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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SANTA ANA DIVISION

12 SUREFIRE, LLC, a California limited
13 liability company,

14 Plaintiff,

15 v.

16 ADVANCED ARMAMENT CORP., a
17 Georgia corporation

18 Defendant.

Case No. SA CV08-1405 DOC(RNBx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
SUREFIRE'S MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: March 23, 2009
Time: 8:30 a.m.
Courtroom: 9D

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1 INTRODUCTION

2 SureFire, LLC ("SureFire") and defendant Advanced Armament Corp. ("AAC") are
3 direct competitors in the market for firearm suppressors. Suppressors muffle the sound
4 and reduce or eliminate the "muzzle flash" produced by the weapon. This false advertising
5 action is based in part on an AAC advertisement published in the February 2009 issue of
6 *Combat Handguns* and several other magazines. The advertisement features a photograph
7 of an abused SureFire suppressor that is cut open to reveal an internal core that has
8 suffered a serious failure. This is juxtaposed against an image of a shiny, unfinished AAC
9 suppressor that looks almost computer generated. The advertisement falsely states that the
10 SureFire suppressor has a "SPOT-WELDED CORE," and makes a series of false and
11 misleading representations regarding the relative strength of AAC's suppressors.

12 On December 23, 2008, AAC agreed not to run this advertisement anymore and to
13 provide a revised version to SureFire's counsel for review, in exchange for SureFire's
14 agreement not to seek a preliminary injunction against further publication.
15 Notwithstanding this agreement, the current issue of the magazine *Tactical Weapons*
16 prominently features the same false AAC advertisement. The only modification AAC
17 made is the addition of fine print stating that the SureFire suppressor was "FIRED 300
18 ROUNDS" and that the AAC suppressor is "UNFINISHED/UNFIRED." This advertisement was
19 never provided to SureFire or its counsel for review.

20 AAC's advertisement is false and misleading. The claim that SureFire's
21 suppressors use spot-welds is literally false, as are claims regarding the strength of AAC's
22 welds compared to those used by SureFire. Moreover, the SureFire suppressor appears to
23 have been both abused and physically manipulated to create the false impression that it
24 suffered a massive structural failure during normal use. SureFire has spent years
25 developing a reputation for designing and building the highest quality products. Absent
26 preliminary injunctive relief, SureFire is being irreparably harmed by AAC's false and
27 unfair descriptions and depictions of its products.
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BACKGROUND

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SureFire designs and manufactures suppressors at its facility in Fountain Valley, California. *Declaration of Barry William Dueck (Dueck Decl.)*, ¶6. SureFire suppressors are used by the United States Marine Corps, Army, Navy, and Air Force, as well as the militaries of various U.S. allies. SureFire has built its reputation by building extremely high quality, durable, and innovative suppressor products. SureFire suppressors provide excellent sound attenuation and suppression of muzzle flash and dust signature, while maintaining or even improving accuracy with minimal to no point of impact shift. *Id.* ¶5.

There are several key performance characteristics for a suppressor. These include the degree of sound attenuation, the ability to easily attach and detach the suppressor from the weapon, the weight and length of the suppressor, the effect of the suppressor on weapon accuracy and the consistency of any resulting shift in the point of impact, and durability. While all of these characteristics are important, because the primary market for suppressors is the military and their primary use is in critical combat situations, strength and durability are very important selling points. This can be seen in SureFire's own marketing materials such as its *SureFire Sound Suppressors Catalog 2007-2008*. *Id.* ¶7. Exh. A.

AAC competes with SureFire in the suppressor market. Both SureFire and AAC make suppressors for use on 5.56 mm and 7.62 mm machine guns, rifles and carbines, as well as a variety of other firearms. Both companies also make related accessories like muzzle brakes and flash hiders that are similarly attached to firearms to improve certain performance characteristics. *Id.* ¶8.

A. The False and Misleading AAC Advertisement

AAC has published full-page advertisements (the "AAC Advertisement") in the February 2009 issue of *Combat Handguns*, as well as several other firearms related publications, that contains material false and misleading statements about SureFire

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1 suppressors. *Id.* ¶9, Exh. B. The AAC Advertisement features images of two suppressors
2 side-by-side. The suppressor shown on the left is not specifically identified, but it is
3 immediately recognizable as a SureFire suppressor because of the distinctive
4 circumferential weld line and shape of the front plate on the end of the exterior tube. The
5 specific suppressor model shown is a SureFire FA556-212.¹ The FA556-212 is designed
6 for use on current military issue 5.56mm rifles and carbines. *Id.* ¶10.

7 The FA556-212 suppressor shown in the AAC Advertisement appears to have been
8 heavily abused. The suppressor has had its exterior tube cut away to reveal the interior
9 structure of the device. That interior structure appears to have been manually pulled apart
10 near the base to separate the baffle portion of the suppressor from the back-end mounting
11 structure. This creates the appearance of a complete failure of the welds and separation of
12 the joint between those two portions of the interior structure. In addition, there are small
13 cracks in the areas adjacent to two welds joining the first and second baffle structures. *Id.*
14 ¶11.

15 It also appears that the SureFire suppressor shown in the AAC Advertisement is
16 actually two different SureFire suppressors – the tube half shown in the photograph
17 appears to be from a different suppressor than the inner core. *Id.* ¶11. In its testing of its
18 suppressors, SureFire has not seen this kind of failure unless the weapon itself is operated
19 well outside of its design parameters, such as by dramatically exceeding the rate of fire
20 specifications for the weapon. *Id.* ¶13.

21 In fact, the FA556-212 suppressor model shown in the AAC Advertisement has
22 been proven to be an extremely durable product, which has competed for a contract
23 directly against an AAC suppressor in a competition administered by the U.S. military.
24 Durability was a key issue in the competition, and the durability test included both semi-
25 automatic and full-automatic test firing at rates that exceeded the weapon specification.

26 _____
27 ¹ The SureFire FA556-212 is the same suppressor as the SureFire FA556K, although
28 when the model number was changed the bore diameter was increased from .267 to .280.
For ease of reference, both models will be referred to herein as the FA556-212.

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1 The SureFire FA556-212 not only passed the durability testing, it was awarded the contract
2 over the AAC suppressor and is currently in use by the military. *Id.* ¶12.

3 The SureFire suppressor also appears under the caption "SPOT-WELDED CORE."
4 The copy below the photograph states that: "Traditional spot welds can fatigue, crack, and
5 break under the high-stress environment of semi and full-auto firing." The caption,
6 photograph, and copy create the impression that: (1) SureFire uses spot welds on its
7 suppressors; (2) SureFire's welds are not as strong as the welds used by AAC in its
8 suppressors; and (3) SureFire's welds are likely to fail during normal semi-automatic and
9 full automatic firing. The copy then goes on to directly claim that AAC's suppressors are
10 stronger than SureFire's, stating as follows: "Rely on the strongest. Depend on the best.
11 Choose Advanced Armament Corp." *Id.* ¶14.

12 A spot weld is a form of "resistance welding" that uses a strong electric current to
13 heat the materials being joined. A spot weld is formed when two overlapping pieces of
14 metal are subjected to pressure and a strong electric current that effectively melts the two
15 materials together at the "spot" where the pressure and current are applied. Resistance
16 welding techniques like spot welding are not effective on many types of steel alloy and are
17 generally not suitable for use in a suppressor. *Id.* ¶15.

18 SureFire does not use spot welds on its suppressors. The interior structure of the
19 SureFire suppressor shown in the AAC Advertisement consists of a series of baffles that
20 are stacked such that they nest within each other. The edges of adjacent baffles are
21 attached to each other by a series of redundant "tack" welds that appear in the photograph
22 like small round buttons of metal on the seams between the baffles. A tack weld is formed
23 by using a small amount of a molten "filler" material that enters the seam between the two
24 pieces of metal to create a very strong weld joint. Unlike spot welds, tack welds are very
25 effective for joining high-temperature steel alloys such as those used in SureFire's
26 suppressors. *Id.* ¶16.

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1 Because SureFire's suppressors are designed for extreme conditions, it uses
2 redundant tack welds spaced around the entire circumference of each baffle to create an
3 incredibly strong interior structure. In the course of both formal and informal testing,
4 SureFire has found that its suppressors can withstand firing at levels that exceed military
5 operational use and requirements. *Id.* ¶17 & 21.

6 In the AAC Advertisement, AAC states that its suppressors "employ 360°
7 circumfrential [sic] fusion welds to achieve maximum strength and durability." Fusion
8 welding refers to a type of welding in which no filler metal is introduced to the weld joint
9 as the pieces of metal being joined are melted together. This type of fusion welding is
10 faster and more cosmetically clean than welding with filler metal. However, a "fusion
11 weld" without filler metal is generally weaker than a weld using filler metal because the
12 weld draws material from the parts being joined, thinning and weakening them in the
13 process. *Id.* ¶18.

14 The AAC suppressor shown in the AAC Advertisement appears to have never been
15 fired and does not appear to even be a finished product. In fact, it appears that the baffle
16 structure has been attached to a tube or bar of steel as opposed to being an actual
17 suppressor. *Id.* ¶19.

18
19 **B. AAC's Agreement to Stop Running the AAC Advertisement**

20 This action was filed on December 11, 2008. On December 12, 2008, SureFire's
21 counsel wrote to AAC's counsel in a separate action in Oregon to inform them of the filing
22 of the case, provide a courtesy copy of the summons and complaint, and request
23 acceptance of service. SureFire's counsel also expressed SureFire's intention to move
24 quickly to obtain a preliminary injunction to prevent any further publication of the AAC
25 Advertisement. *Declaration of Jonathan Hangartner in Support of Motion for Preliminary*
26 *Injunction (Hangartner Decl.)*, ¶2.

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1 On December 17, 2008, SureFire's counsel received a letter from the firm Darby &
2 Darby indicating that it represents AAC with respect to this case. The letter indicated that
3 Darby & Darby was investigating the allegations in the complaint and SureFire's intention
4 to file a motion for preliminary injunction, and stated their desire to discuss these matters.
5 Responding immediately, SureFire's counsel stressed the need to speak promptly since
6 SureFire was in the process of preparing papers in support of a preliminary injunction
7 motion. *Id.* ¶¶3-4.

8 Shortly thereafter, counsel for the parties spoke. AAC's counsel indicated that they
9 were actively reviewing the allegations in the complaint and expressed a desire to reach an
10 agreement that would avoid the need for a preliminary injunction motion. SureFire agreed
11 to temporarily hold off filing such a motion based on those discussions and in anticipation
12 that the parties could promptly reach such an agreement. *Id.* ¶5.

13 On December 23, 2008, AAC's counsel confirmed that AAC would agree not to
14 publish the advertisement at issue. AAC's counsel also indicated that there were no
15 additional pending publications of the AAC Advertisement at that point, and agreed to
16 provide a revised version that AAC believed would cure any problems with the
17 advertisement to SureFire's counsel for review. Based on these representations, SureFire
18 agreed that it would not seek a preliminary injunction. *Id.* ¶6.

19 This agreement was then confirmed by email from AAC's counsel, as follows:

20 This email confirms that Advanced Armament Corp. ("AAC") has agreed not
21 to run the advertisement at issue in any future publications, at least not in the
22 form attached to your complaint. A revised advertisement is being prepared
23 and we should have that available for your review by Tuesday, December 30,
24 2008.

25 *Id.* ¶7.

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1 **C. AAC's Current Publication of the AAC Advertisement**

2 SureFire's counsel never received a revised version of the AAC advertisement. *Id.*
3 ¶8. Nonetheless, the March 2009 issue of *Tactical Weapons* magazine, which became
4 available to the public in mid-February, prominently features the AAC Advertisement on
5 page 7. This version of the AAC Advertisement is identical to the first, except for the
6 inclusion of text at the base of the SureFire suppressor that states "FIRED 580 ROUNDS." and
7 text at the base of the AAC suppressor that states "UNFINISHED/UNFIRED." *Dueck Decl.*, ¶20.
8 Exh. C.

9 The appearance of the SureFire suppressor as shown in the AAC Advertisement is
10 inconsistent with the appearance of this type of SureFire suppressor after 580 rounds.
11 SureFire has fired more rounds through similarly constructed SureFire suppressors and
12 such suppressors have undergone extensive military tests including full-automatic firing in
13 which the stress on the device is at its greatest, without experiencing the failures shown in
14 the photograph. *Id.* ¶21.

15
16 **ARGUMENT**

17 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court may grant
18 preliminary injunctive relief in order to prevent "immediate and irreparable injury." Fed.
19 R. Civ. P. 65(b). This equitable relief is within the discretion of the Court after balancing
20 various factors. *Benda v. Grand Lodge of the Int'l Assoc. of Machinists & Aerospace*
21 *Workers*, 584 F.2d 308, 314 (9th Cir. 1978). Traditionally, the "criteria for granting
22 preliminary injunctive relief are: (1) a strong likelihood of success on the merits, (2) the
23 possibility of irreparable injury to plaintiff if the preliminary relief is not granted, (3) a
24 balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in
25 certain cases)." *Dollar Rent A Car v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir.
26 1985); see, e.g., *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir. 2005);
27 *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995).

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1 Alternatively, the Court may grant temporary relief on a lesser showing of probable
2 success. "If the harm that may occur to the plaintiff is sufficiently serious, it is only
3 necessary that there be a fair chance of success on the merits." *William Inglis & Sons*
4 *Baking Co. v. ITT Continental Baking Co.*, 526 F.2d 86, 88 (9th Cir. 1975) (quoting *C.*
5 *Tennant & Sons, Inc. v. N.Y. Terminal Conference*, 299 F. Supp. 796, 799 (S.D.N.Y.
6 1969)); *see Johnson*, 72 F.3d at 1430; *Benda*, 584 F.2d at 314. The burden may be met by
7 demonstrating either "a combination of probable success on the merits and the possibility
8 of irreparable injury or that serious questions are raised and the balance of hardships tips
9 sharply in its favor." *Wright v. Rushen*, 642 F.2d 1129, 1132 (9th Cir. 1981); *see Sonoran*,
10 408 F.3d at 1120 (explaining that "[t]hese two formulations represent two points on a
11 sliding scale in which the required degree of irreparable harm increases as the probability
12 of success decreases. They are . . . outer reaches of a single continuum." (citations
13 omitted)); *Johnson*, 72 F.3d at 1430; *Sports Form, Inc. v. United Press Int'l, Inc.*, 686 F.2d
14 750, 752 (9th Cir. 1982); *Benda* 584 F.2d at 314.

15

16 **A. SureFire is Likely to Succeed on the Merits of its False Advertising Claim**

17 The elements of false advertising under the Lanham Act are: (1) a false statement of
18 fact by the defendant in a commercial advertisement about its own or another's product; (2)
19 the statement actually deceived or has the tendency to deceive a substantial segment of its
20 audience; (3) the deception is material, in that it is likely to influence the purchasing
21 decision; (4) the defendant caused its false statement to enter interstate commerce; and (5)
22 the plaintiff has been or is likely to be injured as a result of the false statement, either by
23 direct diversion of sales from itself to defendant or by a lessening of the goodwill
24 associated with its products. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134,
25 1139 (9th Cir. 1997); *Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1052
26 (9th Cir. 2008).

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1 I. False Statements of Fact in a Commercial Advertisement

2 "To demonstrate falsity within the meaning of the Lanham Act, a plaintiff may
3 show that the statement was literally false, either on its face or by necessary implication, or
4 that the statement was literally true but likely to mislead or confuse consumers."
5 *Southland Sod.* 108 F.3d at 1139. "When evaluating whether an advertising claim is
6 literally false, the claim must always be analyzed in its full context." *Id.* The AAC
7 Advertisement contains both literally false statements, and statements that are likely to
8 mislead and confuse consumers.

9 The literally false statements in the AAC Advertisement include: (1) the SureFire
10 suppressor shown uses spot welds; (2) SureFire's spot welds are not as strong as the fusion
11 welds used by AAC; (3) SureFire's spot welds are likely to fail during normal semi-
12 automatic and full-automatic firing; and (4) AAC's suppressors are more durable than
13 suppressors like the SureFire suppressor shown. All of these statements are false.

14 First, the SureFire suppressor shown in the advertisement does not use spot welds,
15 which are a form of "resistance welding" that is not suitable for use with the materials or
16 design of SureFire's suppressor products. Rather, the SureFire suppressor uses tack welds,
17 which are formed using an entirely different welding process that uses a filler material to
18 create an extremely strong bond between adjacent baffles. *Dueck Decl.*, ¶¶16 & 17.
19 Moreover, the tack welds used by SureFire are extremely strong compared to fusion welds,
20 which draw material for the weld joint from the parts being joined, often weakening them
21 in the process. *Id.* ¶18. SureFire's welds have repeatedly proven that they can withstand
22 normal semi-automatic and full-automatic firing in test conducted both by SureFire and by
23 the U.S. military. Finally, the SureFire suppressor model shown in the AAC
24 Advertisement was the subject of extensive durability testing by the U.S. military in a
25 direct contract competition with AAC. The SureFire suppressor won the competition and
26 was awarded the contract. *Id.* ¶¶12, 13, 17 & 22.

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1 Beyond these literally false statements, the entire AAC Advertisement is designed
2 to mislead and confuse consumers. First, the SureFire suppressor shown appears to
3 actually be comprised of two different suppressors – the outer tube appears to be from one
4 suppressor and the inner core from another. Second, the inner core of the SureFire
5 suppressor has clearly been physically manipulated for the photograph. The interior core
6 baffle structure has been manually pulled apart from the back-end mounting structure to
7 create the appearance of a complete failure and separation of the inner core. *Id.* ¶11.

8 Moreover, the AAC Advertisement implies that this suppressor was used in the
9 manner in which it is intended, but the types of damage seen on this suppressor are
10 inconsistent with firing conducted within the specifications of the weapons on which it is
11 designed to be used. While SureFire has not yet obtained discovery of any evidence
12 regarding the actual treatment of the suppressors shown in the AAC Advertisement, this
13 strongly indicates that the SureFire suppressor has been used outside of its design
14 parameters. AAC's current version of the advertisement only compounds the confusion.
15 The bare statement that the SureFire suppressor shown was fired 580 rounds, absent any
16 information regarding the circumstances under which it was fired, furthers the impression
17 that the suppressor failed in ordinary operation.

18 Thus, the AAC Advertisement is a commercial advertisement for AAC's products
19 that contains false and misleading statements about SureFire's products.

20 2. AAC's Statements are Likely to Materially Deceive Consumers

21 The AAC Advertisement is specifically designed to deceive consumers regarding
22 the durability of SureFire's suppressors, and it is effective. As set forth above, the AAC
23 Advertisement deceives consumers regarding the construction methods used by SureFire,
24 creating the false impression that SureFire uses an inferior welding process that results in
25 welds that are far more likely than AAC's welds to "fatigue, crack, and break under the
26 high-stress environment of semi and full-auto firing." The AAC Advertisement also
27 deceives customers into believing that the SureFire suppressor shown in the advertisement
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1 had a massive structural failure during normal use. All of this creates a broader deception,
2 generating the false impression that SureFire's suppressors are weaker and less durable
3 than AAC's suppressors and cannot withstand the rigors of the high-stress environment for
4 which they are designed.

5 This deception is unquestionably material, as it goes to a critical feature of the
6 product at issue. Suppressors are designed and intended for use in situations where failure
7 can cause harm not only to the individual participants in the mission, but also to U.S.
8 national interests. Those responsible for purchasing suppressors for the military demand
9 durability and any false impression that SureFire suppressors are made using inferior
10 manufacturing methods or are less reliable is very likely to impact their purchasing
11 decisions.

12 Thus, the false statements in the AAC Advertisement have either deceived or have
13 the tendency to deceive a substantial segment of its audience, and that deception is highly
14 material and very likely to influence the purchasing decision since it goes to a critical
15 feature of the products.

16 3. AAC has Published the AAC Advertisement in Interstate Commerce

17 The AAC Advertisement has been published in a variety of magazines that are sold
18 throughout the United States. *Dueck Decl.*, Exh. B and C. Thus, it is undisputed that the
19 AAC Advertisement is in interstate commerce.

20 4. SureFire is Being Irreparably Injured By the AAC Advertisement

21 Finally, SureFire has been or is likely to be injured as a result of AAC's false
22 statements, both by direct diversion of sales from itself to defendant and by a lessening of
23 the goodwill associated with its products. There is no question that the impression of
24 SureFire's products created by AAC's false and misleading statements is extremely
25 negative. The AAC Advertisement misleads consumers into believing that SureFire's
26 suppressors are not durable enough to withstand the semi-automatic and full-automatic
27 firing for which they are designed, and are generally produced using inferior technology.

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1 This type of false information unquestionably lessens the goodwill associated with
2 SureFire's products, which enjoy a strong reputation for quality, performance and
3 durability in particular. Moreover, because the false and misleading statements go directly
4 to a key selling feature, they are likely to have led to direct diversion of sales from
5 SureFire to AAC.

6 SureFire will be able to establish all of the elements of its false advertising claim
7 with respect to the AAC Advertisement, and has a very high likelihood of success on the
8 merits of this claim. This factor weighs heavily in favor of issuance of the requested
9 injunction.

10 **B. SureFire will be Irreparably Harmed if an Injunction Is Not Issued**

11 Because they are designed for use in combat and other critical situations, durability
12 and reliability are key selling points for suppressors. SureFire has spent years developing
13 a reputation for making products of the highest possible quality. *Dueck Decl.*, ¶22.
14 AAC's false statements are specifically designed to damage that hard-won reputation by
15 calling into question the quality of construction and durability of SureFire's suppressors.
16 Moreover, this sort of damage is insidious, as it uses false and misleading information and
17 strong visual images to create questions in potential customers' minds that would not
18 otherwise be present.

19 While SureFire will continue to build the best and most durable products possible,
20 the harm to SureFire's goodwill done by AAC's false advertising cannot be undone.

21 **C. The Balance of the Hardships Favors Issuance of an Injunction**

22 The balance of hardships tips sharply in favor of issuance of an injunction. While
23 SureFire's goodwill is being irreparably harmed by AAC's false statements, AAC has
24 already run the advertisement in multiple magazines through at least two advertising
25 cycles. AAC will suffer no significant hardship if the advertisement is enjoined.
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1 **D. The Public Interest Favors Issuance of an Injunction**

2 The SureFire FA556-212 suppressor shown in the AAC Advertisement, and several
3 other SureFire suppressors, have competed for and won military contracts based on its
4 quality, durability, and performance. These SureFire suppressors are currently being used
5 by U.S. military personnel in combat environments around the world. AAC's false and
6 misleading statements regarding the durability of SureFire's suppressors undermine the
7 confidence of the citizens who pay for these products – and more importantly they
8 undermine the confidence of the service men and women who are issued these products to
9 carry out their missions. AAC's Advertisement does not serve the public interest.

10 Thus, the public interest favors issuance of an injunction to prevent AAC's false
11 statements from impacting the confidence of our forces in their equipment as they protect
12 U.S. interests around the globe.

13 **E. The Equities Favor Issuance of an Injunction**

14 Because issuance of a preliminary injunction is an exercise of this Court's equitable
15 powers, it is appropriate to consider AAC's actions since the filing of this case in deciding
16 this motion. Immediately upon filing the complaint, SureFire intended to move for a
17 preliminary injunction to prevent any additional publication of the AAC Advertisement.
18 On December 23, 2008 -- in response to SureFire's notification of AAC that it intended to
19 move for a preliminary injunction -- AAC agreed to cease publication of the AAC
20 Advertisement and provide a revised version to SureFire's counsel for review by the end of
21 December.

22 Notwithstanding this agreement, AAC has now started to run the AAC
23 Advertisement again without any prior notice to SureFire and without providing anything
24 for SureFire's review. The only change to the AAC Advertisement as it appears in the
25 current edition of *Tactical Weapons* is the addition of two brief phrases indicating that the
26 SureFire suppressor was fired 580 rounds while the AAC suppressor is unfinished and was
27 not used. These statements do nothing to correct the false and misleading character of the
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1 advertisement, and actually reinforce the false impression that the SureFire suppressor
2 failed during normal use.

3 AAC's voluntary agreement with SureFire not to publish the advertisement was
4 clearly a ruse designed to get SureFire to forego seeking an injunction that would have
5 prevented the current publication of the AAC Advertisement. AAC's conduct confirms
6 the need for a strict injunction to prevent further irreparable harm to SureFire's reputation.

7
8 **F. SureFire Should Be Awarded its Attorney Fees**

9 AAC elected to play a game. By agreeing not to run the AAC Advertisement in any
10 future publications, AAC forestalled this motion for a preliminary injunction. AAC then
11 took advantage of the lack of an injunction, and is now running the same advertisement
12 with only the slightest additional text – an advertisement that never could have run had
13 SureFire sought and obtained injunctive relief.

14 AAC should not be rewarded for this type of gamesmanship by getting a free pass
15 as its false advertisement runs again and SureFire – delayed in seeking preliminary relief
16 by AAC's false promise – suffers further irreparable harm and incurs the expense of this
17 motion. SureFire respectfully requests that this Court award SureFire its attorney fees and
18 costs incurred in seeking this relief.

19 **CONCLUSION**

20
21 For all of the foregoing reasons, SureFire respectfully requests that this Court grant
22 its motion and issue an order: (1) enjoining AAC from any further publication or
23 distribution of the AAC Advertisement in any form; (2) enjoining AAC from making any
24 further false and misleading statements regarding the SureFire suppressor shown in the
25 AAC Advertisement; (3) requiring AAC to promptly publish corrective advertising in a
26 form approved by the Court in all publications in which the AAC Advertisement appeared;
27 and (4) awarding SureFire its attorney fees and costs incurred in seeking this relief.
28

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1 DATED: February 24, 2009

2 X-PATENTS, APC

3
4 By s/Jonathan Hangartner
5 JONATHAN HANGARTNER

6 Attorneys for Plaintiff SureFire, LLC
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