’s intellectual  
17 property rights and damages caused by Defendants’ unlawful conduct.

#### JURISDICTION AND VENUE

23 4. This Court has jurisdiction over the subject matter of this Complaint  
24 pursuant to 28 U.S.C. §§ 1331 and 1392.  
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1 British Columbia Canada. Trident is in the business of selling SUP products and  
2 accessories. Trident is the United States distributor for Defendant Starboard World  
3 Limited products and accessories. Trident does business in Washington and maintains  
4 offices and distribution facilities at 18850 8th Avenue South, Seatac, Washington.  
5 Defendant Trident's name has appeared in the allegedly unlawful commercial  
6 advertisements and it communicates with Defendant Starboard and/or Sky Hi concerning  
7 Starboard US SUP sales in the United States. Trident President Declan Sacre frequently  
8 travels to the United States in connection with Trident/Starboard business. President  
9 Sacre frequently attends Surf Expo in Orlando, Florida and other US SUP industry  
10 events.  
11  
12

13           10. Defendant Starboard World Limited is a Hong Kong corporation with its  
14 corporate headquarters at c/o Level 28 Three Pacific Place, One Queens Road East, Hong  
15 Kong. Starboard is in the business of manufacturing, marketing and selling SUP  
16 products and accessories. Defendant Starboard President Svein Rasmussen frequently  
17 communicates with Defendants Trident and/or Sky Hi concerning Starboard US SUP  
18 sales. President Rasmussen also frequently travels to the United States in connection  
19 with Starboard business. Last year, President Rasmussen attended a SUP industry event  
20 in Utah.  
21  
22

23           11. Defendant Sky Hi Distributing is the Hawai'i distributor for Starboard  
24 World Limited and is located at 111 Hana Highway 108 Kahului, Maui Hawai'i. Sky Hi  
25 Distributing arranges the photo shoots for Starboard catalogues and marketing on  
26  
27

1 Hawai'i. The owners of Sky Hi Distributing are Karen and Keith Baxter. The Baxters are  
2 Starboards Maui team and lead the Starboard photoshoots.<sup>1</sup> The Baxters are also the  
3 parents of the Starboard team rider depicted in Exhibits 1-4 attached to this Complaint.  
4

## 5 FACTS

### 6 A. Jimmy Lewis.

7 12. Jimmy Lewis has been in the business of developing and shaping custom  
8 and production watersports boards since 1968. Jimmy Lewis originally built his brand  
9 and business hand shaping several lines of custom boards, including surfboards, kite  
10 surfboards, paddle surfboards, tow-in surfboards, and foil surfboards. It was a natural  
11 evolution for Jimmy Lewis to create new designs and shapes for sports such as  
12 kitesurfing and stand-up paddleboard surfing. Indeed, Jimmy Lewis was one of the first  
13 to develop and produce a paddlesurf board for commercial sale in the United States.  
14

15 13. Today, Jimmy Lewis sells surf boards, kite surfboards, and paddle  
16 surfboards. The distinguishing characteristics of Jimmy Lewis include a well-recognized  
17 brand, and distinctive designs, shapes and products that are a symbol of quality and  
18 excellence in the watersports board industry, including the United States SUP product  
19 market in which it competes with Defendants.  
20

21 14. Jimmy Lewis has extensively advertised and promoted Jimmy Lewis  
22 products utilizing the trademarked Jimmy Lewis logo and his signature designs and  
23 shapes.  
24  
25  
26

27 <sup>1</sup> <http://www.star-board.com/2010/company/behindthescene.php>.

1 15. Jimmy Lewis has taken particularly great care and pride in applying the  
2 highest level of professional skill in the research, development, design and manufacture  
3 of Jimmy Lewis products.  
4

5 16. Fuacata and/or Jimmy Lewis have invested thousands of dollars over the  
6 years in the research, design, manufacturing marketing, promotion, advertising and sale  
7 of fine quality Jimmy Lewis products.  
8

9 17. Jimmy Lewis has established a worldwide reputation for uniform high  
10 quality products, including SUPs. Jimmy Lewis products have accordingly acquired  
11 outstanding renown and invaluable goodwill in the United States and around the world.  
12 The Jimmy Lewis brand and marks have gained secondary meaning in the US SUP  
13 market.  
14

15 **B. Defendants' "Reverse Passing Off" and False/Deceptive Advertising**

16 18. In 2011, Defendant Starboard created, produced and distributed a 2011  
17 SUP catalogue in hard copy and electronic format. On page 52 of the catalogue,  
18 Starboard promoted its 10'3 x 29 Pro Wave SUP board. *See* Exhibit 1. This page of the  
19 catalogue featured an adulterated photograph of a Jimmy Lewis board being ridden by a  
20 Starboard team rider in extremely challenging Maui, Hawai'i surf conditions. The  
21 photograph was digitally altered to add Starboard Pro Wave pin stripping, carbon brush  
22 markings and a faint impression of the Starboard logo in order to lead consumers to  
23 believe the Jimmy Lewis custom board in the picture was the 2011 Starboard Pro Wave  
24 board.  
25  
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1           19. Starboard digitally altered the board to prominently add its markings in  
2 order to lead consumers to believe that the pictured board was a production board  
3 manufactured by Starboard to perform in such extreme conditions. Truth be told and as  
4 acknowledged by Starboard employee Maragreta Engstrom – the depicted board was not  
5 a Starboard board, but rather a Jimmy Lewis custom board as she stated “Yes, it is true.  
6 Conner Baxter is riding a custom shaped board. At the time we had no Gun available in  
7 our range . . .”<sup>2</sup>  
8

9  
10           20. On May 31, 2011, Plaintiffs contacted Defendants Starboard and Trident to  
11 demand that they immediately cease and desist commercial dissemination of the  
12 photograph or any use of any Jimmy Lewis board in a Starboard advertisement.  
13 Plaintiffs also demanded that Defendants Starboard and Trident immediately contact all  
14 United States Starboard dealers to inform them of the origin and design of the pictured  
15 board and instruct them to destroy all such photographs in all commercial forms,  
16 including in hard copy or electronic formats. Plaintiffs further demanded that Defendants  
17 Starboard and Trident, in connection with Starboard SUP sales, advise all persons that the  
18 pictured board was a Jimmy Lewis product and not a Starboard product. *See* Exhibit 5.  
19

20  
21           21. On May 31, 2011, Starboard President Svein Rasmussen responded via e-  
22 mail to the demand letter admitting that the pictured board was not a Starboard product  
23 noting “we agree that it is a Jimmy Lewis board, great lines as always.”  
24

25  
26  
27           <sup>2</sup> Standupzone.com; <http://www.standupzone.com/forum/index.php?topic=11637.60>, Reply 67.



1           22.    On June 5, 2011, Starboard President Svein Rasmussen capitulated and  
2 agreed to adhere to Plaintiffs' demands while also referring to the incident as a "sad  
3 spectacle."

4  
5           23.    On June 24, 2011, Plaintiffs contacted Starboard President Svein  
6 Rasmussen, via e-mail, because Starboard and Trident failed to comply with all of the  
7 terms contained in the May 31, 2011 demand letter. Notably, Starboard did not send  
8 Plaintiffs a draft of the e-mail it intended to transmit to Starboard United States dealers.

9  
10          24.    More disturbing, however, was the fact that Plaintiffs learned Starboard  
11 took out and published a full page, back cover advertisement in the Summer 2011 Stand  
12 Up Journal. This advertisement was the virtually the same advertisement Starboard  
13 promised it would not use in the future. In other words, this ad appeared *after* Starboard  
14 gave written assurances to Plaintiffs that it would cease and desist commercial use of a  
15 picture utilizing a Jimmy Lewis board.

16  
17          25.    On June 27, 2011, Starboard President Svein Rasmussen claimed the  
18 advertisement was prepared on March 4, 2011 for publication and that Starboard did not  
19 have time to prevent the advertisement from running.

20  
21          26.    In a July 19, 2011 e-mail to Jimmy Lewis, Starboard President Svein  
22 Rasmussen "sincerely apologized for [Starboard's] serious error in judgment." Mr.  
23 Rasmussen further stated "I have learned a very distressing lesson here that what we  
24 thought was okay 20 or so years ago is not the case today. Jimmy, *this will never happen*  
25 *again . . . .*"(emphasis added). This email also contained the text of an e-mail Starboard  
26

1 intended to send directly to all Starboard dealers in the United States. The draft e-mail to  
2 all United States Starboard dealers was as follows:

3 **Email to Dealers:**

4 Dear Starboard Dealer and/or Representative:

5  
6 In our attempt to support Starboard-sponsored rider Connor  
7 Baxter, we included a picture of Connor on page 52 of our 2011 catalog  
8 on a Jimmy Lewis custom gun board - it is NOT the Starboard board  
9 being advertised on that page.

10 We mistakenly believed that because Connor purchased the  
11 board as a blank and explained he would be placing his sponsor's logos  
12 on the board, it would be okay to put the board in our catalog on a page  
13 with a similar board, and altered the photo slightly. Unfortunately, we  
14 were entirely incorrect in our understanding, and received a letter from  
15 an attorney representing Jimmy Lewis advising us of this fact. The  
16 attorney's letter is summarized in this link to a press release issued by  
17 Jimmy Lewis' distributor, Fuacata Sports LLC  
18 (<http://www.outdoorindustry.org/news.industry.php?newsId=14714>).

19 I have known Jimmy Lewis for many years and respect him and  
20 all of the excellent products he makes. This was an error in judgment  
21 on our part and on behalf of Starboard I have extended my sincerest  
22 apologies to Jimmy together with my promise it will NEVER happen  
23 again.

24 To respect Jimmy's request of us, we kindly ask that you assist  
25 us by removing page 52 of 2011 catalog, or cutting out the picture of  
26 Connor in the upper left hand part of that page.

27 If there are any further questions on inquiries on this matter,  
please direct them to me.

Thank you very much for your understanding.

Svein Rasmussen  
Starboard

1 27. In an effort to mitigate its damages, Plaintiffs affirmatively informed the  
2 industry of the problem as well.

3 <http://www.outdoorindustry.org/news.industry.php?newsId=14714>.

4  
5 28. Despite Starboard's promise that "it will never happen again," Plaintiffs  
6 have recently discovered that Defendants have published photographs prominently  
7 featuring the Jimmy Lewis board in Starboard advertisements in the following  
8 magazines:

9 Stand Up Paddler Magazine Summer 2011 Issue (Jun 2011)

10 Stand Up Paddler Magazine Fall 2011 Issue (Sep 2011)

11 Stand Up Paddler Magazine Winter 2011 Issue (Dec 2011)

12 29. When confronted with these additional "errors in judgment" one or more  
13 Defendants have disclaimed responsibility for the advertisements even though their name  
14 appears in the advertisement or they were responsible for the dissemination of the  
15 advertisement.  
16

17 30. In light of the foregoing, a Court Order is required to prevent further "errors  
18 in judgment" or "mistakes" from occurring as Defendants' assurances have proven to be  
19 unreliable and damaging.  
20

21 **C. The Likelihood of Confusion and Injury Caused by Defendants' Actions**

22 31. Consumers who purchase the Pro Wave or other Starboard SUPs based  
23 upon these advertisements are likely to be confused and/or disappointed by obtaining an  
24 inferior product. Starboard SUP purchasers will also be confused to the extent they base  
25 their purchases off these "crown jewel" advertisements because Starboard is suggesting it  
26 manufactures, markets and sells products which are superior to competitors across all  
27

1 product lines when, in fact, the predicate basis for this belief is a complete illusion, *i.e.*,  
2 the depicted board is not a Starboard product.

3  
4 32. As a direct and proximate result of Defendants' actions, Plaintiffs are  
5 suffering injury to their business and property as well as a loss of enormous goodwill  
6 initially created by Jimmy Lewis in the United States SUP market. Plaintiffs seek treble  
7 damages and disgorgement of all Defendants' revenue derived from their 2011 SUP sales  
8 which were generated from this single, "crown jewel" advertising campaign utilizing  
9 what is, in fact, a Jimmy Lewis board being "passed off" as a Starboard product.  
10

11 33. Defendants are likely to continue to commit the acts complained of herein,  
12 and unless restrained and enjoined, will continue to do so, all to Plaintiffs' irreparable  
13 harm.  
14

### 15 COUNT I

#### 16 **Federal Unfair Competition and False Designation of** 17 **Origin under 15 U.S.C. § 1125(a)**

18 34. Plaintiffs reallege and incorporate by reference paragraphs 1- 33 inclusive  
19 of this Complaint as if fully set forth herein.

20 35. The acts of Defendants alleged herein constitute the use in interstate  
21 commerce of a word, term, name, symbol, picture or device, or any combination thereof,  
22 or false designation of origin, in connection with the sale, or offering for sale, of goods in  
23 violation of Section 43(a)(1)(A) and (B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)  
24 and (B). These acts of the Defendants are likely to cause confusion, or to cause mistake,  
25  
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27

1 or to deceive as to the affiliation, connection, or association of Defendants with Jimmy  
2 Lewis boards, or as to the origin, sponsorship, or approval of Jimmy Lewis products.

3 36. Defendants' "reverse passing off" advertisements misleadingly cause  
4 consumers to believe that the board pictured in Starboard advertisements is a Starboard  
5 product when it is, in fact, a Jimmy Lewis product. As such, the Defendants' conduct is  
6 likely to cause confusion in the trade and among the general public as to the design,  
7 origin, manufacture or sponsorship of the pictured board.  
8

9  
10 37. As a direct and proximate result of Defendants' actions, Plaintiffs have  
11 suffered injury.

12 38. Such conduct on the part of the Defendants has caused and will continue to  
13 cause irreparable injury to Plaintiffs.  
14

## 15 COUNT II

### 16 **Unfair Competition under Washington Common Law**

17 39. Plaintiffs reallege and incorporate by reference paragraphs 1- 38 inclusive  
18 of this Complaint as if fully set forth herein.

19  
20 40. By reason of the foregoing, the Defendants have engaged, and continue to  
21 engage, in acts of unfair competition in violation of the common law.

22 41. Such conduct on the part of the Defendants has caused and will continue to  
23 cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at  
24 law.  
25  
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1 42. Such conduct on the part of the Defendants has caused and will continue to  
2 cause irreparable harm to Plaintiffs.

3  
4 **COUNT III**

5 **Violation of Washington Consumer Protection Act**

6 43. Plaintiffs reallege and incorporate by reference paragraphs 1- 46 inclusive  
7 of this Complaint as if fully set forth herein.

8  
9 44. The facts alleged above, including Defendants' infringement of Plaintiffs'  
10 intellectual property with the intent to deceive and defraud the public into believing that a  
11 board pictured in the Starboard catalogue and Starboard advertising was manufactured by  
12 Starboard when it was, in fact, designed, and custom created by Jimmy Lewis. Based  
13 upon this fraudulent and deceptive advertising, Defendants intended to deceive the public  
14 into believing that its products are superior to those of competitor Jimmy Lewis and  
15 others, thereby constituting an unfair or deceptive act or practice in the conduct of trade  
16 or commerce in violation of the Washington Consumer Protection Act, RCW 19.86.010  
17  
18 *et seq.*

19  
20 45. Said conduct affects the public interest, is capable of repetition and has  
21 been repeated as alleged above.

22 46. Defendants' actions were performed with total disregard for the rights of  
23 Plaintiffs and the public interest.  
24  
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27

1 47. As a direct result of Defendants' unfair trade practices, Plaintiffs have been  
2 injured and damaged, and are entitled to recover treble damages, costs, and attorney's  
3 fees.  
4

5 **COUNT IV**

6 **Unjust Enrichment/Disgorgement of Profits**

7 48. Plaintiffs reallege and incorporate by reference paragraphs 1-51 inclusive of  
8 this Complaint as if fully set forth herein.  
9

10 49. Defendants have been unjustly enriched through their unlawful conduct and  
11 the resulting profits.

12 50. Defendants should not be permitted to retain the benefits conferred upon  
13 them as a result of their false and deceptive advertising.  
14

15 51. Plaintiffs seek disgorgement of all profits resulting from such false and  
16 deceptive advertising.  
17

18 **REQUEST FOR RELIEF**

19 **WHEREFORE**, the Plaintiffs, Jimmy Lewis and Fuacata Sports, LLC, request  
20 that this Honorable Court:

21 A. Enter judgment in favor of the Plaintiffs, Jimmy Lewis, and Fuacata Sports,  
22 LLC against the Defendants Trident Sports, Inc., Starboard World Limited and Sky Hi  
23 Distributing, on all Counts and account for and pay over to Plaintiffs all of Defendants'  
24 profits derived from its unlawful conduct, to the full extent provided for by Section 35(a)  
25 of the Lanham Act, 15 U.S.C. § 1117, including treble damages;  
26  
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1 B. Enter a permanent injunction restraining and enjoining Defendants and  
2 their divisions, subsidiaries, officers, agents, employees, attorneys, and all those persons  
3 in active concert or participation with them from (i) representing in any advertisement or  
4 in connection any SUP sale that a Jimmy Lewis product is a Starboard product; or (ii)  
5 using a Jimmy Lewis shape, mark, design or product in any Starboard advertisement. The  
6 injunction should also require Defendants to destroy all copies of the picture or any  
7 related version as identified in this Complaint.  
8

9  
10 C. Award punitive and exemplary damages against Defendants in favor of  
11 Plaintiffs by reason of Defendants' intentional or reckless disregard for Plaintiffs' rights  
12 and the rights of those defrauded;

13 D. Award treble damages pursuant to Washington state law;

14 E. Award disgorgement as to all Starboard Pro Wave and other SUP sales;

15 F. Award the Plaintiffs reasonable attorneys' fees and costs;

16 G. Award the Plaintiffs pre-judgment and post-judgment interest in the  
17 maximum amount allowed under the law; and  
18

19 H. Award such other and further relief as it deems just and reasonable.  
20

21 **JURY TRIAL DEMAND**

22 Plaintiffs demand trial by jury on all issues so triable.  
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1 Dated: March 9, 2012

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3 

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