

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**PREMIUM SALES NETWORK, LLC,**

**Plaintiff,**

**CASE NO: 8:15-cv-02431-EAK-AEP**

**v.**

**MASTERSPAS, INC. and  
ROBERT LAUTER, individually,**

**Defendants.**

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**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Premium Sales Network, LLC (“Premium”), sues Defendants, MasterSpas, Inc. (“MasterSpas”) and Robert Lauter, individually, and alleges the following:

**JURISDICTION AND VENUE**

1. This is an action for preliminary and permanent injunctive relief, equitable relief, damages, profits, costs, expert fees, and attorneys’ fees resulting from the willful infringement of Premium’s rights granted under the patent laws of the United States, Title 35, United States Code, and false advertising perpetrated by MasterSpas and its Chief Executive Officer, Robert Lauter, individually.

2. This Court possesses subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 (a).

3. MasterSpas is subject to jurisdiction in the State of Florida because it has distributed, offered for sale, and sold, goods in the State of Florida which infringe

Premium's design patent, directed false and misleading advertising regarding its products into the State of Florida, and because MasterSpas has engaged in business in the State of Florida. MasterSpas places infringing products and false advertising into the stream of commerce, with the knowledge and understanding that such products are sold and such false advertisements will be distributed within the State of Florida, including in this District. The acts of MasterSpas cause injury to Premium in this District. Upon information and belief, MasterSpas derives substantial revenue from the sale of infringing products within this District, expects its actions to have consequences within this District, and derives substantial revenue from interstate commerce. In addition, MasterSpas maintains and operates a website at the <http://www.masterspas.com> domain address, through which MasterSpas offers for sale and sells the accused product, which contains false and misleading advertising claims, and which Florida residents may access. MasterSpas is also subject to jurisdiction in Florida because it has committed tortuous acts in this state.

4. Mr. Lauter is subject to jurisdiction in the State of Florida because he was and is the active, conscious, and moving force behind Master Spas' patent infringement and false and misleading advertising described above.

5. Venue is proper in this judicial district and in this division under 28 U.S.C. §§1391 and 1400.

#### **THE PARTIES**

6. Premium is a Florida corporation with its principal place of business located in St. Petersburg, Florida.

7. MasterSpas is an Indiana corporation with its principal place of business in Ft. Wayne, Indiana.

8. Mr. Lauter is an individual residing in Ft. Wayne, Indiana.

### **THE '895 PATENT**

9. On December 2, 2013, United States Patent No. D694,895 S (the “'895 Patent”), entitled “Spa With Bi-Lateral Flanges And Lateral Flares” issued to Brian K. Wiley and Brad Glover. A copy of the '895 Patent is attached hereto as Exhibit “A.”

10. Mr. Wiley and Mr. Glover assigned all right, title, and interest in the '895 Patent to Premium. Premium is, and at all relevant times has been, the lawful owner of all right, title, and interest in and to the '895 Patent.

11. The '895 Patent is a design patent that claims an ornamental design for spa with bi-lateral flanges and flares, as shown and described in the '895 Patent drawings.

12. Premium Leisure’s “Leisure’s Edge” line of spas embody the ornamental design claimed in the '895 Patent, are made and sold pursuant to a license from Premium, and are marked in accordance with 35 U.S.C. § 287.

### **GENERAL ALLEGATIONS**

13. All conditions precedent to the maintenance of this action have occurred, have been performed, or have been excused or waived.

14. Premium has retained the law firm of Fee & Jeffries, P.A. to vindicate its rights against MasterSpas, and Premium is obligated to pay its attorneys a reasonable fee for their services.

**COUNT I**  
**Infringement of the '895 Patent**

15. Premium realleges and incorporates by reference the allegations contained within paragraphs 1 through 14 above, as if set forth fully herein.

16. As the side-by-side comparison shown in the photographs set forth in Exhibit "B" hereto reveal, MasterSpas misappropriated Premium's patented bi-lateral flange and flare design in its "Healthy Living" spa products (the "Infringing Spas"). An ordinary observer, familiar with prior art designs, would be deceived into believing that the bi-lateral flanges and flares on the Infringing Spas are the same as the design claimed in the '895 Patent.

17. MasterSpas knowingly misappropriated Premium's patented design in the Infringing Spas.

18. Prior to designing its Infringing Spas, Master Spas obtained and used at least one Premium Leisure "Leisure's Edge" spa, which incorporated the bilateral flange design covered by the '895 Patent, to make portions of the molds for the Infringing Spas by casting directly on portions of that "Leisure's Edge" spa.

19. Master Spas also obtained at least one brochure for Premium Leisure's "Leisure's Edge" spa line, containing photographs of spas embodying Premium's design covered by the '895 Patent, and used that brochure to design its Infringing Spas, including the bi-lateral flange and flare design.

20. MasterSpas has been infringing and is continuing to infringe, the '895 Patent under 35 U.S.C. §271 by importing, manufacturing, using, offering to sell and/or

selling in this District and elsewhere in the United States, products that fall within the scope of the '895 Patent.

21. The activities constituting MasterSpas' willful infringement of Premium's '895 Patent have always been, and continue to be, carried out by MasterSpas without Premium's authority or license.

22. Mr. Lauter, MasterSpas' CEO, was active, conscious, and moving force behind Master Spas' willful infringement of Premium's '895 Patent and is, therefore, jointly and severally liable for such infringement.

23. Mr. Lauter approved the purchase of the Premium Leisure "Leisure's Edge" spa and the use of that spa and Premium Leisure's "Leisure's Edge" brochure to design Master Spas' Infringing Spas and participated in the design process. Mr. Lauter oversees Master Spas' product development and marketing and is the company's final decision maker in these areas.

24. Premium has complied with the notice provisions of 35 U.S.C. § 287 (a) regarding Premium's '895 Patent.

25. Although Premium has been injured by, and would continue to suffer injury from, the willfully infringing activities of MasterSpas and Mr. Lauter, including irreparable injury, Master Spas and Mr. Lauter claim to have changed the design of the Infringing Spas to eliminate the bi-lateral flange and flare design after the filing of this lawsuit.

26. Premium would have no adequate remedy at law to prevent injuries it would suffer should the willful infringement of Premium's '895 Patent by Master Spas and Mr. Lauter continue.

27. Given the clear, direct, and willful infringement of Premium's '895 Patent by Master Spas and Mr. Lauter, Premium is substantially likely to prevail upon the merits of this action.

28. The balance of hardships and the public interest requires that MasterSpas and Mr. Lauter immediately cease, and if already ceased, never resume, their infringing activities.

29. This is an exceptional case under 35 U.S.C. § 285 because the infringing conduct of Master Spas and Mr. Lauter has been, and is, clearly willful, intentional, and deliberate.

WHEREFORE, Premium respectfully requests this Court to enter judgment in its favor and against Master Spas and Mr. Lauter:

(A) granting Premium preliminary and permanent injunctive relief barring the activities of MasterSpas and Mr. Lauter that infringe upon Premium's patent rights in Premium's '895 Patent;

(B) awarding to Premium and against Master Spas and Mr. Lauter, jointly and severally, damages adequate to compensate for the infringement of the '895 Patent by MasterSpas and Mr. Lauter, including but not limited to MasterSpas' total profit, as well as treble damages due to the willful and deliberate nature of the infringement by MasterSpas and Mr. Lauter of Premium's '895 Patent;

(C) awarding to Premium and against Master Spas and Mr. Lauter, jointly and severally, prejudgment interest, post-judgment interest, costs, attorneys' fees, and expert fees; and

(D) granting to Premium all other relief this Court deems just and appropriate.

**COUNT II**  
**False and Misleading Advertising**  
**In Violation of Section 43(A) of The Lanham Trademark Act**

30. Premium realleges and incorporates by reference the allegations contained within paragraphs 1 through 14 above, as if set forth fully herein.

31. Master Spas has and continues to make false and misleading advertising statements to the public regarding Master Spas Infringing Spas.

32. Specifically, Master Spas falsely and misleadingly advertises to the public that the seats in its Infringing Spas were created by "Engineers" using "advanced technology" (the "False Seat Statement"). The False Seat Statement is literally false and is also misleading.

33. In fact, the seats in the Infringing Spas were *not* designed by engineers for Master Spas. Rather, Master Spas directly and physically copied from Premium Leisure's "Leisure's Edge" line of spas.

34. Nor were the seats in Master Spas' Infringing Spas created using "Advanced technology". Master Spas created those seats with a long-time molding technique called "splashing", whereby a fiberglass cast impressions were made of seats from a Premium Leisure "Leisure's Edge" spa. Those cast impressions were then used to make the molds for Master Spas' Infringing Spas.

35. Master Spas has used and continues to use the False Seat Statement to create the literally false and misleading impression that the seat designs of Master Spas' Infringing spas are unique to Master Spas, superior to those of its competitors, and were created for Master Spas by a group of "Engineers" using "advanced technology".

36. Master Spas has distributed and published and continues to distribute and publish the False Seat Statement through the use of interstate commerce, including but not limited publishing it on Master Spas' internet website ([www.masterspas.com](http://www.masterspas.com)) and in brochures.

37. Mr. Lauter, MasterSpas' CEO, was active, conscious, and moving force behind Master Spas' above-described false and misleading advertising and is, therefore, jointly and severally liable for such advertising.

38. Mr. Lauter approved Master Spas' use of the False Seat Statement, oversees Master Spas' marketing, and is the company's final decision maker for marketing.

39. The False Seat Statement relates to the nature and qualities or characteristics of Master Spas' Infringing Spas, is material to the purchasing decisions of potential customers, and is false or have been made in a way that is likely to mislead or improperly influence an appreciable group of the persons exposed to that statement.

40. The dissemination and publication by Master Spas and Mr. Lauter of the False Seat Statement constitutes false and misleading advertising in violation of Section 43(a) of the Lanham Trademark Act.



41. As a result of the false and misleading advertising by Master Spas and Mr. Lauter regarding Master Spas' Infringing Spas, Premium has likely suffered and is likely to continue suffering actual damages, including a diversion of sales.

WHEREFORE, Premium respectfully requests this Court to enter judgment in its favor and against Master Spas and Mr. Lauter:

a) Permanently enjoining Master Spas and Mr. Lauter, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, from disseminating the False Seat Statement;

b) Awarding Premium:

(i) All of the profits, gains and advantages derived by Master Spas and Mr. Lauter from their false and misleading advertising, and that such sums be trebled pursuant to 15 U.S.C. §1117;

(ii) All damages sustained by Premium by reason of the false and misleading advertising by Master Spas and Mr. Lauter, and requesting that such damages be trebled pursuant to 15 U.S.C. §1117; and

(iii) Interest, including prejudgment interest, on the foregoing sums;

c) Awarding to Premium its attorneys' fees and costs incurred by reason of the false and misleading advertising of Master Spas and Mr. Lauter; and

d) Directing such other relief as the Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 22, 2016, I filed a true and accurate copy of the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: **Jon A. Bragalone, Esq., J. Blake Hike, Esq.**, CARSON BOXBERGER, LLP, 301 W. Jefferson Blvd., Ste. 200, Fort Wayne, IN 46802 ([bragalone@carsonboxberger.com](mailto:bragalone@carsonboxberger.com); [hike@carsonboxberger.com](mailto:hike@carsonboxberger.com)); **Jeffrey I. Kaplan, Esq.**, KAPLAN, BREYER, SCHWARZ & OTTESEN, LLP, 100 Matawan Road, Ste. 120, Matawan, NJ 07747 ([jkaplan@kbsolaw.com](mailto:jkaplan@kbsolaw.com)); and **Joseph W. Bain, Esq.**, SHUTTS & BOWEN LLP, CityPlace Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 ([jbain@shuttbs.com](mailto:jbain@shuttbs.com)), *Counsel for Defendant MasterSpas, Inc.*

*s/ Richard E. Fee*

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