

**THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

Rimco, Inc., dba Idaho Wrecker Sales)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
Dual-Tech, Inc.)	
)	JURY TRIAL DEMAND
Defendant.)	

COMPLAINT

Plaintiff Rimco, Inc. (“Rimco”) complains of Defendant Dual-Tech, Inc. (“Dual-Tech”), as follows:

1. This is a claim for patent infringement, arising under the patent laws of the United States, specifically Title 35 of the United States Code, 35 U.S.C. § 271, as well as for infringement of a common law trademark, under the Lanham Act, 15 U.S.C. § 1125(a)(1).

The Parties

2. Plaintiff Rimco is an Idaho corporation, with its principal place of business located at 3195 Industrial Way, Mountain Home, Idaho 83647.

3. Defendant Dual-Tech is a Tennessee corporation, with its principal place of business located at 321 Industrial Dr., Bean Station, TN 37708-6241 (Grainger County) (<https://dual-techinc.com/>; phone: (800) 852-0345). See Exhibit A, Dual-Tech’s Tennessee corporate information.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this is a civil action for patent infringement arising under 35 U.S.C. § 271 and trademark infringement arising under 15 U.S.C. § 1125(a)(1).

5. This Court has personal jurisdiction over Dual-Tech, as Dual-Tech has been, and continues to be, engaged in patent and trademark infringement that is directed at and/or causes damage to Rimco in Tennessee, and throughout the United States. Dual-Tech maintains its principal place of business in Tennessee (Exhibit A), and also regularly advertises and sells its infringing products, bearing the infringing trademark, to customers in Tennessee.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(a)-(c) and 1400(b), because the Eastern District of Tennessee, is where a substantial part of the events or omissions giving rise to these claims occurred, or a substantial part of property that is the subject of the action is situated. Venue is also proper in this District because Dual-Tech is an incorporated resident of Bean Station, Tennessee (Grainger County) (Exhibit A), which is within this District, and maintains its company headquarters there (*id.*).

Rimco's '135 Patent-In-Suit

7. Rimco is a private company formed in 1996 that designs and manufactures tow trucks and towing equipment, and distributes trailers and motor coaches. Rimco owns unexpired U.S. Patent No. 8,192,135, titled “Side Puller Accessory Frame For A Car Carrier And For A Tow Truck,” filed May 6, 2011, and issued June 5, 2012 (Exhibit B, the “‘135 Patent”).¹ The ‘135 Patent generally concerns devices carried by recovery vehicles (e.g., tow trucks and car carriers) which are capable of recovering disabled vehicles located adjacent to either side of the recovery

¹ The term of the ‘135 Patent does not expire until July 2, 2028. *See* Exhibit B, at p.1, Notice.

vehicle. The ‘135 Patent’s invention also provides a tow truck or car carrier operator with “multiple useful angles of pulling power towards the sides and rear of the carrier” while “reduc[ing] the lateral space (number of lanes of traffic) needed by a recovery apparatus performing a recovery” of a disabled vehicle. *See id.*, at 1:63-2:7. Rimco has the right to enforce and sue under the ‘135 Patent to recover past, current and future damages, as it manufactures “In The Ditch® SidePuller™” products² according to its ‘135 Patent, and it has been marking those devices, as evidenced by Exhibit C, for example (*see* <https://iwssales.com/towing-equipment/in-the-ditch-side-pullers/>).

Dual-Tech’s Infringement Of Rimco’s ‘135 Patent-In-Suit

8. On June 4, 2012, Dual-Tech filed for its own patent (Exhibit D, U.S. Pat. No. 9,555,733, Roberts, titled “Vehicle-Mounted Side Puller Apparatus,” issued January 31, 2017, the “‘733 Patent”). On June 2, 2015, during the prosecution of the ‘733 Patent, the Examiner first cited the parent patent application for the ‘135 Patent (U.S. 2004/0228714 A1) as a primary prior art reference that formed that basis of an obviousness rejection of the ‘733 Patent’s claims (*see* Exhibit E, 6/2/15 Office Action, at pp.2-6 (highlighted for emphasis)). The ‘135 Patent was also cited by the Examiner as a prior art reference to the ‘733 Patent (*see* Exhibit D, at p.1). Despite being aware of the ‘135 Patent since at least the prosecution of the ‘733 Patent, Dual-Tech continues to willfully infringe the ‘135 Patent, and has not ceased its manufacture and sale of its Dual-Tech infringing devices (Exhibit F, images of the Dual-Tech infringing devices).³

² Rimco’s website (<https://iwssales.com/towing-equipment/in-the-ditch-side-pullers/>) shows its infringed Series SP8500, SP9000, SP12,000 and SP20,000 In The Ditch® SidePuller™ products, all of which are marked with the ‘135 Patent. *See* Exhibit C.

³ Dual-Tech obtained its own, later patent based on a minimal improvement to Rimco’s ‘135 patent – the use of dual winches. Dual-Tech’s devices infringe Rimco’s more basic, earlier patent, which covers the use of one or more winches.

Dual-Tech's Infringement Of Rimco's SidePuller™ Mark

9. Dual-Tech is infringing Rimco's common law mark used to identify the goods made under the '135 Patent. Since 2004, Rimco has been using the unregistered "SidePuller™" word mark (with a ™ notice) to advertise the In The Ditch® line of products to consumers (Exhibit C), such that consumers in the towing industry associate the SidePuller™ mark with Rimco. After the creation of the SidePuller™ mark, Dual-Tech started using its confusingly similar Dual-Tech "Sidepuller" word mark (Exhibit G, at pp.1, 4, "the Infringing Mark") to identify its infringing devices. Given that both entities target the same consumers in the towing industry, Dual-Tech's use of the Infringing Mark is likely to cause damaging consumer confusion to Rimco in the form of lost business opportunities and valuable goodwill in the industry. Dual-Tech's use of the Infringing Mark is a marketing maneuver to pass their infringing products off as Rimco's well known In The Ditch® SidePuller™ products, because the term "side puller" is not generic or merely descriptive of the device itself (*see, e.g.*, Exhibit H, competitor Jerr-Dan's version of the at-issue product (*see* ¶11, *infra*) is called a Side Recovery System or "SRS" – not a "side puller"). Dual-Tech has also intentionally stylized the spelling of the Infringing Mark to be the same as the SidePuller™ mark, in that the space between the words "side" and "puller" has been removed in both marks.

Dual-Tech's Willful And On-Going Infringement Of The '135 Patent -In-Suit And The SidePuller™ Mark Has, And Will Continue To, Cause Substantial and Irreparable Damage to Rimco

10. Given that Dual-Tech has been on notice of the '135 Patent's claims since at least June 2, 2015, when the Examiner initially cited (and then later repeatedly cited) the parent application to the '135 Patent to Dual-Tech as a primary prior art obviousness reference during the prosecution of the '733 Patent (Exhibit E, at pp.2-6 (highlighted for emphasis)), Dual-Tech has

been willfully infringing the ‘135 Patent since at least June 2015. Dual-Tech has, or should have, also know of Rimco’s SidePuller™ mark before adopting the Infringing Mark, as the SidePuller™ mark has long been known by customers in the towing industry and widely used by Rimco to identify its products.

11. Despite having knowledge of the ‘135 Patent, Dual-Tech continues to manufacture, market and sell the infringing devices throughout the United States (*see e.g.*, Exhibit F, images of Dual-Tech’s infringing devices for sale on their website (<https://dual-techinc.com/literature/sidepuller/>)). Dual-Tech’s infringement constitutes an intentional, unfair effort to compete with Rimco, and deprive Rimco of business opportunities with In The Ditch® SidePuller™ customers that Rimco reasonably expected, or expects, to obtain. This expectation is reasonable because, to Rimco’s current knowledge, there are no other major U.S. manufactures or sellers of the infringing devices, other than Jerr-Dan (Exhibit H, brochure of Jerr-Dan’s Side Recovery System “SRS” product), so very often every infringing device sale to Dual-Tech is a customer lost by Rimco. And unlike the Rimco and Dual-Tech devices, Jerr-Dan’s device has a swinging and rotatable horizontal boom feature (*id.*), so a customer who does not want that design must choose between Dual-Tech and Rimco.

12. Dual-Tech’s ongoing infringement has, and continues to, injure Rimco, such that Rimco is entitled to recover damages adequate to compensate it for infringement of Rimco’s ‘135 Patent and the SidePuller™ mark. Dual-Tech’s infringement will continue to injure Rimco, causing lost customers and damage to Rimco’s reputation and valuable business goodwill in the towing industry, until the Court enters an injunction prohibiting further infringement. The injunction should permanently prohibit Dual-Tech’s further manufacture, use, sale, offer for sale, marketing and distribution of the infringing devices under the Infringing Mark.

COUNT I
Patent Infringement of the '135 Patent
(35 U.S.C. § 271)

13. Rimco incorporates by reference Pars. 1-12, above.

14. Rimco is the owner of the '135 Patent, an embodiment of which is the In The Ditch® SidePuller™ recovery vehicle.

15. Through Dual-Tech's manufacture, marketing, distribution and sale of the Dual-Tech infringing devices shown in the attached photographs (Exhibit F), Dual-Tech has directly and literally infringed at least independent Claims 1 and 2 of the '135 Patent, as well as dependent Claims 3 and 4 of the '135 Patent.

16. Dual-Tech's infringement is willful, as it has been on notice of the '135 Patent since at least the prosecution of its '733 Patent, where the '135 Patent and its parent application were cited by the Examiner as prior art (*see* Exhibits D, E).

17. For these reasons, as well as additional reasons that may be developed in discovery, Dual-Tech's infringement has been willful and treble damages and attorney fees should be awarded pursuant to 35 U.S.C. §§ 284, 285. As Rimco and Dual-Tech are in direct competition and the only other major competitor supplying similar devices in the United States market is Jerr-Dan, Rimco also requests damages in the form of lost profits. At a minimum, Rimco is entitled to damages in the amount of a reasonable royalty pursuant to 35 U.S.C. § 284.

18. Additionally, Dual-Tech's infringement has, and will continue to, irreparably injure Rimco, unless Dual-Tech's infringement is immediately and permanently enjoined by this Court.

COUNT II
Common Law Lanham Act Trademark Infringement
(under 15 U.S.C. §1125(a)(1))

19. Rimco incorporates by reference Pars. 1-12, above.

20. Rimco is the owner of the common law SidePuller™ mark. Since 2004, Rimco has used this mark to advertise and identify its patented devices products to consumers in the towing industry.

21. Despite the fact that Dual-Tech has never been authorized by Rimco to use the SidePuller™ mark, or any confusingly similar mark, Dual-Tech has willfully used the Infringing Mark to advertise its infringing devices to the same customer base.

22. Dual-Tech knew, or should have known, that its impermissible use of a confusingly similar Infringing Mark would likely cause confusion, mistake and deception as to the affiliation, connection or association of Dual-Tech's infringing devices with those of Rimco.

23. As a result of Dual-Tech's trademark infringement, Rimco has suffered, and will continue to suffer, substantial damage in an amount to be proven at trial, and irreparable harm for which Rimco has no adequate remedy at law. Unless this Court enjoins Dual-Tech's conduct, Rimco will continue to suffer irreparable harm.

24. The intentional nature of this trademark infringement renders this an exceptional case under 15 U.S.C. § 1117(a).

PRAYER FOR RELIEF

WHEREFORE, Rimco requests that the Court enter judgment against Dual-Tech, as well as its subsidiaries, agents, servants, employees, attorneys and all persons in active concert or participation with it, and grant Rimco the following relief:

A. An award to Rimco of such damages pursuant to 35 U.S.C. § 284 that are adequate to compensate it for Dual-Tech's patent infringement, in an amount equal to Rimco's lost profits, but in no event less than a reasonable royalty;

B. An award of prejudgment interest from the date infringement began of the ‘135 Patent-in-suit;

C. A permanent injunction pursuant to 35 U.S.C. § 283 prohibiting further infringement of the ‘135 Patent;

D. An award of treble damages pursuant to 35 U.S.C. § 284 to the extent that Dual-Tech’s patent infringement is ultimately found to be willful;

E. An award to Rimco of its reasonable costs and attorney and investigator fees pursuant to 35 U.S.C. § 285 upon a determination that this is an exceptional patent infringement case justifying such fees;

F. An award to Rimco compensating it for damages sustained as a consequence of Dual-Tech’s trademark infringement, and to account for all gains, profits, and advantages derived by Dual-Tech’s trademark infringement, and that the award to Rimco be trebled as provided for under 15 U.S.C. § 1117; alternatively, that the Plaintiff be awarded statutory damages pursuant to 15 U.S.C. § 1117(c)-(d).

G. That the Court issue an order that Rimco recover the costs of the trademark action together with reasonable attorney and investigator fees and prejudgment interest in accordance with 15 U.S.C. § 1117;

H. That Dual-Tech be permanently enjoined from directly or indirectly infringing Rimco’s SidePuller™ mark through the impermissible use of the Infringing Mark, or any confusingly similar mark. Any award or injunction should require that any past infringing advertising materials be destroyed by Dual-Tech, and that an explanation of the infringement be sent by Dual-Tech to its relevant consumers; and

I. Such other and further relief as the Court may deem proper and just.

JURY DEMAND

A jury trial is hereby demanded for all issues that are triable to a jury.

Date: August 31, 2021

Respectfully submitted,

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