

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

**ACOUSTIBLOK, INC.,  
a Florida corporation, and  
L.J. AVALON, LLC,  
A Florida Limited liability company,**

**Plaintiff,**

**vs.**

**Case No.: 8:17-CV-2715-T-17TBM**

**SONIC-SHIELD, LLC,  
a Florida limited liability company,  
PHILIP J. HIPOL, an individual, and  
RYAN P. MENENDEZ, an individual,**

**Defendants.** \_\_\_\_\_/

**AMENDED COMPLAINT AND DEMAND FOR  
JURY TRIAL, INJUNCTIVE RELIEF SOUGHT**

Plaintiffs Acoustiblok, Inc. and L.J. Avalon, LLC (“Plaintiffs”) bring this Amended Complaint seeking injunctive relief against, and damages from, Defendants, Sonic-Shield, LLC (“Sonic-Shield”), Philip J. Hipol (“Hipol”), and Ryan P. Menendez (“Menendez”) for willful patent infringement, and in support states as follows:

**STATEMENT OF THE CASE**

1. This is an action for willful patent infringement. Plaintiff Acoustiblok designs and manufactures, among other things, patented sound reducing panels suitable for use in outdoor or hazardous environments. Many years after the patent on these panels issued, and Acoustiblok began successfully selling the panels, an independent sales representative of Acoustiblok named Philip J. Hipol left Acoustiblok and with another individual named Ryan P. Menendez started up a company named Sonic-Shield, LLC, which manufactures and sells infringing copies of Acoustiblok’s sound reducing panels. Mr. Hipol and Mr. Menendez were

both well aware at the time of Acoustiblok, its products, and patents, and so their infringement is willful. As a result of this blatant and willful infringement, Acoustiblok is entitled to injunctive and monetary relief as sought in this Complaint.

**PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Acoustiblok, Inc. is a corporation organized under the laws of the State of Florida with its principal place of business at 6900 Interbay Boulevard, Tampa, Florida 33616.

3. Plaintiff L.J. Avalon, LLC (“Avalon”) is a limited liability company organized under the laws of the State of Florida with its principal place of business at 6900 Interbay Boulevard, Tampa, Florida 33616.

4. Defendant Sonic-Shield, LLC is a limited liability company organized by Philip J. Hipol on July 20, 2015 under the laws of the State of Florida with a principal place of business at 19813 Sea Rider Way, Lutz, Florida 33559.

5. Defendant Philip J. Hipol is an individual residing in Hillsborough County, Florida. Mr. Hipol was Sonic-Shield’s initial Manager and has at relevant times been an officer, principal, and employee of Sonic-Shield.

6. Upon information and belief, Mr. Hipol, during relevant periods of infringement discussed hereafter, controlled, operated, and was responsible for day-to-day operations of Sonic-Shield.

7. Defendant Hipol has or had ultimate decision-making authority for, and control over, the design, manufacture, sale, and offers for sale of infringing products.

8. Defendant Ryan P. Menendez is an individual residing in Hillsborough County, Florida, and the current Manager of Sonic-Shield. Mr. Menendez has also at relevant times been an officer, principal, and employee of Sonic-Shield.

9. Upon information and belief, Mr. Menendez controls, operates, and is responsible for day-to-day operations of Sonic-Shield, including its infringing activities discussed hereafter.

10. Defendant Menendez has or had ultimate decision-making authority for, and control over, the design, manufacture, sale, and offers for sale of infringing products.

11. This Court has exclusive subject matter jurisdiction over the patent infringement claims asserted in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this Complaint states an action based upon a federal question relating to patents; this Court has jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.

12. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b) since Defendants are all residents or doing business in this judicial district. Furthermore, a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in this judicial district.

### **PLAINTIFFS AND THEIR PATENT RIGHTS**

13. Over 20 years ago, Acoustiblok was founded by Lahnne Johnson based on a recognized need to isolate sound and prevent it from bleeding into surrounding environments in certain applications. Acoustiblok was later incorporated in the State of Florida in 2001. Acoustiblok today is an industry leader in the design and manufacture of sound isolating technologies and products.

14. On June 11, 2003, Mr. Johnson filed patent application number 10/458,983 with the United States Patent and Trademark Office (the “Patent Office”) for an improved sound reducing panel suitable for use in an outdoor or hazardous environment (the “Acoustiblok Panel”). The structure of the Acoustiblok Panel was disclosed and claimed in the application.

15. On or about July 22, 2005, Mr. Johnson assigned patent application number 10/458,983 to Avalon. A copy of the assignment was recorded with the Patent Office on September 21, 2005 at reel number 017013 and frame number 0906. A true and correct copy of the assignment for patent application number 10/458,983 is attached hereto as Exhibit 1.

16. Mr. Johnson is a managing member and the sole owner of Avalon.

17. On June 20, 2006, the Patent Office duly, validly, and legally allowed patent application number 10/458,983 to issue as United States Patent No. 7,063,184 (the “‘184 Patent”) for the Acoustiblok Panel. A true and correct copy of the ‘184 Patent is attached hereto as Exhibit 2. A picture of one of the Acoustiblok Panels, as claimed in the ‘184 Patent, is attached hereto as Exhibit 3.

18. Avalon remains the owner of all right, title, and interest in and to the ‘184 Patent.

19. Acoustiblok is the exclusive licensee of the ‘184 Patent.

20. Acoustiblok has successfully manufactured and sold the Acoustiblok Panel marked with the ‘184 Patent number.

21. Acoustiblok has also continuously marketed the Acoustiblok Panel as a patented product, including through its website, an example of which is attached hereto as Exhibit 4.

#### **DEFENDANTS’ UNLAWFUL ACTIVITIES**

22. On August 29, 2014, Mr. Hipol was engaged by Acoustiblok as a Sales Representative. A true and correct copy of Mr. Hipol’s Independent Sales Representative Agreement with Acoustiblok is attached hereto as Exhibit 5.

23. Mr. Hipol has a degree in engineering, possesses significant technical experience, and is included as an inventor on one or more patents.

24. During the term of his engagement by Acoustiblok, Mr. Hipol received detailed information from Acoustiblok regarding Acoustiblok's products, their design, manufacture, installation, and use, including the Acoustiblok Panel, as well as Acoustiblok's customers and potential customers.

25. In Mr. Hipol's role as a sales representative for Acoustiblok, he was acutely aware of the benefits and learned of the composition of the Acoustiblok Panel.

26. As a result of his knowledge of the Acoustiblok Panel as well as his technical knowledge, Mr. Hipol possessed the requisite technical expertise needed to design and manufacture copies of the Acoustiblok Panel.

27. Pursuant to the terms of Mr. Hipol's Independent Sales Representative Agreement with Acoustiblok, he agreed during the agreement's term not to promote, advertise, offer for sale, or sell any products that were identical to, confusingly or deceptively similar to, or otherwise competitive with the Acoustiblok Panel, and further agreed that all leads and prospect lists forwarded to him or developed by him were the property of Acoustiblok.

28. Mr. Hipol terminated his relationship with Acoustiblok on January 4, 2016.

29. Unbeknownst to Acoustiblok, almost six months prior to leaving Acoustiblok and while still engaged as a sales representative for Acoustiblok, Mr. Hipol formed Sonic-Shield for the purpose of manufacturing, distributing, and selling an infringing copy of the Acoustiblok Panel, including to customers of Acoustiblok that Mr. Hipol had met and was continuing to meet while working as a sales representative of Acoustiblok.

30. Sonic-Shield markets the infringing acoustical panels through its website as well as through other channels. A copy of Sonic-Shield's website advertising infringing products is attached hereto as Exhibit 6.

31. In addition to Mr. Hipol, Sonic-Shield hired, contracted with, or otherwise employed other former Acoustiblok employees or affiliates, including Steve Reres and Roy Marshall.

32. Menendez and Hipol are or were responsible for the design, manufacture, and sale of the infringing acoustical panels.

33. Defendants Hipol and Menendez receive and have received compensation from Sonic-Shield in the form of a salary and/or bonuses based on company profits.

34. Defendants Hipol and Menendez currently benefit, or have benefited, directly from their own as well as Sonic-Shield's infringing activities.

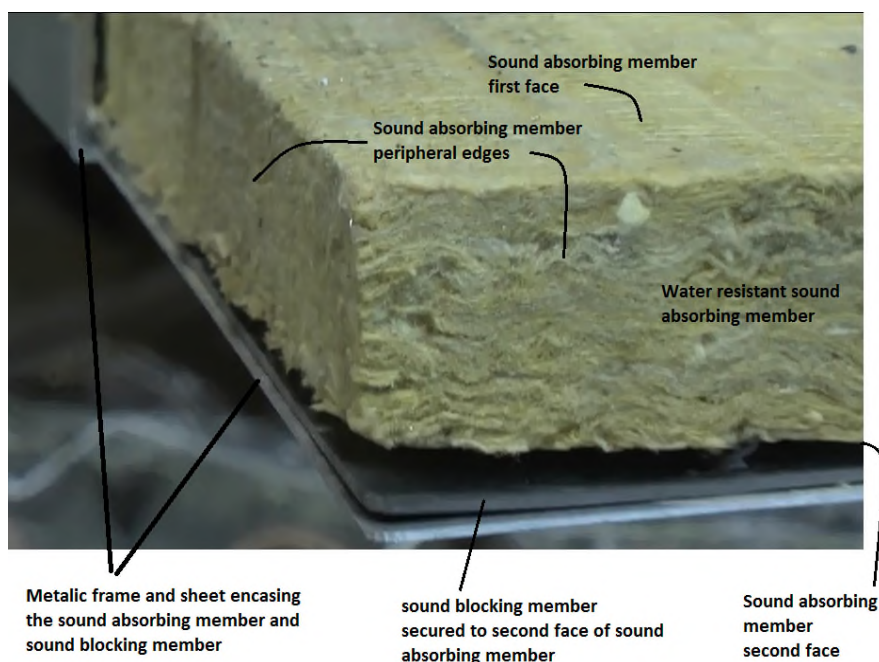
35. Acoustiblok obtained a Sonic-Shield acoustical panel, and following an inspection, Acoustiblok determined that the Sonic-Shield acoustical panel was infringing at least claims 4 and 5 of the '184 Patent.

36. Sonic-Shield is infringing the '184 Patent by making, importing, using, offering to sell, and/or selling in this judicial district, and elsewhere in the United States, acoustical panels that embody the inventions claimed in the '184 Patent.

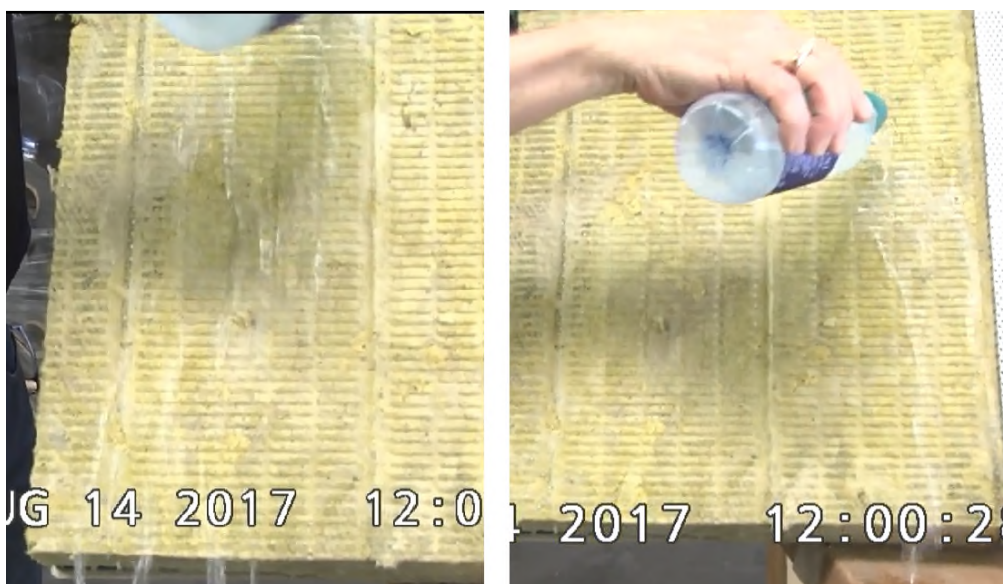
37. A chart illustrating Acoustiblok's inspection of the accused acoustical panel and explaining how the accused acoustical panel meets every element of claims 4 and 5 is attached hereto as Exhibit 7.

38. Upon information and belief, Sonic-Shield's acoustical panels include: (a) a water resistant sound absorbing member defined by a first and second face surface and a plurality of peripheral edges; and (b) a water resistant sound blocking member secured to the second face surface of the sound absorbing member for blocking the transmission of sound through the sound reducing panel. Annotated photograph of Sonic-Shield's acoustical panel are shown below in

Figures 1 and 2 illustrating these elements as well as the water resistance of the sound absorbing member.



**Figure 1: Cutaway View of a Sonic-Shield Panel**

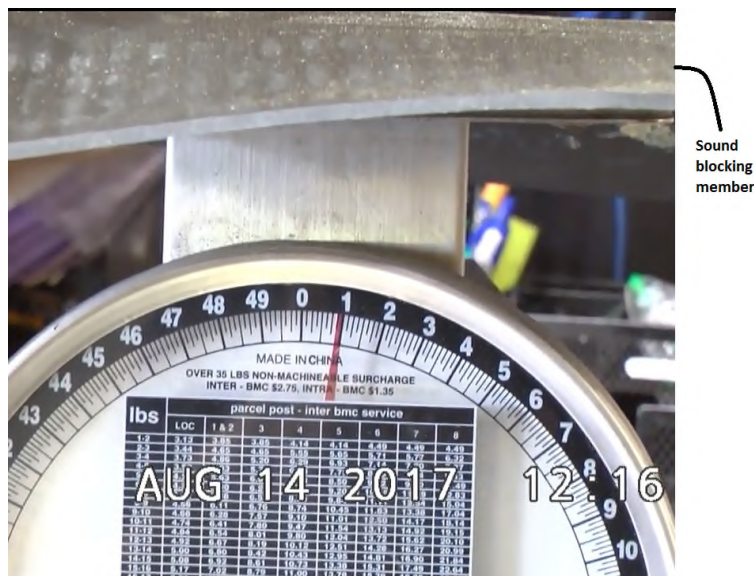


**Figure 2: Water Resistance of the Sound-Absorbing Member**

39. Upon information and belief, Sonic-Shield's panels utilize a water resistant sound blocking member made from a sheet of polymeric material. Sonic-Shield refers to the water

resistant sound blocking member as a “Noise Barrier.” *See* Exhibit 6. Sonic-Shield identifies the Noise Barrier as being made from a mass loaded vinyl, which is described as a “visco-elastic polymer that reduces the transmission of noise through walls, panels, partitions, and enclosures.” *See* Exhibit 8, Printout from Sonic-Shield Website.

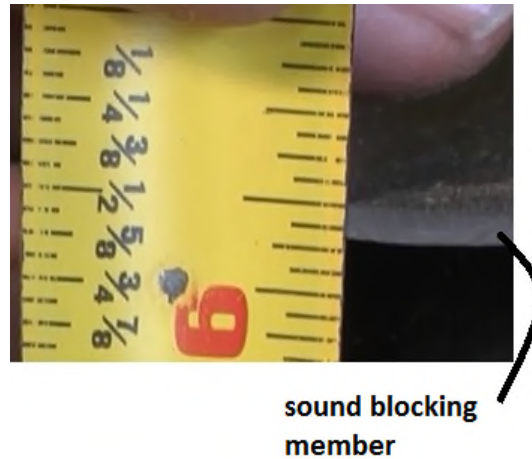
40. Upon information and belief, the water resistant sound-blocking member used in Sonic-Shield’s acoustical panels has a weight equal to or greater than one pound per square foot. Figure 3 below depicts the weighing of one square foot of Sonic-Shield’s Noise Barrier.



**Figure 3**

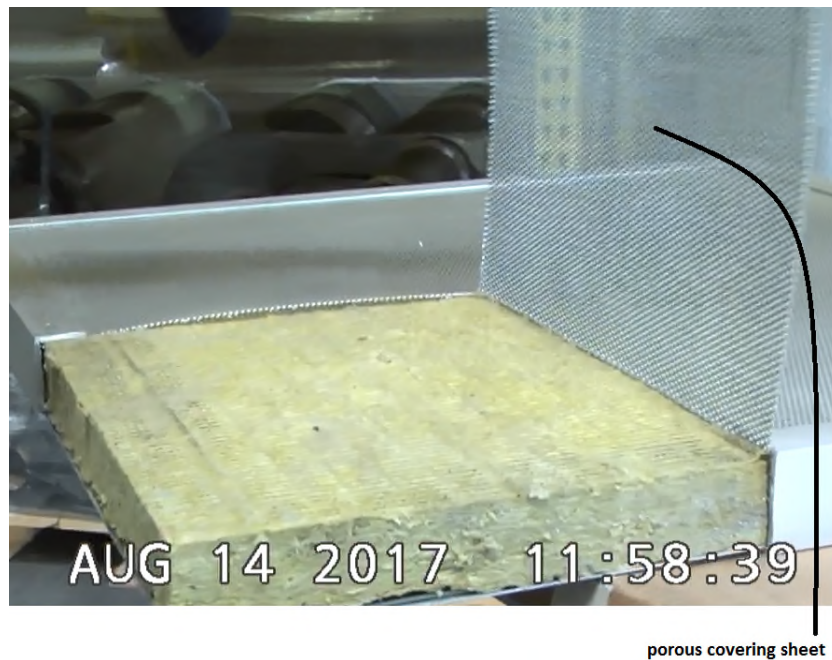
41. Upon information and belief, Sonic-Shield’s panels utilize a water resistant sound blocking member having a thickness of approximately one-eighth of an inch. Figure 4 below depicts a thickness measurement for Sonic-Shield’s Noise Barrier.





**Figure 4**

42. Upon information and belief, Sonic-Shield's acoustical panels include a porous covering sheet overlaying the sound absorbing member and the sound blocking member. Figure 5 below depicts the porous covering sheet.



**Figure 5**

43. Upon information and belief, Sonic-Shield's acoustical panels include: (a) a support frame located about the peripheral edges of the sound absorbing member and the sound

blocking member; and (b) a mounting for supporting the improved sound reducing panel. A photograph depicting these elements is shown below in Figure 5.



Figure 6

44. Acoustiblok has retained the law firm of Shumaker, Loop & Kendrick, LLP to represent it in this action and is obligated to pay its attorneys a reasonable fee for their services.

**COUNT I: DIRECT INFRINGEMENT**  
**AGAINST DEFENDANT SONIC-SHIELD, LLC**

45. Plaintiffs reallege preceding paragraphs 1-44 as if fully restated herein.

46. Sonic-Shield has been, and is now, infringing one or more claims of the '184 Patent in violation of 35 U.S.C. § 271(a) by making, importing, using, offering to sell, and/or

selling in this judicial district, and elsewhere in the United States, products which embody the inventions claimed in the '184 Patent.

47. Specifically, the sound reducing panels manufactured, distributed, and sold by Sonic-Shield (the "accused products") infringe the '184 Patent.

48. Defendants' actions with respect to the '184 Patent are without authority or license from Acoustiblok.

49. Defendants have been, and will continue, making, importing, using, offering to sell, and/or selling products that infringe the '184 Patent without a license from Plaintiffs.

50. Defendants' conduct as described in this Complaint has been, and will continue to be, willful.

51. As a direct and proximate result of Defendants' infringement, Plaintiffs have been damaged, and will continue to be damaged, in an amount to be determined at trial.

52. As a direct and proximate result of Defendants' infringement of the '184 Patent, Plaintiffs have suffered and will continue to suffer irreparable harm and impairment of the value of their patent rights, are threatened with continuing loss of sales to its existing and potential customers, are losing and will continue to lose the goodwill of customers, and are suffering a violation of their patent rights, all of which will continue unless Defendants are enjoined by this Court from infringing the '184 Patent under 35 U.S.C. § 283. Plaintiffs have no adequate remedy at law.

**COUNT II: INDUCED INFRINGEMENT**  
**AGAINST ALL DEFENDANTS**

53. Plaintiffs reallege preceding paragraphs 1-44 as if fully restated herein.

54. On information and belief, Defendants Hipol and Menendez have infringed, and may still be infringing, one or more claims of the ‘184 Patent in violation of 35 U.S.C. § 271(b) by knowingly and actively inducing others to infringe the ‘184 Patent.

55. The sound reducing panels manufactured, distributed, and sold by Sonic-Shield (the “accused products”) infringe the ‘184 Patent.

56. Defendants Hipol and Menendez are well aware of Acoustiblok’s products and its intellectual property, including the ‘184 Patent, by virtue of at least the work of Messrs. Hipol, Reres, and Marshall on behalf of Acoustiblok, the marking of Acoustiblok’s panels with the ‘184 Patent number, and the marketing of Acoustiblok’s panels as patented.

57. Defendants Hipol and Menendez are the moving, active, conscious force behind the infringement alleged herein.

58. Defendants’ actions with respect to the ‘184 Patent are without authority or license from Acoustiblok.

59. Defendants have been, and will continue, making, importing, using, offering to sell, and/or selling products that infringe the ‘184 Patent without a license from Acoustiblok.

60. Defendants’ conduct as described in this Complaint has been, and will continue to be, willful.

61. As a direct and proximate result of Defendants’ infringement, Plaintiffs have been damaged, and will continue to be damaged, in an amount to be determined at trial.

62. As a direct and proximate result of Defendants’ infringement of the ‘184 Patent, Plaintiffs have suffered and will continue to suffer irreparable harm and impairment of the value of their patent rights, are threatened with continuing loss of sales to its existing and potential customers, are losing and will continue to lose the goodwill of customers, and are suffering a

violation of their patent rights, all of which will continue unless Defendants are enjoined by this Court from infringing the '184 Patent under 35 U.S.C. § 283. Plaintiffs have no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiffs respectfully request the Court to enter judgment:

- A. Finding that Defendants have infringed the '184 Patent;
- B. Entering preliminary and permanent injunctions against Defendants and their employees, agents, representatives, affiliates, distributors, dealers, successors, and assigns, and all others acting in concert or participation with them, from making, importing, using, offering to sell, and/or selling the inventions of the '184 Patent, practicing the inventions of the '184 Patent, and/or securing or supplying items used to infringe the '184 Patent;
- C. Finding the infringement to be willful;
- D. Ordering an accounting of and awarding Plaintiffs such damages, profits, royalties, attorneys' fees, costs, prejudgment interest, and enhanced damages as may be shown by the evidence;
- E. Finding this to be an exceptional case under 35 U.S.C. § 283 and awarding Plaintiffs reasonable attorneys' fees under 35 U.S.C. § 285;
- F. Awarding Plaintiffs interest on such profits and damages at the highest rate allowed by law;
- G. Awarding Plaintiffs its costs of this action; and
- H. Awarding Plaintiffs such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by a jury on all issues so triable.

Dated: January 11, 2018

Respectfully submitted,

/s/ J. Todd Timmerman

J. Todd Timmerman, Trial Counsel

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