

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CONTOUR HARDENING, INC.)	JURY TRIAL DEMANDED
)	
Plaintiff,)	
)	
vs.)	Case No. 1:14-cv-26
)	
VANAIR MANUFACTURING, INC.)	
)	COMPLAINT AND JURY DEMAND
Defendant.)	
)	

COMPLAINT AND JURY DEMAND

Plaintiff, Contour Hardening, Inc. (“Contour Hardening”) for its Complaint against the Defendant, Vanair Manufacturing, Inc. (“Vanair”), alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking injunctive and monetary relief for patent and trademark infringement with regard to Plaintiff’s intellectual property rights. Defendant has violated, and continues to violate, *inter alia*, the patent laws of the United States, 35 U.S.C. §§271 and 281-285, and the Federal Trademark Act of 1946, as amended, by infringing Plaintiff’s U.S. Patent Nos. 6,979,913 and 7,057,303 and infringing Plaintiff’s mark by the use of its ROAD POWER mark.

PARTIES

2. Plaintiff Contour Hardening is a corporation organized and existing under the laws of the State of Indiana, having a principal place of business at 8401 Northwest Blvd., Indianapolis, Indiana 46278.

3. Upon information and belief, Defendant Vanair is a corporation organized and existing under the laws of the State of Indiana, having a principal place of business at 10896 West 300 N., Michigan City, Indiana 46360.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this Action pursuant to 28 U.S.C. § 1338(a) and (b) and 15 U.S.C. § 1121.

5. This Court has personal jurisdiction over Defendant because Defendant is an Indiana corporation that resides within the State of Indiana.

6. Venue is proper in this judicial district under 28 U.S.C. §§1391 because Defendant regularly conducts business in this judicial district, including the shipment and sale of the infringing product(s) into this judicial district, such as through at least six authorized “Dealers/Service Centers” located within this judicial district.

BACKGROUND FACTS

7. Plaintiff Contour Hardening is a developer and provider of Power Take-Off (PTO) driven generator systems for vehicles ranging from Class 2 pickup trucks (e.g., full-size trucks) to larger Class 8 Heavy Duty trucks (e.g., tractor trailer trucks).

8. These systems have helped those working in municipal, fire-rescue, construction, healthcare, mining, farming and many other vocations to perform work that was previously not possible, or required expensive, space-consuming alternatives.

Contour Hardening’s REAL POWER® Mark

9. Since at least 2004 and continuously to date, Plaintiff has adopted and used in interstate commerce the mark REAL POWER in connection with its PTO driven AC generator systems and related operations.

10. Plaintiff's PTO driven AC generator systems and related services sold under the REAL POWER mark have become successful in the marketplace.

11. Sales and installations of Plaintiff's PTO driven AC generator systems under the REAL POWER mark have increased significantly over time.

12. Over the years, Plaintiff has spent a considerable amount of money in establishing the REAL POWER mark in the minds of the consumer as a source of its high quality and reliable PTO driven AC generator systems and related services.

13. Plaintiff's REAL POWER mark has become distinctive to consumers in the vehicle mounted AC generator industry.

14. Plaintiff is the owner of United States Registration No. 3,124,014 issued August 1, 2006 for the mark REAL POWER for providing AC generators. A true copy of registration 3,124,014 is attached as Exhibit A.

The Contour Hardening Patents

15. Plaintiff is also the owner of United States Patent Nos. 6,979,913 and 7,057,303 commonly entitled "Vehicle Mounted Electrical Generator System" (hereinafter "the Contour Patents"). A true and accurate copy of each of the Contour Patents is attached as Exhibits B and C. The Contour Patents issued on December 27, 2005 and June 6, 2006 respectively. Prior to their issuance, the Contour Patents were assigned to Plaintiff, who still owns them.

16. Plaintiff has complied with the patent marking requirements of 35 U.S.C. for products manufactured and sold by Plaintiff which are covered by the Contour Patents.

17. Defendant had actual knowledge that it was infringing the Contour Patents at least as early December 17, 2012 when Plaintiff's counsel sent the Defendant a letter, via certified mail, providing it with actual notice of the Contour Patents and expressing "concerns regarding possible infringement." The letter requested that the Defendant "evaluate [its] activities relative

to these two (2) patents and provide a written response as to when any infringing activities will cease.”

18. Defendant did not respond to Plaintiff’s letter.

Vanair’s Infringing Acts

19. Upon information and belief, sometime around 2007, Defendant first began offering vehicle mounted AC generator systems which infringe one or more of the claims of the Contour Patents. A copy of Defendant’s product brochure showing its “Road Power PTO Driven Generator” is attached hereto as Exhibit D. Additionally, screen shots taken from Defendant’s website, located at www.vanair.com, which show additional details of the “Road Power PTO Driven Generator” are included as Exhibit E.

20. Defendant offers these infringing products under the mark ROAD POWER with knowledge of Contour Hardening’s REAL POWER mark.

21. Defendant’s ROAD POWER mark is used in conjunction with virtually identical competing products to those which Plaintiff offers under its REAL POWER mark.

22. Upon information and belief, Defendant offers to sell, sells, and installs its infringing vehicle mounted AC generator systems within this district and throughout the United States with nameplates, labels or other graphic displays which are confusingly similar to Contour Hardening’s REAL POWER mark.

23. Defendant commenced its use of the mark ROAD POWER in interstate commerce at a time subsequent to the commencement of Plaintiff’s use of the mark REAL POWER.

24. Defendant has in commercial advertising, marketing, and/or promotion in the United States used its ROAD POWER mark, which is confusingly similar to Plaintiff’s REAL POWER mark, in conjunction with its sales, installation and service of vehicle mounted AC generator systems.

25. Defendant's use of its ROAD POWER mark on its products and with its services is likely to cause confusion or mistake or deception of consumers as to the source of origin of Defendant's goods or services.

26. Consumers are likely to obtain Defendant's goods or services offered under the ROAD POWER mark believing they are being provided by the Plaintiff, thereby resulting in a loss of sales or revenue to Plaintiff.

27. Upon information and belief, Defendant's activities have been willful, deliberate, and intentional, causing a likelihood of confusion, and were done with an intent to trade upon Plaintiff's goodwill in the mark REAL POWER.

COUNT I - INFRINGEMENT OF U.S. PATENT 6,979,913

28. Plaintiff incorporates by reference paragraphs 1 through 27.

29. Defendant has infringed one or more claims of the '913 Patent. This infringement includes, in part, the manufacture, sale, and offer for sale of its Road Power PTO Driven Generator.

30. On information and belief, Defendant has acted willfully, intentionally and deliberately in derogation of Plaintiff's rights in the '913 Patent.

31. Plaintiff has been damaged by Defendant's infringement and will suffer irreparable injury unless Defendant is permanently enjoined by this Court.

COUNT II - INFRINGEMENT OF U.S. PATENT 7,057,303

32. Plaintiff incorporates by reference paragraphs 1 through 31.

33. Defendant has infringed one or more claims of the '303 Patent. This infringement includes, in part, the manufacture, sale, and offer for sale of its ROAD POWER PTO Driven Generator.

34. On information and belief, Defendant has acted willfully, intentionally and deliberately in derogation of Plaintiff's rights in the '303 Patent.

35. Plaintiff has been damaged by Defendant's infringement and will suffer irreparable injury unless Defendant is permanently enjoined by this Court.

COUNT III - TRADEMARK INFRINGEMENT

36. Plaintiff incorporates by reference paragraphs 1 through 35.

37. Defendant's actions constitute infringement of the mark REAL POWER in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

38. Defendant's infringing conduct is causing Plaintiff irreparable damage in an amount yet to be determined.

39. Unless enjoined, the continued conduct of Defendant in derogation of the rights of Plaintiff will cause additional damage, harm and injury to Plaintiff for which it has no adequate remedy at law, and will destroy or substantially impair the rights and property of Plaintiff.

COUNT IV – FALSE DESIGNATION OF ORIGIN

40. Plaintiff incorporates by reference paragraphs 1 through 39.

41. Defendant's use of the ROAD POWER mark constitutes a false designation of origin which is likely to deceive and has deceived customers and prospective customers into believing that Defendant's products or services are those of Plaintiff, and, as a consequence, are likely to divert customers away from Plaintiff.

42. Plaintiff has no control over the nature and quality of the products and related services offered by Defendant. Any failure, neglect or default by Defendant in providing such products and services will reflect adversely on Plaintiff as the believed source of origin, hampering efforts by Plaintiff to continue to protect its reputation for high quality products and

related services, resulting in loss of sales and the considerable expenditures to promote its products and services under the REAL POWER mark, all to the irreparable harm of the Plaintiff.

43. The acts of Defendant complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

44. Defendant's false designation of origin will continue unless enjoined by this Court.

RELIEF

WHEREFORE, Contour Hardening prays for judgment as follows:

A. A judgment of infringement of the Contour Patents be entered in favor of Plaintiff against Defendant.

B. A judgment of infringement of Plaintiff's REAL POWER mark be entered in favor of Plaintiff against Defendant.

C. An order permanently restraining Defendant or any subsidiaries, employees, agents or servants thereof, from further acts of infringement of the Contour Patents and the REAL POWER mark.

C. An order that all infringing devices in the possession of, or subject to control by Defendant or any employees, agents, servants or distributors thereof, infringing on any claim of the Contour Patents and/or the REAL POWER mark, be delivered up and destroyed.

D. An award of damages to Plaintiff in whatever amount it is found to be entitled plus interest.

E. An award of damages under 35 U.S.C. §284 in an amount not less than three times the amount of actual damages caused by Defendant's acts of willful and wanton infringement.

F. An award to Plaintiff of its costs and expenses.

G. An order declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 as a result of Defendant's knowing and willful infringement of the Contour Patents, and awarding Plaintiff its attorneys' fees incurred in bringing this action.

H. An order granting all other relief found necessary, just and proper under the circumstances, including monetary damages to which Plaintiff may be entitled.

JURY DEMAND

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

Respectfully submitted,

s/William A. McKenna
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