

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EXTANG CORPORATION and
LAURMARK ENTERPRISES, INC. d/b/a
BAK INDUSTRIES,

Plaintiffs,

v.

TRUCK ACCESSORIES GROUP, LLC
d/b/a LEER, INC.,

Defendant.

C.A. No.

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiffs Extang Corporation (“Extang”) and Laurmark Enterprises, Inc. d/b/a BAK Industries (“BAK”) (collectively, “Plaintiffs”) file this Complaint for patent infringement against Defendant Truck Accessories Group, LLC d/b/a LEER, Inc. (“LEER” or “Defendant”), and allege as follows:

I. BACKGROUND

2. This is a Complaint for patent infringement of U.S. Patent Nos. 8,182,021 (“’021 Patent”) and 6,814,389 (“’389 Patent”) (collectively, “Asserted Patents”) under 35 U.S.C. § 271.

3. Plaintiffs are indirect wholly owned subsidiaries of Truck Hero, Inc. (“Truck Hero”). Truck Hero and its subsidiaries are global leaders in the development, manufacture, and sale of high quality, innovative pickup truck and Jeep accessories. Headquartered in Michigan, Truck Hero and its Plaintiff subsidiaries are located at the heart of the automotive industry. Plaintiffs are premier manufacturers of resilient and durable truck bed covers. These devices, also known as “tonneau covers” or “tonneaus,” are predominately used on pickup trucks to cover and secure truck beds against dirt, debris, weather, and other environmental contaminants, as well as to improve the aesthetic quality, security, and aerodynamics of pickup trucks generally.

4. Whether driven on the highway or a back country road, Plaintiffs’ innovative tonneau covers have earned a reputation second to none for keeping a truck bed and its cargo

clean, secure, and dry, regardless of the weather.

5. Defendant, as part of the Truck Accessories Group LLC, has directly infringed and continues to infringe, directly and/or indirectly, the asserted patents by making, using, selling, offering to sell and/or importing in or into the United States, without authority, pickup truck tonneau covers that infringe one or more claims of each of the Asserted Patents. Accused pickup truck tonneau covers include at least the LEER HF650M.

II. THE PARTIES

6. Plaintiff Extang is a domestic manufacturing company that is organized and existing under the laws of the State of Michigan, with its principal place of business located at 5400 South State Road, Ann Arbor, MI 48108.

7. Plaintiff BAK is a domestic manufacturing company that is organized and existing under the laws of the State of Texas, with its principal place of business located at 5400 Data Court, Ann Arbor, MI 48108.

8. Defendant LEER is a Delaware corporation. Upon information and belief, Defendant's principal place of business is located at 28858 Ventura Drive, Elkhart, IN 46517.

III. JURISDICTION AND VENUE

9. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et. seq.* This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

10. Personal jurisdiction exists over Defendant because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Delaware. Defendant is organized under the State of Delaware.

11. Venue is appropriate in the District of Delaware under 28 U.S.C. §§1391(b), 1391(c)(2), and 1400(b).

IV. GENERAL ALLEGATIONS

12. Founded in 1982, initially as a company providing mail order car and truck parts, Extang developed one of the first easy-to-install tonneau covers. Extang rapidly became, and today remains, a leading seller of tonneau covers and related accessories. All of Extang's tonneau

products are of the highest quality and are assembled by Michigan workers at its facility in Ann Arbor, Michigan. In 2007, Extang and TruXedo, Inc. (“TruXedo”) merged to form Truck Hero.

13. Founded in 1988 as a plastics manufacturer of bed liners and caps, BAK entered the tonneau market in the early 2000s, offering a manually operated retractable cover. BAK quickly expanded into a number of other styles including quad-folding and aluminum slat roll-up tonneau covers. In 2014, Truck Hero acquired BAK to add another premium brand name to its portfolio of products and to enhance its ability to service customers while continuing to offer innovative and high quality products.

14. Plaintiffs continue to provide high quality, innovative tonneau products and accessories to this day. Plaintiffs’ tonneau covers and accessories are well known for their quality, value, and ease of use. The stylish aesthetics, unique features, and ease of installation are hallmarks of Plaintiffs’ products. A culture of innovation drives Plaintiffs’ businesses.

15. Upon information and belief, Defendant LEER was founded in the late 1960s and produced truck caps. Upon information and belief, Defendant was acquired by J.B. Poindexter & Co., LP at a point in time between 1986 and mid-1994 and went on after that to expand its holdings in the truck cap and tonneau segment, forming the Truck Accessories Group, LLC, to manage production, distribution, and sales.

16. Defendant LEER has for many years possessed actual knowledge of the asserted patent rights. Specifically, Defendant LEER has had knowledge of the ‘021 Patent at least as early as 2015.

17. On information and belief, Defendant LEER was aware of the ’389 Patent prior to the design and development of the HF650M.

V. THE ASSERTED PATENTS

A. The ’021 Patent

18. On May 22, 2012, U.S. Patent No. 8,182,021 titled “Pick-Up Truck Box Cover” was duly and lawfully issued. A true and correct copy of the ‘021 Patent is attached to this Complaint as **Exhibit A**.

19. BAK is the owner, by valid assignment, of the entire right, title, and interest in and

to the '021 Patent. The '021 Patent is valid, enforceable, and is currently in full force and effect.

B. The '389 Patent

20. On November 9, 2004, U.S. Patent No. 6,814,389 titled "Tonneau Cover Frame" was duly and lawfully issued. A true and correct copy of the '389 Patent is attached to this Complaint as **Exhibit B**.

21. Extang is the owner, by valid assignment, of the entire right, title, and interest in and to the '389 Patent. The '389 Patent is valid, enforceable, and is currently in full force and effect.

VI. COUNT I: INFRINGEMENT OF THE '021 PATENT

22. Plaintiffs incorporate the previous paragraphs of this Complaint as if fully set forth herein.

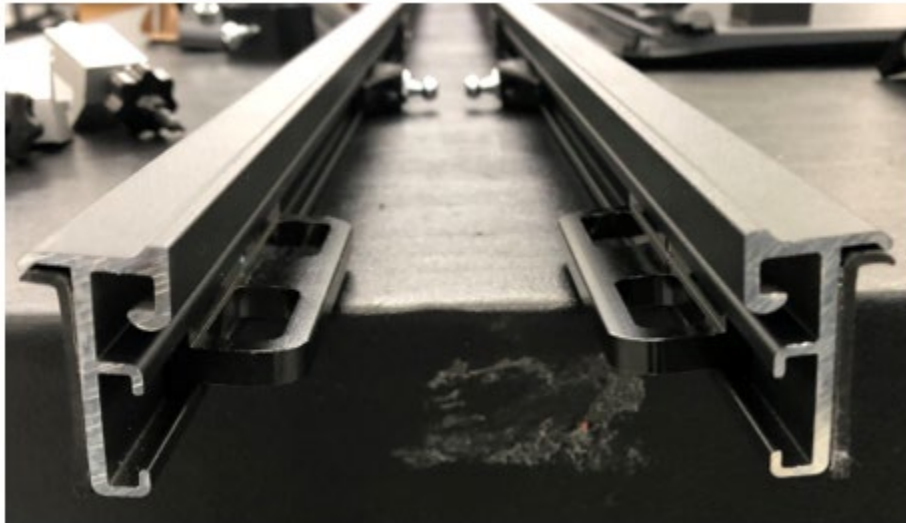
23. BAK is the owner of all rights, title, and interest in the '021 Patent, including the right to bring this suit for injunctive relief and damages.

24. The '021 Patent generally relates to a tonneau cover having multiple panels with a latch assembly entirely on the bottom surface of at least one panel.

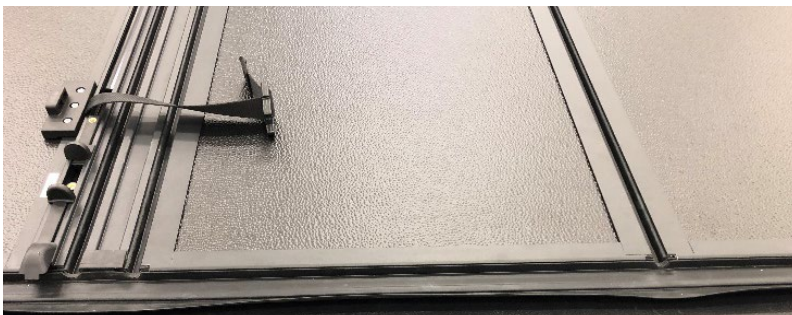
25. LEER has infringed and continues to infringe literally and/or through the doctrine of equivalents, one or more claims of the '021 Patent, including but not limited to Claim 31, by using, making, offering to sell, and/or selling without authority in the United States certain tonneau systems, including but not limited to the HF650M Tonneau Cover.

26. By way of example, and without limitation, the HF650M Tonneau Cover infringes upon every element of Claim 31 of the '021 Patent when used as intended by LEER. Specifically, the HF650M is a cover assembly for a pick-up truck cargo box that has a first and second side rails with each side rail comprising a clamp plate, a panel support surface, and an extension plate

adjacent to a front end of the rail. The below picture shows the above elements on the HF650M Tonneau Cover.



27. Additionally, the HF650M is a folding cover that is attached to the extension plate and supported by the first and second rails, with the folding cover including a first panel pivotally attached to a second panel, a first spacer pivotally attached to the second panel and to a third panel; a second spacer pivotally attached to the third panel and to a fourth panel, with the fourth panel secured to the extension plates; and a latch assembly entirely on a bottom surface of one or more of the first, second, and third panels. The below pictures show the above elements on the HF650M tonneau cover





28. LEER has also infringed and continues to infringe at least one other dependent claim of the '021 Patent.

29. The HF650M Tonneau Cover has infringed and continues to infringe on each and every element of Claim 31 and other claims of the '021 Patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities, including at least making, using, selling, and/or offering for sale the HF650M Tonneau Cover.

30. LEER is on notice of the '021 Patent since at least 2015 and was sued on the same patent in 2019 in Case No: 19-923-MN in the United States District Court for the District of Delaware. In addition, LEER had actual or constructive knowledge of the '021 Patent and its infringement prior to the filing of this Complaint. As stated above, LEER has been on notice of Plaintiffs' products and patents well before the filing of this Complaint. If it did not investigate Plaintiffs' patents as a result, it was acting in willful blindness of a reasonable likelihood of infringement.

31. LEER's direct infringement of the '021 Patent has injured BAK, and BAK is entitled to recover damages adequate to compensate it for such infringement.

32. LEER's direct and/or indirect infringement of the '021 Patent has injured BAK, and BAK is entitled to recover damages adequate to compensate it for such infringement.

33. On information and belief, LEER's infringement of the '021 Patent has been willful, wanton, malicious, and/or deliberate and constitutes egregious behavior justifying an award of enhanced damages. More specifically, LEER knew or should have known about the '021 Patent and its infringement of that patent, as discussed above, but continued to engage in the using, making, offering to sell, and/or selling of the HF650M Tonneau Cover, despite an

objectively high likelihood that this conduct would infringe the '021 Patent. An award of enhanced damages, attorneys' fees, and costs in bringing this action is appropriate under 35 U.S.C. §§ 284 and 285.

34. As a direct and proximate consequence of the acts and practices of Defendant LEER in infringing, directly and/or indirectly, one or more claims of the '021 Patent, BAK has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

35. Further, as a direct and proximate consequence of the acts and practices of Defendant LEER in infringing, directly and/or indirectly, one or more claims of the Asserted Patents, BAK is continuously and irreparably harmed. Having no other remedy at law, Plaintiffs are forced to bring this suit to secure appropriate relief and ensure adequate compensation as a result of LEER's manufacture, use, sale, and offer for sale of Plaintiffs' patented technology pursuant to 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents.

36. LEER's infringement activities will continue to injure BAK unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further direct and indirect infringement of the '021 Patent. If LEER's conduct is not stopped, BAK will continue to suffer competitive harm, irreparable injury, and significant damages. Because BAK has no adequate remedy at law, BAK seeks injunction relief in addition to damages.

VII. COUNT II: INFRINGEMENT OF THE '389 PATENT

37. Plaintiffs incorporate the previous paragraphs of this Complaint as if fully set forth herein.

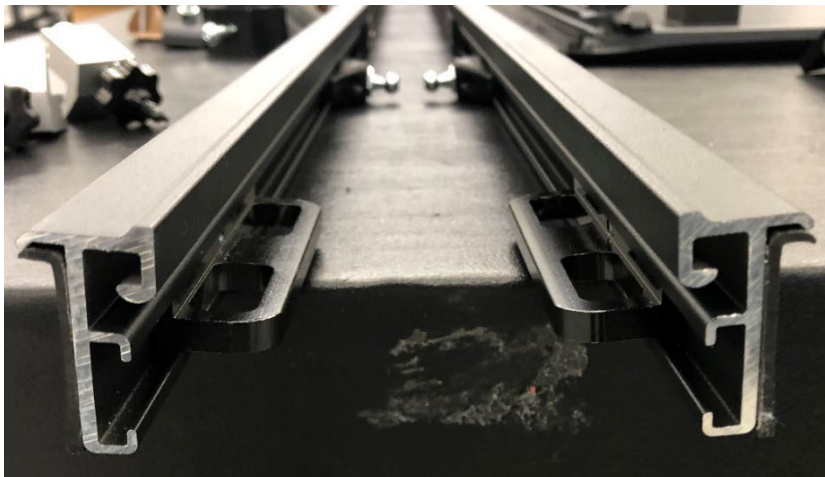
38. Extang is the owner of all rights, title, and interest in the '389 Patent, including the right to bring this suit for injunctive relief and damages.

39. The '389 Patent generally relates to a tonneau cover with a support frame having a seal.

40. LEER has infringed and continues to infringe literally and/or through the doctrine of equivalents, one or more claims of the '389 Patent, including but not limited to Claim 1, by using, making, offering to sell, and/or selling without authority in the United States certain

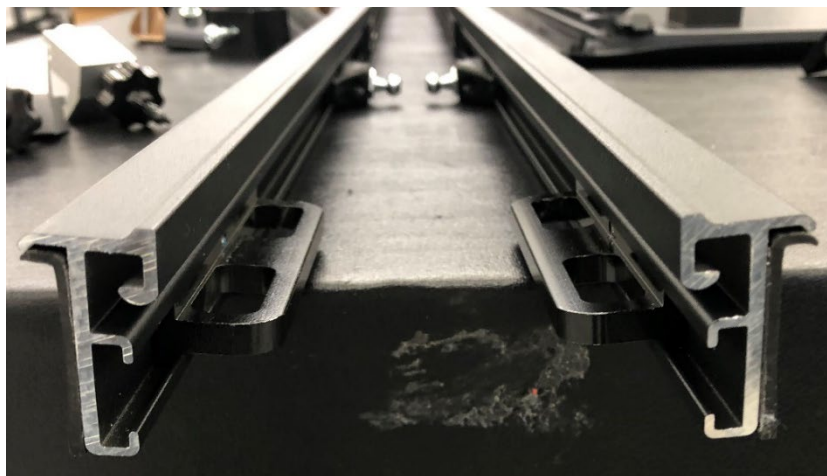
tonneau systems, including but not limited to the HF650M Tonneau Cover.

41. By way of example, and without limitation, the HF650M Tonneau Cover infringes upon every element of Claim 1 of the '389 Patent when used as intended by LEER. Specifically, as it pertains to Claim 1 of the '389 Patent, the HF650M is a tonneau cover for a cargo box of a vehicle with a support frame having a generally horizontal portion and a generally vertical portion downwardly extending from the horizontal portion from a position bisecting said generally horizontal portion into an inboard section and an outboard section with the outboard section being positionable adjacent a top surface of a sidewall, the vertical portion being positionable adjacent the inside wall of the sidewall, a cover spanning said support frame, and a seal positionable between the outboard section and the top surface of the sidewall. The below pictures show the above elements on the HF650M Tonneau Cover.





42. Additionally, and as it pertains to Claim 7 of the '389 Patent, the HF650M is a tonneau cover having a support frame having a generally horizontal portion and a generally vertical portion downwardly extending from said generally horizontal portion from a position bisecting said generally horizontal portion into an inboard section and an outboard section, said outboard section being positionable adjacent the top surface of the sidewall, said generally vertical portion being positionable adjacent the inside wall of the sidewall and a cover spanning said support frame and a first seal positionable between said outboard section and the top surface of the sidewall and a second seal positionable between said generally vertical portion and the inside wall of the sidewall. The below pictures show the above elements on the HF650M tonneau cover.





43. The HF650M Tonneau Cover has infringed and continues to infringe on each and every element of at least Claim 1 and Claim 7 of the '389 Patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities, including at least making, using, selling, and/or offering for sale the HF650M Tonneau Cover.

44. LEER is on notice of the '389 Patent since at least as of September 3, 2021. In addition, on information and belief, LEER had actual or constructive knowledge of the '389 Patent and its infringement prior to September 3, 2021. As stated above, LEER has been on notice of Plaintiffs' products and patents well before the filing of this Complaint. If it did not investigate Plaintiffs' patents as a result, it was acting in willful blindness of a reasonable likelihood of infringement.

45. LEER's direct infringement of the '389 Patent has injured Extang, and Extang is entitled to recover damages adequate to compensate it for such infringement.

46. LEER is on notice of the '389 Patent at least as of the filing of this Complaint. In addition, on information and belief, LEER possessed actual knowledge of the '389 Patent and its infringement prior to the filing of this Complaint. As set forth above, LEER has been on notice of Plaintiffs' products and patents well before the filing of this Complaint. On information and belief, any absence of investigation of the asserted patents was an act of willful blindness.

47. LEER's direct and/or indirect infringement of the '389 Patent has injured Extang, and Extang is entitled to recover damages adequate to compensate it for such infringement.

48. On information and belief, LEER's infringement of the '389 Patent has been

willful, wanton, malicious, and/or deliberate and constitutes egregious behavior justifying an award of enhanced damages. More specifically, LEER knew or should have known about the ‘389 Patent and its infringement of that patent, as discussed above, but continued to engage in the using, making, offering to sell, and/or selling of the HF650M Tonneau Cover, despite an objectively high likelihood that this conduct would infringe the ‘389 Patent. An award of enhanced damages, attorneys’ fees, and costs in bringing this action is appropriate under 35 U.S.C. §§ 284 and 285.

49. As a direct and proximate consequence of the acts and practices of Defendant LEER in infringing, directly and/or indirectly, one or more claims of the ‘389 Patent, Extang has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

50. Further, as a direct and proximate consequence of the acts and practices of Defendant LEER in infringing, directly and/or indirectly, one or more claims of the asserted patents, Extang is continuously and irreparably harmed. Having no other remedy at law, plaintiffs are forced to bring this suit to secure appropriate relief and ensure adequate compensation as a result of LEER’s manufacture, use, sale, and offer for sale of Plaintiffs’ patented technology pursuant to 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents.

LEER’s infringement activities will continue to injure Extang unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further direct and indirect infringement of the ‘389 Patent. If LEER’s conduct is not stopped, Extang will continue to suffer competitive harm, irreparable injury, and significant damages. Because Extang has no adequate remedy at law, Extang seeks injunction relief in addition to damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief and judgment against Defendant LEER as follows:

1. An entry of judgment in favor of Plaintiffs and against LEER;
2. An award of damages adequate to compensate Plaintiffs for LEER’s direct and indirect infringement of U.S. Patent Nos. 6,814,389 and 8,182,021.

3. An injunction against LEER and its officers, directors, employees, agents, consultants, contractors, suppliers, distributors, and all others acting in concert or privity with LEER from further infringement of the Asserted Patents;

4. If an injunction is denied, an award of an ongoing royalty;

5. An award of treble damages to Plaintiffs as a result of LEER's willful infringement;

6. An award of prejudgment interest;

7. A finding that, with respect to LEER, this case is exceptional and awarding to Plaintiffs their reasonable costs and attorneys' fees under 35 U.S.C. § 285;

8. All other costs and fees awardable by law; and

9. Such other relief that the Court sees as just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury as to all issues so triable.

DATE: September 17, 2021

Respectfully Submitted,

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