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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

15 SUREFIRE, LLC, a California limited  
16 liability company,

17 Plaintiff,

18 v.

19 ADVANCED ARMAMENT CORP.,  
20 a Georgia corporation,  
21 Defendant.

22 ADVANCED ARMAMENT CORP.,  
23 a Georgia corporation,

24 Counter-Claimant,

25 v.

26 SUREFIRE, LLC, a California limited  
27 liability company,

28 Counter-Defendant.

Case No. SACV 08-1405 DOC (RNBx)  
Assigned to Hon. David O. Carter

**COUNTERCLAIMS OF  
DEFENDANT ADVANCED  
ARMAMENT CORP. FOR:**

(1) FALSE ADVERTISING –  
FEDERAL LAW;

(2) FALSE ADVERTISING –  
CALIFORNIA BUS. & PROF. CODE  
§ 17500; AND

(3) UNFAIR COMPETITION –  
CALIFORNIA BUS. & PROF. CODE  
§ 17200.

**JURY TRIAL DEMANDED**

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CENTRAL DISTRICT OF CALIF.  
SANTA ANA



1 8. Statements concerning the number of rounds that may be fired through a  
2 given firearm before that firearm fails are material because they relate to the  
3 performance or inherent qualities of the firearm or firearm accessory.

4 9. In particular, consumers of firearms and firearm accessories rely on  
5 statements made concerning the number of rounds that may be fired through a given  
6 firearm or firearm accessory when said firearm discharges successive rounds.

7 10. The discharge of successive rounds from a firearm can be continuous  
8 upon one pull of the trigger; this type of firing is referred to as “fully automatic” or  
9 “full-auto” firing.

10 11. AAC is informed and believes and thereon alleges that consumers rely on  
11 statements made concerning the number of rounds that may be fired through a given  
12 firearm or firearm accessory during full-auto firing.

13 **SUREFIRE’S FALSE ADVERTISING**

14 12. SureFire has made and continues to make statements in commerce  
15 concerning the number of rounds that can be fired through its firearm accessories,  
16 including suppressors and silencers, before they fail.

17 13. AAC is informed and believes and thereon alleges that statements made  
18 by SureFire in commerce concerning the number of rounds that can be fired through  
19 its suppressors before they fail are materially false or misleading.

20 14. AAC is informed and believes and thereon alleges that SureFire represents  
21 that it has conducted testing in order to prove statements concerning the number of  
22 rounds that can be fired through its firearm accessories.

23 15. AAC is informed and believes and thereon alleges that no tests were  
24 conducted supporting certain statements relating to the number of rounds that can be  
25 fired through SureFire’s suppressors before they fail.

26 16. SureFire represented that its suppressors did not fail after being fired by  
27 an individual named Barry Dueck, where Mr. Dueck purportedly fired “50 magazines  
28

1 on full auto, emptying each [magazine] in one continuous 30-round burst and  
2 continuing as fast as he could change magazines.”

3 17. AAC is informed and believes and thereon alleges that no tests were  
4 conducted to support statements that SureFire’s suppressors could withstand the  
5 continuous firing of 1,500 rounds, unless extraordinary measures were taken to keep  
6 the suppressor cool.

7 18. SureFire represented that its suppressors show “no appreciable wear”  
8 after the continuous firing of 1,500 full-auto rounds.

9 19. AAC is informed and believes and thereon alleges that SureFire  
10 suppressors will fail before far less than the continuous firing of 1,500 full-auto rounds.

11 20. AAC is informed and believes and thereon alleges that SureFire  
12 suppressors are likely to fail before approximately 500 continuous full-auto rounds are  
13 fired.

#### 14 COUNTERCLAIM I

#### 15 (False Advertising – Federal Law)

16 21. Counter-Claimant AAC repeats and realleges the allegations contained in  
17 ¶¶ 1-20 of this Counterclaim as if fully set forth herein.

18 22. AAC is informed and believes and thereon alleges that SureFire has  
19 violated 15 U.S.C. § 1125(1)(1)(B) by using false or misleading descriptions of facts or  
20 representations of fact in commercial advertising or promotion in a way that materially  
21 mischaracterizes the quality or characteristics of its goods.

22 23. AAC is informed and believes and thereon alleges that SureFire’s violation  
23 of the Lanham Act as described above was conducted knowingly and willfully.

24 24. AAC is informed and believes and thereon alleges that SureFire’s false or  
25 misleading descriptions of fact or representations of fact have misled or are likely to  
26 mislead a substantial segment of consumers.

27 25. AAC is informed and believes and thereon alleges that SureFire’s false or  
28 misleading descriptions of fact or representations of fact have caused damage to

1 Counter-Claimant AAC in an amount to be proven at trial, but in no event less than  
2 the sum of SureFire's profits, Counter-Claimant AAC's actual lost sales, the value of  
3 Counter-Claimant AAC's damaged goodwill, equitable damages including unjust  
4 enrichment, and costs of this litigation including attorneys fees, as provided in 15  
5 U.S.C. § 1117(a).

6 26. AAC is informed and believes and thereon alleges that SureFire should be  
7 enjoined from continuing to violate the Lanham Act's prohibition upon false  
8 advertising, as the continuing violations are creating irreparable harm for AAC.

9 27. AAC is informed and believes and thereon alleges that Counter-Claimant  
10 AAC has no adequate remedy at law for the harm caused by SureFire's false or  
11 misleading descriptions of fact or representations of fact, and unless enjoined by this  
12 Court, Counter-Claimant AAC will be irreparably harmed.

## 13 COUNTERCLAIM II

### 14 (False Advertising – California State Law

### 15 Business & Professions Code § 17500)

16 28. Counter-Claimant AAC repeats and realleges the allegations contained in  
17 ¶¶ 1-27 of this Counterclaim as if fully set forth herein.

18 29. AAC is informed and believes and thereon alleges that SureFire intended  
19 to dispose of personal property, namely its suppressors, through the use of the  
20 advertising and/or marketing described above, by selling the suppressors to consumers.

21 30. AAC is informed and believes and thereon alleges that SureFire publicly  
22 disseminated commercial advertising that contained false or misleading descriptions of  
23 facts or representations of fact in a way that materially mischaracterizes the quality or  
24 characteristics of its goods, namely its suppressors.

25 31. AAC is informed and believes and thereon alleges that SureFire knew, or  
26 in the exercise of reasonable care should have known, that its advertising regarding the  
27 suppressors was false or misleading.

28

1 32. AAC is informed and believes and thereon alleges that SureFire's  
2 advertisements concerned the personal property, namely suppressors, and their  
3 disposition through sale as well as the alleged performance of such suppressors.

4 33. AAC is informed and believes and thereon alleges that SureFire's conduct  
5 as alleged in this Counterclaim violates California's Business and Professions Code  
6 covering actions relating to false advertising, § 17500, *et. seq.*

7 34. AAC is informed and believes and thereon alleges that SureFire should be  
8 enjoined from continuing to violate the False Advertising Law, as the continuing  
9 violations are creating irreparable harm for AAC.

10 35. AAC is informed and believes and thereon alleges that SureFire's conduct  
11 as alleged herein has caused injury in fact to AAC and that AAC has lost money or  
12 property as a result of such false advertising and unfair competition, in an amount or  
13 extent to be proven at trial.

14 **COUNTERCLAIM III**  
15 **(Unfair Competition– California State Law**  
16 **Business & Professions Code § 17200)**

17 36. Counter-Claimant AAC repeats and realleges the allegations contained in  
18 ¶¶ 1-35 of this Counterclaim as if fully set forth herein.

19 37. AAC is informed and believes and thereon alleges that the conduct of  
20 SureFire alleged above constitutes unlawful, unfair and fraudulent conduct that is  
21 prohibited under Business & Professions Code Section 17200 *et seq.* (the "California  
22 Unfair Competition Law").

23 38. AAC is informed and believes and thereon alleges that the conduct of  
24 SureFire in question and as alleged in this Counterclaim is unlawful conduct under the  
25 California Unfair Competition Law because it violates, *inter alia*, 15 U.S.C. § 1125 and  
26 Business & Professions Code Section 17500 *et seq.*

27 39. AAC is informed and believes and thereon alleges that the conduct of  
28 SureFire in question and as alleged in this Counterclaim either threatens an incipient

1 violation of an antitrust law or violates the policy or spirit of such antitrust laws or  
2 otherwise significantly threatens or harms competition in the relevant marketplace for  
3 suppressors.

4 40. AAC is informed and believes and thereon alleges that the conduct of  
5 SureFire in question and as alleged in this Counterclaim is fraudulent within the  
6 meaning of the California Unfair Competition Law because (a) the conduct of SureFire  
7 involved misrepresentations and/or misleading statements regarding its products, (b)  
8 SureFire knew its statements were false and/or misleading prior to making such  
9 statements, (c) SureFire intended those hearing the representations to rely upon and  
10 believe them, (d) those persons hearing the false representations of SureFire are likely  
11 to be deceived by SureFire's fraudulent conduct and misrepresentations, and (e) AAC  
12 and others have been damaged by SureFire's fraudulent conduct.

13 41. SureFire's conduct as alleged in this Counterclaim violates California's  
14 Business and Professions Code covering actions relating to, *inter alia*, unfair  
15 competition, § 17200, *et. seq.*

16 42. AAC is informed and believes and thereon alleges that SureFire should be  
17 enjoined from continuing to violate the Unfair Competition Law, as the continuing  
18 violations are creating irreparable harm for AAC.

19 43. AAC is informed and believes and thereon alleges that SureFire's conduct  
20 as alleged herein has caused injury in fact to AAC and that AAC has lost money or  
21 property as a result of such false advertising and unfair competition, in an amount or  
22 extent to be proven at trial.

23  
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Counter-Claimant AAC prays for the following relief:

- 26 1. On the First Counterclaim for false advertising under federal law:  
27 (a) For judgment against SureFire for violation of 15 U.S.C. §  
28 1125(a)(1)(B);

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- (b) For an award to AAC ordering disgorgement of SureFire's profits, according to proof at trial;
- (c) For an award to AAC of its damages, according to proof at trial;
- (d) For a finding that SureFire's conduct was and is willful, wanton, or reckless, and an order granting enhanced damages under 15 U.S.C. § 1117(a);
- (e) For an order commanding SureFire to conduct corrective advertising and a judgment including corrective advertising expenses for Counter-Claimant AAC in an amount sufficient to permit Counter-Claimant AAC to inform its customers regarding the truthful nature of SureFire's goods;
- (f) For an order calling for the collection and confiscation of any of SureFire's false or misleading advertisements, articles, web pages, and like materials, as well as any devices used in their production and distribution, as provided by 15 U.S.C. § 1118;
- (g) For preliminary and permanent injunctive relief against SureFire prohibiting it from continuing to commit false advertising with respect to its products that irreparably harms AAC;
- (h) For an award to AAC of its costs and attorneys fees incurred in this action; and
- (i) For interest on all sums awarded to AAC.

2. On the Second Counterclaim for violation of California Business & Professions Code Section 17500 *et seq.*:

- (a) For judgment against SureFire for violation of Cal. Bus. & Prof. Code § 17500;
- (b) For an award to AAC ordering restitution of amounts that SureFire wrongfully acquired from AAC, in an amount to be proven at trial;

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- (c) For preliminary and permanent injunctive relief against SureFire prohibiting it from continuing to commit false advertising with respect to its products that irreparably harms AAC; and
- (d) For an award to AAC of its costs incurred in this proceeding; and
- (e) For interest on all sums awarded to AAC.

3. On the Third Counterclaim for violation of California Business & Professions Code Section 17200 *et seq.*:

- (a) For judgment against SureFire for violation of Cal. Bus. & Prof. Code § 17200 *et seq.* for its unlawful, unfair and fraudulent conduct;
- (b) For an award to AAC ordering restitution of amounts that SureFire wrongfully acquired from AAC, in an amount to be proven at trial;
- (c) For preliminary and permanent injunctive relief against SureFire prohibiting it from continuing to commit false advertising and acts of unfair competition with respect to its products that irreparably harms AAC; and
- (d) For an award to AAC of its costs incurred in this proceeding; and
- (e) For interest on all sums awarded to AAC.

4. On all Claims in the Counterclaim:

- (a) For all costs incurred in this proceeding;
- (b) For interest on all sums awarded to AAC; and
- (c) For such other and further relief as the Court deems just and proper.

### JURY DEMAND

Counter-Claimant AAC demands a jury trial pursuant to Fed. R. Civ. P. 38(b) as to any and all issues that may be tried by a jury.

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1 DATED: January 20, 2009  
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**SERVICE LIST**

**SureFire, LLC . v. Advanced Armament Corp.**  
**United States District Court Case No. SACV-08-1405 DOC (RNBx)**

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