

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-01820

SHENZHEN FULILAI TECHNOLOGY CO., LTD.  
(a.k.a. ELIFLOSS DIRECT), a Chinese limited company,

Plaintiff,

v.

WATER PIK, INC., a Colorado corporation,

Defendant.

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**COMPLAINT FOR DAMAGES AND FOR DECLARATORY JUDGMENT**

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COMES NOW, Plaintiff Shenzhen Fulilai Technology Co., Ltd (a.k.a Elifloss Direct) (“Plaintiff”), by and through its undersigned counsel, for its Complaint against Defendant Water Pik, Inc. (“Defendant”) and to the best of its knowledge, information, and belief, and through its attorneys, alleges as follows:

**NATURE OF ACTION**

1. This is an action for Declaratory Judgment for non-infringement of Defendant’s U.S. Patent No. 10,617,500 B2 (the “‘500 Patent”), and for damages resulting from the Federal Unfair Competition under the Lanham Act Section 43(a), 15 U.S.C. §1125, common law Tortious Interference with Contractual Relations, Intentional Interference with Prospective Economic Advantage, and Unjust Enrichment. Plaintiff seeks declaratory relief, actual damages, an award of attorneys’ fees and costs, and any other relief that the Court deems just and proper.

2. A true copy of the ‘500 Patent is attached hereto as **Exhibit 1**.

## **PARTIES**

3. Plaintiff Elifloss Direct is a limited company organized under the laws of China, with its principal place of business in Shenzhen, China.

4. On information and belief, Defendant Water Pik, Inc. is a domestic corporation organized and existing under the laws of Delaware, with its principal place of business at 1730 E Prospect Rd., Fort Collins, CO 80553. On information and belief, Defendant may be served by service of process upon its registered agent National Registered Agents, Inc. at 7700 E Arapahoe Rd., Ste. 220, Centennial, CO 80112.

## **JURISDICTION AND VENUE**

5. This action is brought under, and subject matter jurisdiction of this matter is vested in this Court through, 28 U.S. C. §1331 (Federal Question Jurisdiction), 1332 (Diversity Jurisdiction), and 1338 (action arising under an Act of Congress relating to patents). This action is also brought under the patent laws of the United States, Title 35 of the United States Code (35 U.S.C. §1, et seq.), Federal Unfair Competition under Section 43 of the Lanham Act (15 U.S.C. §1125), and under the Federal Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202).

6. General personal jurisdiction over Defendant is proper in this District because, upon information and belief, Defendant's principal place of business is in Colorado, Defendant regularly transacts business in this judicial district, and has availed itself of the rights and benefits of the laws of Colorado.

7. Furthermore, specific jurisdiction is proper in this District because as explained below, Defendant knew it was likely to inflict harm on Plaintiff in Colorado when Defendant

accused Plaintiff of patent infringement and filed a complaint with Amazon.com. This cause of action arises out of these Colorado-directed activities.

8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)-(d) and 1400(b) because a substantial part of the acts or events giving rise to the claims herein occurred and/or will arise in this judicial district.

### **BACKGROUND FACTS**

9. Plaintiff is an Amazon Seller and maintains a storefront on Amazon.com. Plaintiff's Amazon Seller ID is AAUWB2Q8JT8U. The only product Plaintiff sells through its Amazon.com storefront is the Water Dental Flosser Cordless V35(Black), depicted below, listed under Amazon Standard Identification Number ("ASIN") B098VYKM2R (the "Dental Flosser"). Amazon.com is the only medium through which Plaintiff sells the Dental Flosser.



10. Since July 7, 2021, 100% of Plaintiff's revenue has come from sales of the Dental Flosser through Amazon.com.

11. Upon information and belief, Defendant is also an experienced Amazon Seller.

12. Defendant filed U.S. patent application number 15/887,187 on February 2, 2018. The application matured into US Patent No. 10,617,500 B2 (the “‘500 Patent”). The ‘500 Patent was issued on April 14, 2020. See Exhibit 1.

13. Upon information and belief, Amazon has developed an automated process for addressing complaints relating to the sale of goods that infringe on intellectual property rights. Pursuant to that process, Amazon will often suspend sellers’ products about which such complaints are made.

14. Amazon’s policy, which is published to all sellers including Defendant, states “If your notice of infringement is accepted, we will remove the content you reported and take appropriate action against the responsible sellers.”<sup>1</sup> See **Exhibit 2**.

15. At no time did Plaintiff market or sell any goods that infringed on Defendant’s intellectual property rights.

16. On or about November 24, 2021 Defendant filed an infringement complaint with Amazon alleging that the Dental Flosser infringed upon Defendant’s ‘500 Patent (“November 2021 Complaint”).

17. As a result of Defendant’s November 24, 2021 Complaint, Amazon removed the Dental Flosser from Plaintiff’s Amazon.com storefront.

18. After receiving the notice of removal from Amazon, Plaintiff submitted an explanation of non-infringement to Amazon related to the November 2021 Complaint.

19. Following the review of Plaintiff’s explanation of non-infringement related to Defendant’s November 2021 Complaint, Amazon reactivated the listing of the Dental Flosser on

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<sup>1</sup> *Intellectual Property Rights for Owners*, AMAZON SELLER CENTRAL, <https://sellercentral.amazon.com/gp/help/external/U5SQCEKADDAQRLZ#:~:text=If your notice of infringement,not already public in nature> (last visited July 22, 2022).

Plaintiff's Amazon.com storefront. The Dental Flosser was delisted from Plaintiff's Amazon.com storefront for a period of 28 days.

20. On or about March 2, 2022 Defendant filed a second infringement complaint with Amazon, falsely and in bad faith alleging that the Dental Flosser infringed upon Defendant's '500 Patent ("March 2022 Complaint").

21. As a result of Defendant's March 2022 Complaint, Amazon removed the Dental Flosser from Plaintiff's Amazon.com storefront.

22. After receiving the notice of removal from Amazon, Plaintiff submitted an explanation of non-infringement to Amazon related to the March 2022 Complaint.

23. Following the review of Plaintiff's explanation of non-infringement related to Defendant's March 2022 Complaint, Amazon reactivated the listing of the Dental Flosser on Plaintiff's Amazon.com storefront. The Dental Flosser was delisted from Plaintiff's Amazon.com storefront for a period of 15 days.

24. On or about April 7, 2022, Defendant filed a third infringement complaint with Amazon, again falsely and in bad faith alleging that the Dental Flosser infringed upon Defendant's '500 Patent.

25. As a result of Defendant's April 2022 Complaint, Amazon removed the Dental Flosser from Plaintiff's Amazon.com storefront.

26. Upon receiving the notice of removal, Plaintiff submitted a third explanation of non-infringement to Amazon relating to Defendant's April 2022 Complaint.

27. Amazon has not reactivated the listing of the Dental Flosser on Plaintiff's Amazon.com storefront. Plaintiff's contractual right to sell the Dental Flosser on Amazon.com has been suspended since April 7, 2022.

28. Upon information and belief, Defendant is in direct competition with Plaintiff on Amazon.com and has filed multiple false and frivolous infringement complaints with Amazon, against Plaintiff, alleging that the Dental Flosser infringed upon Defendant's '500 Patent.

29. Amazon has a system in which a seller may appeal or dispute an intellectual property infringement report it received.

30. Plaintiff has attempted to mitigate its damages by appealing the suspension of its Amazon sales privileges by disputing Defendant's knowingly false representations to Amazon, but these efforts have been ineffective.

31. As a direct result of Defendant's baseless allegations and anticompetitive behaviors, Plaintiff has suffered tremendously in lost profits as a result of being barred from selling the Dental Flosser on Amazon.com and has incurred unnecessary legal expenses due to the acts of Defendant.

**COUNT I**  
**(Declaratory Judgment of Non-Infringement)**

32. Plaintiff realleges and incorporates paragraph 1 through 31, as if fully set forth herein.

33. The Dental Flosser has been offered for sale or sold by Plaintiff on Amazon.com since July 7, 2021.

34. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of non-infringement.

35. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the Dental Flosser and the '500 Patent.

36. Plaintiff is entitled to a declaratory judgment because the Dental Flosser, sold by Plaintiff on Amazon.com, does not infringe and has not infringed, either directly or indirectly, any valid and enforceable claim of the '500 Patent under 35 U.S.C. §271.

37. The '500 patent contains 20 claims, with claims 1 and 14 being the only independent claims. *See Exhibit 1.*

38. Independent claim 1 of the '500 Patent claims an oral irrigator comprising a pump at least partially received within the handle and in fluid communication with the time, the pump comprising: an inlet valve regulating flow into the pump chamber. The Dental Flosser does not include this element of claim 1.

39. Independent claim 14 of the '500 Patent claims an oral irrigation device comprising a pump in fluid communication with the tip and a fluid source and operative to draw fluid from the fluid source and propel the fluid to the tip, the pump including: a first valve regulating fluid flow into the interior fluid channel from the fluid source. The Dental Flosser does not include this element of claim 14.

40. Independent claim 14 of the '500 Patent claims an oral irrigation device comprising a pump in fluid communication with the tip and a fluid source and operative to draw fluid from the fluid source and propel the fluid to the tip, the pump including: a piston positioned within the pump chamber of the pump body, the piston including a bottom portion and a top portion having an outer wall extending outwardly so that the top portion has an increasingly larger diameter as compared with the bottom portion, wherein the outer wall is slidable along an interior wall of the pump chamber and forms a fluid-tight seal with the interior wall, *wherein when the piston moves one of upwards or downwards within the chamber the first valve is open and the second valve is closed, and when the piston moves the other one of upwards or downwards within the chamber*

*the second valve is open and the first valve is closed.* The Dental Flosser does not include this element of claim 14.

41. Independent claim 14 of the '500 Patent claims an oral irrigation device comprising a pump in fluid communication with the tip and a fluid source and operative to draw fluid from the fluid source and propel the fluid to the tip, the pump including: a pump gear comprising a second disc portion extending from the first disc portion, wherein the second disc portion is offset relative to a center axis of the first disc portion. The Dental Flosser does not include this element of claim 14.

42. Independent claim 14 of the '500 Patent claims an oral irrigation device comprising a pump in fluid communication with the tip and a fluid source and operative to draw fluid from the fluid source and propel the fluid to the tip, the pump including: a pump gear comprising a gear pin coaxial with an axis of the first disc portion and about which the pump gear rotates. The Dental Flosser does not include this element of claim 14.

43. Independent claim 14 of the '500 Patent claims an oral irrigation device comprising a pump in fluid communication with the tip and a fluid source and operative to draw fluid from the fluid source and propel the fluid to the tip, the pump including: a connecting rod comprising a cylindrical end operatively connected to a second disc portion. The Dental Flosser does not include this element of claim 14.

44. Plaintiff is entitled to declaratory relief pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §2201 *et seq.*, in the form of a judgment, that the Dental Flosser has not infringed and is not infringing upon any valid and enforceable claim of the '500 Patent, has not contributed to and is not contributing to an infringement of any claim of the '500 Patent, and has not induced



and is not inducing infringement upon any claim of the '500 Patent. Such a determination is appropriate at this time.

**COUNT II**  
**(Tortious Interference with Contractual Relationship)**

45. Plaintiff realleges and incorporates paragraph 1 through 44, as if fully set forth herein.

46. Plaintiff has a valid and existing contract with Amazon in order to sell the Dental Flosser under ASIN B098VYKM2R through Amazon.com.

47. Upon information and belief, Defendant knew or should have known of Plaintiff's contractual relationship with Amazon.

48. Upon information and belief, Defendant intentionally interfered with Plaintiff's contractual relationship with Amazon by knowingly and intentionally asserting false allegations of patent infringement against Plaintiff to Amazon, in order to have the Dental Flosser removed from Plaintiff's Amazon.com storefront and to eliminate Plaintiff's lawful competition.

49. As a result of Defendant's improper acts, the Dental Flosser was repeatedly removed from Plaintiff's Amazon.com storefront.

50. Defendant continues its efforts to harm Plaintiff through its frivolous and spurious infringement complaints against Plaintiff by claiming the Dental Flosser infringed upon the claims of the '500 Patent despite knowing that the '500 Patent was not infringed upon by the Dental Flosser.

51. Plaintiff has suffered direct, proximate, and foreseeable damages and continues to suffer direct, proximate, and foreseeable damages as a result of Defendant's improper acts.

52. Defendant's efforts to have the Dental Flosser delisted through improper means was and is unlawful, fraudulent, malicious, and frivolous.

53. By reason of Defendant's improper acts, Plaintiff is entitled to equitable remedies and damages in an amount to be proven at trial.

**COUNT III**  
**(Intentional Interference with Prospective Economic Advantage)**

54. Plaintiff realleges and incorporates paragraph 1 through 53, as if fully set forth herein.

55. Plaintiff's ongoing business relationship with Amazon included the selling of the Dental Flosser under ASIN B098VYKM2R on Plaintiff's Amazon.com storefront.

56. The Dental Flosser has been removed from Plaintiff's Amazon.com storefront by Amazon, as a result of Defendant's false, frivolous, and spurious infringement complaints, and Plaintiff has been harmed as a result of Defendant's improper conduct.

57. Defendant had and continues to have full knowledge of the ongoing relationship and prospective future business arrangements between Plaintiff and Amazon regarding Plaintiff's sale of the Dental Flosser on Amazon.com.

58. Defendant intentionally and knowingly made fraudulent assertions of patent infringement, which ultimately caused Amazon to remove the Dental Flosser from Plaintiff's Amazon.com storefront, thus interfering with Plaintiff's future and ongoing business relationship with Amazon.

59. Defendant knew that the removal of the Dental Flosser from Plaintiff's Amazon.com storefront would harm Plaintiff's business and would benefit Defendant due to it having less competition. Defendant intended to harm Plaintiff by fraudulently convincing Amazon to remove the Dental Flosser from Plaintiff's Amazon storefront.

60. Defendant, through the November 2021 Complaint, March 2022 Complaint and April 2022 Complaint to Amazon, initiated willful and fraudulent efforts to harm Plaintiff,

diminish Plaintiff's Amazon sales, rankings, review, reputation, goodwill, and standing in the dental flosser market.

61. Defendant knows that the removal of Plaintiff's product listings would harm Plaintiff's business and would benefit Defendant due to it having less competition. Defendant intended to harm Plaintiff by fraudulently initiating infringement complaints with Amazon against Plaintiff in the effort to convince Amazon to remove the Dental Flosser from Plaintiff's Amazon storefront.

62. Based on Defendant's complaints, Amazon removed the Dental Flosser from Plaintiff's Amazon storefront.

63. Defendant has no privilege or justification in interfering with Plaintiff's relationship with Amazon.

64. As a result of Defendant's interference with Plaintiff's ongoing and future relationship with Amazon, Plaintiff has incurred damages and will continue to incur damages.

65. Damages incurred, and to be incurred by Plaintiff, include fees and cost associated with Amazon product storage fees. Fulfillment by Amazon ("FBA") charges a monthly storage fee to sellers. Plaintiff has 9,135 units of the Dental Flosser stored in Amazon's warehouse. The fee to store the 9,135 Dental Flossers is approximately \$25.54 per day. There is also a fee associated with removing products stored by Amazon. The removal fee for the delisted Dental Flosser will be \$4,384.80. Additionally, there is a cost associated with restocking the Amazon warehouse with the previously removed product. The cost to resupply the Dental Flossers to FBA for the 9,135 Dental Flossers is approximately \$13,245.75.

66. Damages incurred, and to be incurred by Plaintiff, include fees and costs associated with the Dental Flossers and transportation. The cost of the delisted products and costs for

transportation of the same is approximately \$162,111.00, and due to the delisting, there is an immediate and ongoing detrimental impact on Plaintiff's ability to conduct business, remain profitable, and has damaged Plaintiff's product's rankings and reviews, and has resulted in a loss of Plaintiff's goodwill and reputation on the Amazon marketplace. The damage to Plaintiff should its products continue to be delisted as a result of Defendant's frivolous infringement complaints against Plaintiff is incalculable and irreparable.

67. By reason of the foregoing, Plaintiff has suffered direct, proximate, and foreseeable damages in an amount to be proven at trial.

**COUNT IV**  
**(Unjust Enrichment)**

68. Plaintiff realleges and incorporates paragraph 1 through 67, as if fully set forth herein.

69. As a result of Defendant's actions as stated herein Defendant has been unjustly enriched and, at the same time, is causing a loss of revenue to Plaintiff to Plaintiff's detriment.

70. Defendant is currently engaged in efforts to further damage Plaintiff by fraudulently asserting infringement claims against Plaintiff so as to reduce Plaintiff's ability to compete with Defendant.

71. Defendant has accepted and retained the benefit of the unjust enrichment from its wrongful conduct.

72. There is no express, written contract between Plaintiff and Defendant that would allow for Defendant to retain the benefit of the unjust enrichment from its wrongful conduct as described herein.

73. Plaintiff is entitled to recover from Defendant its unjust enrichment including gains, profits, and advantages it has obtained as a result of Defendant's wrongful conduct. Plaintiff is at

the present time unable to ascertain the full extent of the gains, profits and advantages Defendant has obtained by reason of Defendant's wrongful conduct.

74. By reason of the foregoing, Plaintiff seeks damages based on Defendant's unjust enrichment in an amount to be proven at trial.

**COUNT V**  
**(Federal False Description – Lanham Act Section 43(a), 15 U.S.C. §1125)**

75. Plaintiff realleges and incorporates paragraph 1 through 74, as if fully set forth herein.

76. Defendant engaged in unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a)(1) by falsely and in bad faith representing to Amazon that the Dental Flosser sold by Plaintiff on Amazon.com infringed upon the '500 Patent despite knowing that the Dental Flosser did not infringe upon the '500 Patent.

77. Amazon was actually deceived by Defendant's bad faith representations of infringement and the deception actually did influence purchasing decisions in that it caused Amazon to delist the Dental Flosser from Plaintiff's Amazon.com storefront.

78. The Dental Flosser became unavailable to purchase through Plaintiff's Amazon.com storefront which is a primary national marketplace for interstate commerce. Therefore, Defendant caused, directed, and intended that the false statement enter and go through interstate commerce to Amazon in order to harm Plaintiff's business.

79. Defendant intended for Plaintiff's listing to be removed in order to limit, or eliminate entirely, Defendant's competition on Amazon.

80. On or about November 24, 2021, Defendant filed an infringement complaint with Amazon related to the Dental Flosser.

81. On or about March 2, 2022, Defendant filed a second infringement complaint with Amazon related to the Dental Flosser.

82. On or about April 7, 2022, Defendant filed a third infringement complaint with Amazon related to the Dental Flosser.

83. Defendant's frivolous and spurious infringement complaints against Plaintiff demonstrate Defendant's continued engagement in unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a)(1) by falsely and in bad faith representing to Amazon that the Dental Flosser, sold on Plaintiff's Amazon.com storefront, infringed the '500 Patent despite knowing that the '500 Patent was not infringed by the Dental Flosser.

84. As a result of Defendant's bad faith representations, Plaintiff has suffered direct injury to its profits, products, sale rankings, reviews, and reputation. Plaintiff is entitled to damages in an amount to be proven at trial including reasonable attorneys' fees and costs.

85. Plaintiff is also entitled to immediate injunctive relief in order to preserve the status quo and prevent Defendant's baseless and malicious efforts to have Amazon delist the Dental Flosser from Plaintiff's Amazon.com storefront.

**WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

1. For judgment in favor of Plaintiff and against Defendant on all claims.
2. Declaring that the Dental Flosser does not infringe any valid claim of the '500 Patent.
3. Awarding Plaintiff its reasonable attorneys' fees and costs, including costs for experts, pursuant to State and Federal law, including 35 U.S.C. §285.

4. Judgment that this case is exceptional, and that the Defendant be ordered to pay all Plaintiffs' attorneys' fees associated with this action pursuant to 35 U.S.C. §285.

5. Order by this Court that Defendant must immediately retract any complaints of infringement of the '500 Patent made to Amazon.com with respect to the Dental Flosser and Plaintiff's Amazon.com storefront.

6. Enjoining Defendant temporarily, preliminarily, and permanently from making any future complaint regarding the '500 Patent against Plaintiff and the products Plaintiff sales on its Amazon.com storefront.

7. Ordering Defendant to return to the Court with proof of compliance of this Order within seven (7) days of entry thereof, with a copy served on Plaintiff's attorney.

8. Awarding to Plaintiff damages due to Defendant's improper acts, doubled and/or trebled due to the willful and exceptional nature of the case.

9. Awarding to Plaintiff compensatory, general and special, consequential and incidental damages in an amount to be determined at trial.

10. Disgorgement of Defendant's profits as a result of Defendant's wrongful acts.

11. Awarding to Plaintiff exemplary, punitive, statutory, and enhanced damages.

12. Awarding pre- and post- judgment interest

13. Awarding Plaintiff such other and further relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

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

Dated this 22nd day of July 2022.

**BAYRAMOGLU LAW OFFICES, LLC**

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