

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NATIONAL SHELTER PRODUCTS, INC.,
10 West Streetsboro Street
Suite 207
Hudson, Ohio 44236

Plaintiff,

v.

PLYVENEER PRODUCTS,
800 48th Street
Springfield, Oregon 97478

Defendant.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff National Shelter Products, Inc. (“National Shelter Products”), for its complaint against Defendant PlyVeneer Products (“PlyVeneer”), alleges as follows:

INTRODUCTION

1. This is an action for willful patent infringement. Without authorization, PlyVeneer sells to its customers a liner for use in a patented vehicle floor assembly with the knowledge and intent that its customers use the liner to infringe the patent; in fact, the liner has no substantial noninfringing uses. In addition, PlyVeneer actively induces its customers to use the liner to infringe the patent.

PARTIES

2. Plaintiff National Shelter Products is a company that produces, among other things, multi-layered materials used by motor vehicle manufacturers in the production of vehicles, including recreational vehicles. National Shelter Products is incorporated in Washington and has its principal place of business in Hudson, Summit County, Ohio.

3. PlyVeneer is a manufacturing company with a production facility located in Springfield, Oregon. PlyVeneer likewise produces multi-layered materials that are used by manufacturers during the production of motor vehicles, including recreational vehicles.

4. On information and belief, PlyVeneer is a corporation organized and existing under the laws of Oregon with a principal place of business in Springfield, Oregon.

5. National Shelter Products and PlyVeneer are direct competitors in the field of multi-layered materials.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code, including 35 U.S.C. § 271. Subject matter jurisdiction of this Court is conferred by 28 U.S.C. §§ 1331 and 1338.

7. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b), 28 U.S.C. § 1400(b), and LR 3.8.

8. This Court has personal jurisdiction over PlyVeneer under the laws of the State of Ohio, including the Ohio long-arm statute, Ohio Rev. Code § 2307.382.

9. On information and belief, PlyVeneer has conducted and does conduct business within the State of Ohio, directly or through intermediaries or agents, induces others to use products in Ohio to infringe U.S. Patent No. 5,863,091 (the “‘091 Patent”), and knowingly contributes to infringement of the ‘091 Patent in Ohio.

PATENT-IN-SUIT

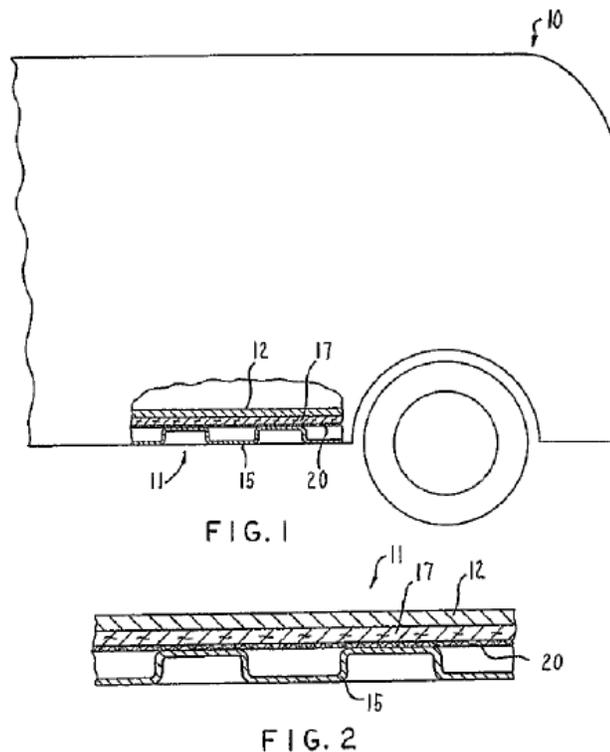
10. On August 6, 1997, Earl H. Shepherd and John W. Cahill filed a patent application in the United States Patent and Trademark Office (“USPTO”) for their invention

titled, "Vehicle Floor Assembly." This application was assigned Serial No. 08/907,176 (the "176 Application").

11. On January 26, 1999, the '091 Patent, titled, "Vehicle Floor Assembly," was duly and legally issued from the '176 Application.

12. As issued, the '091 Patent contained errors in Figures 1 and 2, and on September 4, 2007, the USPTO issued a Certificate of Correction for the '091 Patent. A copy of the '091 Patent along with the Certificate of Correction is attached as Exhibit 1.

13. The '091 Patent relates to vehicle floor assemblies. For example, below is claim 1 of the patent, above which are two figures from the patent. For convenience, references to the figures are provided in brackets in the claim language.



Claim 1: In a vehicle floor assembly [11] comprising a floor [12], a floor support frame [15] and a liner provided underneath and attached to the floor [12], the improvement comprising said liner having a polymer fabric reinforcing layer [20] laminated to a cellulose or unwoven polymer fabric bonding layer [17] which is bonded directly to the floor [12].

14. National Shelter Products is the sole assignee of the '091 Patent under 35 pU.S.C. § 261.

BACKGROUND FACTS

PlyVeneer Seeks Trademark Protection for and Subsequently Sells an Infringing Liner

15. PlyVeneer's affiliate—Sabalito, LLC—applied for a U.S. trademark application for the mark “TuffTear” on November 14, 2013. The goods and services identified by the “TuffTear” trademark application were “[m]oisture resistant barrier materials, namely plastic composite material in roll or sheet form composed of layers of woven plastic and Kraft linerboard with a black moisture resistant coating, primarily for use in the manufacture and repair of recreational vehicles.” A copy of the trademark filing is attached as Exhibit 2.

16. In an Office Action response that was submitted to the USPTO on August 19, 2014, related to the pending “TuffTear” trademark application, PlyVeneer's attorney responded to an inquiry of the trademark Examining Attorney by stating that the “goods are sold both directly and through distributors to recreational vehicle manufacturers and repairers.” PlyVeneer's attorney included two photographs of the TuffTear moisture resistant barrier material with the Office Action response. A copy of the Office Action response, which includes the two photographs, is attached as Exhibit 3.

17. More specifically, on information and belief, PlyVeneer sold, and continues to sell, TuffTear material “to recreational vehicle manufacturers and repairers” for use in vehicle floor assemblies.

***National Shelter Products Learns PlyVeneer
Is Selling a Competing Liner and Infringing the Patent***

18. In approximately July 2014, National Shelter Products noticed a drop in sales and learned that PlyVeneer was selling a liner that competed directly with a liner that National Shelter Products sold for use in its patented vehicle floor assembly.

19. On July 31, 2014, counsel for National Shelter Products wrote to the president of PlyVeneer, enclosed a copy of the '091 Patent, informed him that National Shelter Products was investigating PlyVeneer's new liner, asked for a sample of PlyVeneer's new liner for analysis, and requested a response from PlyVeneer's patent counsel.

20. In response, PlyVeneer's president wrote and admitted that PlyVeneer had begun selling a new liner, but he refused to provide a sample of the liner.

21. Over the next month, PlyVeneer's president and counsel for National Shelter Products exchanged additional letters, in which National Shelter Products' counsel explained how sales of PlyVeneer's liner infringed the '091 Patent, demanded that PlyVeneer cease its infringing activities, and encouraged PlyVeneer to engage patent counsel.

22. Notably, PlyVeneer never denied in any of that correspondence—or subsequently—that PlyVeneer sold its liner for use in vehicle floor assemblies, that PlyVeneer instructed its customers to use the liner in vehicle floor assemblies, or that PlyVeneer intended its customers to use the liner in vehicle floor assemblies.

23. On August 29, 2014, in the last letter from National Shelter Products to PlyVeneer, counsel enclosed a sample of the infringing liner, identified the liner as affiliated with the "TuffTear" trademark application (based on the recent trademark correspondence with the USPTO), and explained again how PlyVeneer's sales of its liner infringed the '091 Patent.

24. To date, PlyVeneer continues to sell the liner, knowing—indeed, intending—that its customers use the liner to infringe the ‘091 Patent.

PlyVeneer’s Indirect Infringement of the ‘091 Patent

25. PlyVeneer has actively induced and currently is actively inducing others to infringe, and/or has contributorily infringed and currently is contributorily infringing claims of the ‘091 Patent in the United States, by making, using, offering for sale, and selling products that are used by PlyVeneer’s customers to infringe one or more claims of the ‘091 Patent.

26. More specifically, with respect to contributory infringement, PlyVeneer makes, uses, sells, offers to sell, supplies, and/or causes to be supplied its TuffTear liner to recreational vehicle manufacturers and repairers, which manufacture the vehicle floor assemblies as disclosed and claimed in the ‘091 Patent.

27. The TuffTear liner is material to practicing the invention claimed in the ‘091 Patent and has no substantial non-infringing uses.

28. Indeed, National Shelter Products, which sells a liner for use in the patented floor assembly, is aware of no substantial uses of either its liner or PlyVeneer’s liner, other than for use in the patented floor assembly.

29. With respect to PlyVeneer’s inducing others to infringe, on information and belief, PlyVeneer has sold its TuffTear liner to third parties, including recreational vehicle manufacturers and repairers, and instructed them to use the liner in vehicle floor assemblies and infringe one or more claims of the ‘091 Patent.

30. On information and belief, these third parties, including recreational vehicle manufacturers and repairers, use the TuffTear liner as PlyVeneer instructed, infringing one or more claims of the ‘091 Patent.

31. On information and belief, PlyVeneer intended these third parties to infringe one or more claims of the '091 Patent and knew the acts of these third parties constituted infringement.

32. PlyVeneer's actions constituting indirect infringement of the claims of the '091 Patent were committed despite an objectively high likelihood that PlyVeneer's actions constituted infringement of a valid patent. PlyVeneer either knew or should have known that its reckless actions constituted infringement of a valid patent.

33. National Shelter Products owned the '091 Patent through the period of the infringing acts of PlyVeneer and the third parties, and National Shelter Products still owns the '091 Patent.

34. Since at least July 31, 2014, PlyVeneer has had actual notice of the claims of the '091 Patent.

35. PlyVeneer's infringement of the claims of the '091 Patent has injured National Shelter Products, continues to injure National Shelter Products, and will cause irreparable injury in the future unless PlyVeneer is enjoined from further infringing claims of the patent.

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,863,091)

36. National Shelter Products repeats and incorporates by reference the allegations set forth in the foregoing paragraphs.

37. Without the authorization, consent, or permission of National Shelter Products, PlyVeneer has willfully infringed and continues to infringe—contributorily and by active inducement—one or more claims of the '091 Patent, by making, offering to sell, selling,

supplying, causing to be supplied, using, and causing to be used, in the United States, liners (including the TuffTear liner) that are used to infringe one or more claims of the '091 Patent.

38. National Shelter Products has been damaged and continues to be damaged by PlyVeneer's infringement of the '091 Patent.

39. Unless enjoined by this Court, PlyVeneer will continue its infringing activities through the manufacture, marketing, offering for sale, and sale of the TuffTear liner, causing further damages and irreparable harm to National Shelter Products.

40. On information and belief, PlyVeneer has engaged in willful and deliberate infringement of the '091 Patent justifying an assessment of treble damages under 35 U.S.C. § 284.

41. Under 35 U.S.C. § 285, PlyVeneer's willful infringement also qualifies this action as an exceptional case in support of an award of reasonable attorneys' fees, expenses, and costs incurred by National Shelter Products in this action.

RELIEF REQUESTED

WHEREFORE, National Shelter Products prays that this Court enter judgment as follows:

- (A) That the '091 Patent is valid and infringed by PlyVeneer;
- (B) That PlyVeneer be held liable for damages not less than a reasonable royalty;
- (C) That PlyVeneer's infringement of the '091 Patent is willful and entitles National Shelter Products to treble damages under 35 U.S.C. § 284;
- (D) That PlyVeneer, its officers, agents, suppliers, distributors, servants, employees, successors, assigns, and all persons acting in concert or participation with it, be

preliminarily and permanently enjoined and restrained from further infringement of the '091 Patent;

- (E) That this an exceptional case under 35 U.S.C. § 285 and award National Shelter Products reasonable attorneys' fees, expenses, and costs incurred in this action; and
- (F) That National Shelter Products receive such further necessary or proper relief as the Court may deem just.

Respectfully submitted,

/s/ Andrew G. Fiorella

John F. Bennett (#0074506)
ULMER & BERNE LLP
600 Vine Street, Suite 2800
Cincinnati, Ohio 45202-2409
Telephone: (513) 698-5152
Facsimile: (513) 698-5153
Email: jrbennett@ulmer.com

Andrew G. Fiorella (#0077005)
ULMER & BERNE LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1448
Telephone: (216) 583-7154
Facsimile: (216) 583-7001
Email: aifiorella@ulmer.com

ATTORNEYS FOR PLAINTIFF
NATIONAL SHELTER PRODUCTS, INC.

JURY DEMAND

National Shelter Products respectfully requests a trial by jury on all issues so triable in this action.

/s/ Andrew G. Fiorella

Andrew G. Fiorella