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18 Attorneys for Plaintiff GLO SCIENCE, INC.

19 UNITED STATES DISTRICT COURT

20 SOUTHERN DISTRICT OF CALIFORNIA

21 GLO SCIENCE, INC., a Delaware
Corporation,

22 Plaintiff,

23 vs.

24 ANGELO DE SIMONE;
25 TRUECOMPANY LIMITED a
Corporation of the United Kingdom; and
26 MILLION DOLLAR SMILE, L.L.C. a
corporation of Nevada,

27 Defendants.
28

Case No.: '18CV0217 AJB JMA

**PLAINTIFF GLO SCIENCE, INC.'S
COMPLAINT; DEMAND FOR
JURY TRIAL**

1 GLO SCIENCE, INC. (hereinafter, "Plaintiff" or "GLO SCIENCE") files this
2 Complaint against Defendants ANGELO DE SIMONE (hereinafter, "DE SIMONE"),
3 TRUECOMPANY LIMITED (hereinafter, "TRUECOMPANY"), and MILLION
4 DOLLAR SMILE, L.L.C. (hereinafter, "MILLION DOLLAR") (collectively referred
5 to hereinafter as "Defendants") and alleges as follows:

6 **THE PARTIES**

7 1. GLO SCIENCE is a corporation duly incorporated in the State of
8 Delaware having a place of business at 10 West 37th Street, Suite 1001, New York,
9 New York 10018. GLO SCIENCE is doing business in this District.

10 2. GLO SCIENCE is the exclusive licensee of JBL RADICAL
11 INNOVATIONS, LLC, ("JBL") a Delaware limited liability company having a place
12 of business at 923 Fifth Avenue, New York, NY 10021 for inventions covered by U.S.
13 Patents at issue in this civil action as described in greater detail hereinafter.

14 3. Upon information and belief, DE SIMONE is an individual whose
15 address is 2002 Marquette Road, Chula Vista, California 91913. Upon information
16 and belief, DE SIMONE is the sole owner of and alter ego of TRUECOMPANY and
17 MILLION DOLLAR and makes all business decisions of TRUECOMPANY and
18 MILLION DOLLAR.

19 4. Upon information and belief, TRUECOMPANY is a corporation
20 incorporated in the United Kingdom whose business address is 881 Kuhn Drive, Suite
21 205, Chula Vista, California 91914.

22 5. Upon information and belief, MILLION DOLLAR is a corporation
23 incorporated in Nevada whose business address is 881 Kuhn Drive, Suite 205, Chula
24 Vista, California 91914.

25 6. Defendants make, use, offer to sell and/or sell mouthpieces which
26 infringe certain patents owned by JBL and which JBL exclusively licenses to GLO
27 SCIENCE as will be described in greater detail hereinafter.

28

1 7. Upon information and belief, TRUECOMPANY was incorporated in the
2 United Kingdom on September 14, 2016. Upon information and belief, DE SIMONE
3 is the sole Director and shareholder of TRUECOMPANY and thus controls all the
4 business decisions of TRUECOMPANY. Attached as Exhibit 1 is a copy of the
5 Certificate of Incorporation of a Private Limited Company issued by the Registrar of
6 Companies for England and Wales dated September 1, 2016, Attached as Exhibit 2 is
7 a copy of the Affidavit of Angelo De Simone which was taken from Defendants'
8 motion to dismiss.

9 8. Upon information and belief, MILLION DOLLAR was incorporated in
10 Nevada on September 14, 2011. See Exhibit 3.

11 **NATURE OF THE ACTION**

12 9. This is an Action for patent infringement arising under the patent laws of
13 the United States including 35 U.S.C. §§ 271, 281, 283, 284, 285 and 289.

14 **JURISDICTION AND VENUE**

15 10. This is an Action for patent infringement arising under the patent laws of
16 the United States, Title 35 of the United States Code, 35 U.S.C. § 271 *et seq.*

17 11. This Court has jurisdiction over the subject matter of this Action under
18 28 U.S.C. §§ 1331 and 1338(a).

19 12. Venue properly lies in this District under 28 U.S.C. 1400(b) because (1)
20 DE SIMONE resides in this District, and (2) TRUECOMPANY and MILLION
21 DOLLAR have both committed acts of infringement in this District and both have a
22 regular and established place of business in this District. Venue is also proper over
23 TRUECOMPANY under 28 U.S.C. § 1391(c)(3).

24 **FACTUAL BACKGROUND**

25 13. JBL is the owner of U.S. Patent No. D636,074 (the '074 patent), issued
26 April 12, 2011 from application Serial No. 29/363,728, filed June 14, 2010. See
27 Exhibit 4. The '074 patent remains in full force and effect.

28 14. GLO SCIENCE is the exclusive licensee of the '074 patent.

1 15. The ‘074 patent covers the ornamental appearance of a mouthpiece.

2 16. JBL is the owner of U.S. Patent No. D765,255 (the ‘255 patent), issued
3 on August 30, 2016 from application Serial No. 29/492,179, filed on May 29, 2014.
4 See Exhibit 5. The ‘255 patent remains in full force and effect.

5 17. GLO SCIENCE is the exclusive licensee of the ‘255 patent.

6 18. The ‘255 patent covers the ornamental appearance of a mouthpiece.

7 19. Upon information and belief, Defendants have been and are actively
8 selling and marketing tooth whitening systems from a website accessed at www.true-
9 company.com. See Exhibit 6. Among the products sold, marketed and offered for
10 sale on that website are tooth whitening mouthpieces virtually identical in appearance
11 to the mouthpieces claimed in the ‘074 and ‘255 patents (hereinafter, the “Infringing
12 Products”). See Exhibit 7.

13 20. Upon information and belief, Defendants sell, market and offer for sale
14 the Infringing Products using the fictitious business name “MILLION DOLLAR
15 SMILE” and the trademark “truewhite.” See Exhibit 8 (an image of packaging for the
16 goods).

17 21. Defendants have infringed and continue to infringe the ‘074 patent and
18 ‘255 patent by making, using, offering to sell, and selling the Infringing Products as
19 shown in Exhibit 7, throughout the United States including in this judicial District.

20 22. Plaintiff actively manufactures, markets and distributes tooth whitening
21 mouthpieces covered by JBL’s patents. See Exhibit 9. Given the virtually identical
22 appearance between Plaintiff’s mouthpiece and the Infringing Products, upon
23 information and belief, Defendants’ infringement is deliberate, willful, wanton, and
24 intentional.

25 23. Defendants have caused and will continue to cause Plaintiff substantial
26 damages and injury including Plaintiff’s loss of unique product positioning and lost
27 profits due to lost sales of its systems including the patented mouthpieces by virtue of
28 Defendants’ past and continuing infringement of the ‘074 and ‘255 patents.

1 24. Plaintiff will suffer further damage and injury unless and until
2 Defendants are enjoined by this Court from continuing such infringement. The
3 damage caused by Defendants are irreparable and cannot be adequately compensated
4 for solely in monetary damages.

5 COUNT I

6 **(Infringement of the '074 Patent by Defendants)**

7 25. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-24.

8 26. Defendants have been and are now infringing the '074 patent by making,
9 using, selling, offering for sale, and/or importing into the United States, including in
10 this District, the Infringing Products.

11 27. On information and belief, and after a reasonable opportunity for further
12 investigation or discovery, it is likely the evidence will show that Defendants' acts of
13 infringement have been made with full knowledge of the '074 patent particularly since
14 it issued over five years ago. Such acts constitute willful and deliberate infringement,
15 entitling Plaintiff to enhanced damages and attorneys' fees.

16 28. As a consequence of Defendants' infringement, Plaintiff has been
17 irreparably damaged, to an extent not yet determined, and will continue to be
18 irreparably damaged by such acts in the future unless Defendants are enjoined by this
19 Court from committing further acts of infringement.

20 29. Plaintiff is entitled to recover damages adequate to compensate for
21 Defendants' infringement, which in no event can be less than a reasonable royalty, as
22 well as for lost profits.

23 COUNT II

24 **(Infringement of the '255 Patent by Defendants)**

25 30. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-29.

26 31. Defendants have been and are now infringing the '255 patent by making,
27 using, selling, offering for sale, and/or importing into the United States, including in
28 this District, the Infringing Products.

1 32. On information and belief, and after a reasonable opportunity for further
2 investigation or discovery, it is likely the evidence will show that Defendants' acts of
3 infringement have been made with full knowledge of the '255 patent particularly since
4 the mouthpiece covered by the '255 patent has been actively and extensively marketed
5 by GLO SCIENCE as exclusive licensee of JBL. Such acts constitute willful and
6 deliberate infringement, entitling Plaintiff to enhanced damages and attorneys' fees.

7 33. As a consequence of Defendants' infringement, Plaintiff has been
8 irreparably damaged, to an extent not yet determined, and will continue to be
9 irreparably damaged by such acts in the future unless Defendants are enjoined by this
10 Court from committing further acts of infringement.

11 34. Plaintiff is entitled to recover damages adequate to compensate for
12 Defendants' infringement, which in no event can be less than a reasonable royalty, as
13 well as for lost profits.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for the following relief:

16 (A) That this Court enter Judgment that the '074 patent has been infringed by
17 Defendants (35 USC § 271(a)) and that such infringement has been willful.

18 (B) That this Court enter Judgment that the '255 patent has been infringed by
19 Defendants (35 USC § 271(a)) and that such infringement has been willful.

20 (C) That this Court issue an injunction, permanently enjoining Defendants
21 and their officers, agents, subsidiaries, successors, employees, representatives, and
22 assigns from further patent infringement (35 USC § 283).

23 (D) That this Court award damages to Plaintiff adequate to compensate
24 Plaintiff for all acts of infringement by Defendants (35 USC § 284) including for lost
25 profits (35 USC § 289).

26 (E) That this Court award damages in the amount of Defendants' total profits
27 realized for the Infringing Products (35 U.S.C. § 289).
28

1 (F) That the damages awarded be increased up to three times as provided for
2 in 35 U.S.C. § 284 concerning patent infringement.

3 (G) That Plaintiff be awarded their attorneys' fees under 35 U.S.C. § 285.

4 (H) That Plaintiff be granted pre-judgment interest pursuant to 35 U.S.C. §
5 284 and post-judgment interest pursuant to 28 U.S.C. § 1961 continuing thereafter
6 until such judgment is paid, on the damages caused by reason of the acts of
7 Defendants as set forth above.

8 (I) That Plaintiff be granted an award of increased damages in an amount not
9 less than three times the amount of damages found by the jury or assessed by this
10 Court, for Defendants' willful and wanton acts of infringement, pursuant to 35 U.S.C.
11 § 284.

12 (J) That Plaintiff be awarded their costs and expenses in this action pursuant
13 to 35 U.S.C. § 284.

14 (K) That the Court order Defendants to deliver to Plaintiff all infringing
15 mouthpieces and their packaging as well as all mouthpiece and packaging molds,
16 templates and proofs for destruction.

17 (L) That the Court order Defendants to identify the manufacturer of its
18 infringing mouthpieces including their location and the location of any molds or other
19 tooling employed in manufacturing the mouthpieces and creating their packaging.

20 (M) That this Court grant Plaintiff such other and further relief as it may
21 deem just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands a trial by jury on all issues so triable.

24 Dated: January 30, 2018

COZEN O'CONNOR

25
26 By: /s/ Brett Taylor

Amy B. Alderfer

Brett N. Taylor

Attorneys for GLO SCIENCE, INC.

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Exhibits

Exhibit No.	Page No.	Description
1	1	Certificate of Incorporation of a Private Limited Company
2	11	Affidavit of Angelo DeSimone in Opposition to the Order to Show Cause dated December 4, 2017
3	15	Application to Register a Foreign Limited Liability Company (LLC) for Million Dollar Smile L.L.C. filed November 13, 2017 (CA) and Certificate of Existence with Status of Good Standing (NV)
4	18	U.S. Design Patent No. US D636,074 S dated April 12, 2011
5	24	U.S. Design Patent No. US D765,255 S dated August 30, 2016
6	28	Product Listing: Advanced Plus 3 – True Company from https://www.true-company.com/products/truwhite-advanced-plus-3 dated 3/28/2017
7	31	Photos
8	35	Photos Truwhite Whitening System, Advanced Plus 3
9	37	Photos

Dated: January 30, 2018

COZEN O'CONNOR

By: /s/ Brett Taylor

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Brett N. Taylor
Attorneys for GLO SCIENCE, INC.