

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NACRE AS,
Sluppenvegen 12 East
Trondheim, 7037
Norway

Plaintiff,

v.

SILYNX COMMUNICATIONS, INC.,
a Delaware corporation
9901 Belward Campus Drive, Suite 150
Rockville, MD 20850
Montgomery County

and

GIL LIMONCHIK, individually,
1104 Main Street
Gaithersburg, MD 20878
Montgomery County

Defendants.

CIVIL ACTION NO. 8:07-cv-02676-AW

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Nacre AS (“Nacre”) brings this civil action against Silynx Communications, Inc. (“Silynx”) and Gil Limonchik (collectively “Defendants”).

1. Plaintiff Nacre is a Norwegian corporation with its principal place of business in Trondheim, Norway. Nacre designs and manufactures tactical miniature communications headsets with built-in noise protection. Nacre markets and sells its products primarily to military and law enforcement personnel.

2. On information and belief, Silynx is a Delaware corporation with its principal place of business at 9901 Belward Campus Drive, Suite 150, Rockville, MD 20850. Also on

information and belief, Silynx markets and sells products with similar features to those made by Nacre, to the same or similar purchasers to those who purchase Nacre products.

3. On information and belief, Mr. Limonchik is an individual residing at 1104 Main Street, Gaithersburg, MD 20878. Also on information and belief, Mr. Limonchik is the Chief Executive Officer of Silynx. Mr. Limonchik is a former consultant to Nacre.

4. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. § 1 *et seq.* and for trademark infringement arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.* The value of the subject matter in controversy, exclusive of interest and costs, exceeds \$75,000. This Court has jurisdiction pursuant to 15 U.S.C. § 1125 and 28 U.S.C. §§ 1331, 1338.

5. This Court has personal jurisdiction over Defendants. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. Defendants' infringing acts, described below, unjustly enrich Defendants and have damaged Nacre in an amount in excess of \$75,000, exclusive of costs and interest.

COUNT I – INFRINGEMENT OF QUIETPRO®

7. The allegations of paragraphs 1–6 are restated and realleged as though fully set forth herein.

8. Nacre is the sole and exclusive owner of the federally registered mark QUIETPRO® in Registration No. 3152987 for, *inter alia*, two-way radios and wireless communicators for use in combat, in battlefield conditions, in military, military special forces and law enforcement activities, in noisy aircraft, watercraft, and vehicle environments, on the U.S. Patent and Trademark Office ("PTO") Principal Register. That registration issued on October 10, 2006, with a priority date of September 14, 2004. A true and correct copy of this registration is attached hereto as **Exhibit 1**. Said registration is in full force and effect.

9. Nacre also has common law rights in QUIETPRO® for, *inter alia*, tactical communication headsets having wired and wireless push-to-talk modules and ear protection solid as a unit, in the United States.

10. On information and belief, Mr. Limonchik is a former consultant to Nacre, was aware of Nacre's rights to and use of the QUIETPRO[®] mark, and had familiarity with Nacre's business strategy in the area of tactical hearing protection communication devices.

11. Silynx currently uses the confusingly similar mark QUIETOPS in connection with a tactical hearing protection communication device in the United States.

12. On information and belief, Silynx began using QUIETOPS after the date of Nacre's first commercial use of QUIETPRO[®]. On information and belief, Mr. Limonchik was and is the principal actor and moving force behind Silynx's selection, adoption, and use of the QUIETOPS mark. On information and belief, Mr. Limonchik used his knowledge of the QUIETPRO[®] mark and the goodwill associated with it, to personally confuse potential customers and misappropriate the goodwill associated with Nacre's QUIETPRO[®] mark. Mr. Limonchik also used his knowledge of the QUIETPRO[®] mark and the goodwill associated with it, and his position as CEO of Silynx, to actively and intentionally direct, control, induce, and/or supervise Silynx's use of the confusingly similar QUIETOPS mark to confuse potential customers and misappropriate the goodwill associated with Nacre's QUIETPRO[®] mark. On information and belief, Silynx and Mr. Limonchik are still actively and intentionally marketing and promoting products using the confusingly similar QUIETOPS mark with full knowledge of Nacre's rights in the QUIETPRO[®] mark and with the intention to confuse potential customers.

13. On April 28, 2006, Silynx filed an application for a federal trademark registration for QUIETOPS for tactical communication headsets featuring wired and wireless push-to-talk modules and ear protectors sold as a unit. That application was filed pursuant to 15 U.S.C. § 1051(b), indicating an intent to use the mark. A printout from the PTO Trademark Electronic Search System ("TESS") reflecting this application is attached hereto as **Exhibit 2**.

14. Silynx has and is infringing the rights of Nacre in QUIETPRO[®] under 15 U.S.C. § 1125 and the common law. Mr. Limonchik also has and is infringing the rights of Nacre in QUIETPRO[®] under 15 U.S.C. § 1125 and the common law.

15. Defendants' infringement of Nacre's rights in QUIETPRO[®] is and has been willful.

16. If the infringing acts of Defendants are allowed to continue, Nacre will suffer irreparable injury.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,039,195

17. The allegations of paragraphs 1–6 are restated and realleged as though fully set forth herein.

18. Nacre is the assignee and owner of all right, title, and interest in United States Patent No. 7,039,195, entitled “Ear Terminal” (“the ’195 patent”). The ’195 patent was duly and legally issued on May 2, 2006, by the PTO. A true and correct copy of the ’195 patent is attached hereto as **Exhibit 3**.

19. Defendants have been and are now infringing, actively inducing infringement, and/or liable for contributory infringement of the ’195 patent by making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset.

20. On information and belief, Silynx has been and is making, importing, using, offering for sale, and selling hardware or software products including, but not limited to, the QuietOps Tactical Communication Headset, that infringe the ’195 patent. Mr. Limonchik, Silynx’s current CEO, was a consultant to Nacre in the months prior to Silynx’s incorporation. Mr. Limonchik had extensive access to the patented technology, and Nacre documentation associated therewith, in fully-developed form while consulting for Nacre. On information and belief, Silynx, led by Mr. Limonchik, was already promoting the QuietOps product at the Eurosatory conference in Paris soon after Silynx’s incorporation. On information and belief, Mr. Limonchik personally appropriated Nacre’s patented and proprietary technology and directed, controlled, and/or supervised Silynx’s accelerated development of the infringing QuietOps product. On information and belief, Mr. Limonchik, prior to and following his appointment as CEO of Silynx, was the vehicle by which Nacre’s patented and proprietary technology and

documentation were transferred to Silynx so that Silynx could develop a competing product with little or no research.

21. Defendants have been and now are actively inducing infringement of the '195 patent. On information and belief, Silynx has and is providing its customers with equipment and instructions to practice the patented technology, with the specific intent that they practice that technology. On information and belief, Mr. Limonchik personally and actively directed, supervised, and/or controlled Silynx's acquisition of and practice of the patented technology with the specific intent that it practice that technology.

22. On information and belief, Silynx has been and is now making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset, that are components of technology patented by the '195 patent, knowing the components to be especially made or especially adapted for use in an infringement of the '195 patent and not suitable for substantial noninfringing use. On information and belief, Mr. Limonchik personally directed, controlled, and/or supervised Silynx's accelerated development of the QuietOps product.

23. Therefore, Silynx has and is directly infringing, actively inducing infringement, and/or contributorily infringing the '195 patent by making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset. Mr. Limonchik, personally, has and is directly infringing, actively inducing infringement, and/or contributorily infringing the '195 patent by facilitating, directing, supervising, and controlling Silynx's making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset.

24. Defendants' past and continued acts of infringement have injured Nacre and, thus, Nacre is entitled to recover damages adequate to compensate for the infringement.

25. Defendants' acts of infringement are causing irreparable injury to Nacre and will continue to cause irreparable injury until enjoined by this Court from further infringement.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 6,567,524

26. The allegations of paragraphs 1–6 are restated and realleged as though fully set forth herein.

27. Nacre is the assignee and owner of all right, title, and interest in United States Patent No. 6,567,524, entitled “Noise Protection Verification Device” (“the ’524 patent”). The ’524 patent was duly and legally issued on May 20, 2003, by the PTO. A true and correct copy of the ’524 patent is attached hereto as **Exhibit 4**.

28. Defendants have been and are now infringing, actively inducing infringement, and/or liable for contributory infringement of the ’524 patent by making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset.

29. On information and belief, Silynx has been and is making, importing, using, offering for sale, and selling hardware or software products including, but not limited to, the QuietOps Tactical Communication Headset, that infringe the ’524 patent. Mr. Limonchik, Silynx’s current CEO, was a consultant to Nacre in the months prior to Silynx’s incorporation. Mr. Limonchik had extensive access to the patented technology, and Nacre documentation associated therewith, in fully-developed form while consulting for Nacre. On information and belief, Silynx, led by Mr. Limonchik, was already promoting the QuietOps product at the Eurosatory conference in Paris soon after Silynx’s incorporation. On information and belief, Mr. Limonchik personally appropriated Nacre’s patented and proprietary technology and directed, controlled, and/or supervised Silynx’s accelerated development of the infringing QuietOps product. On information and belief, Mr. Limonchik, prior to and following his appointment as CEO of Silynx, was the vehicle by which Nacre’s patented and proprietary technology and documentation were transferred to Silynx so that Silynx could develop a competing product with little or no research.

30. Defendants have been and now are actively inducing infringement of the ’524 patent. On information and belief, Silynx has and is providing its customers with equipment and

instructions to practice the patented technology, with the specific intent that they practice that technology. On information and belief, Mr. Limonchik personally and actively directed, supervised, and/or controlled Silynx's acquisition of and practice of the patented technology with the specific intent that it practice that technology.

31. On information and belief, Silynx has been and is now making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset, that are components of technology patented by the '524 patent, knowing the components to be especially made or especially adapted for use in an infringement of the '524 patent and not suitable for substantial noninfringing use. On information and belief, Mr. Limonchik personally directed, controlled, and/or supervised Silynx's accelerated development of the QuietOps product.

32. Therefore, Silynx has and is directly infringing, actively inducing infringement, and/or contributorily infringing the '524 patent by making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset. Mr. Limonchik, personally, has and is directly infringing, actively inducing infringement, and/or contributorily infringing the '524 patent by facilitating, directing, supervising, and controlling Silynx's making, importing, using, offering for sale, or selling hardware or software products, including, but not limited to, the QuietOps Tactical Communications Headset.

33. Defendants' past and continued acts of infringement have injured Nacre and, thus, Nacre is entitled to recover damages adequate to compensate for the infringement.

34. Defendants' acts of infringement are causing irreparable injury to Nacre and will continue to cause irreparable injury until enjoined by this Court from further infringement.

JURY DEMAND

35. Nacre demands a jury trial for all matters so triable.

RELIEF REQUESTED

WHEREFORE, Nacre requests that this Court:

- A. Preliminarily and permanently enjoin Defendants, and those in active concert or participation with Defendants, from using QUIETPRO[®], QUIETOPS, or any term confusingly similar to QUIETPRO[®] or QUIETOPS, whether alone or in combination with other words or symbols, and from any further trademark infringement;
- B. Direct Defendants to pay Nacre the actual damages to Nacre and any profits realized by Defendant, and the costs of this action pursuant to 15 U.S.C. § 1117(a);
- C. Enter judgment that the Defendants' acts of trademark infringement have been knowing and willful;
- D. Order Defendants to pay for corrective advertising for the purpose of correcting consumers' mistaken impressions created by Defendants' infringing acts;
- E. Order the recall, impounding and destruction of all goods, advertising or other items bearing infringing markings, pursuant to 15 U.S.C. § 1118, or otherwise;
- F. Order Defendants' application for a federal trademark registration for QUIETOPS to be withdrawn and/or canceled;
- G. Render judgment finding that Defendants have infringed and/or induced infringement of the '195 patent and the '524 patent;
- H. Find that Defendants' patent infringement was willful;
- I. Issue preliminary and permanent injunctions preventing Defendants, and those in active concert or participation with Defendants, from further infringement, inducement of infringement, or contributory infringement of the '195 patent or the '524 patent;
- J. Award compensatory damages for patent infringement in an amount to be determined at trial;
- K. Award treble damages for patent infringement pursuant to 35 U.S.C. § 284;
- L. Award interest as allowed by law;

M. Declare that this case is exceptional pursuant to 35 U.S.C. § 285, and award the costs and reasonably attorneys' fees incurred in connection with this action; and

N. Award Nacre such further relief as this Court and the jury may deem just and proper.

Respectfully submitted,

NACRE AS

By its attorneys,

Dated: June 25, 2008

/s/ Andrew R. Kipsidas
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NACRE AS

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2008, a true and correct copy of **NACRE AS'S**

FIRST AMENDED COMPLAINT was electronically served as to the parties below:

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