

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

QUALITY EDGE, INC.	:	
	:	Civil Action No. 1:10-cv-278
Plaintiff,	:	
	:	Hon. Janet T. Neff
v.	:	U.S. District Judge
	:	
ROLLEX CORPORATION	:	
	:	
Defendant.	:	<u>AMENDED COMPLAINT</u>
_____	:	<u>WITH JURY DEMAND</u>

Plaintiff, Quality Edge, Inc. (“Quality Edge”), by its attorneys, as and for its Complaint against Defendant, Rollex Corporation (“Rollex”), alleges upon personal knowledge as to its own actions, and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. This is an action for patent infringement arising under 35 U.S.C. § 271 for Rollex’s infringement of Quality Edge’s United States Letters Patent No. 7,137,224 (“the ‘224 Patent”).

2. This is also an action for Rollex’s false advertising and unfair competition under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and the laws of the State of Michigan, including common law.

3. Additionally, this is an action for unjust enrichment by reason of Rollex’s false advertising and acts of unfair competition.

4. Additionally, this is an action for Declaratory Judgment that Quality Edge’s use of a blower assembly in advertising is not actionable under the Lanham Act, 15 U.S.C. § 1125 *et seq.*, or under any state law.

THE PARTIES

5. Quality Edge is a corporation organized and existing under the laws of the State of Delaware with a principal office and place of business at 2712 Walkent Drive, N.W., Walker, Michigan 49544.

6. Upon information and belief, Rollex is a corporation organized and existing under the laws of the State of Illinois, having a place of business at 800 Chase Avenue, Elk Grove Village, Illinois 60007.

JURISDICTION AND VENUE

7. Quality Edge brings this patent infringement action pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* Quality Edge brings this false advertising and unfair competition complaint under the Trademark Laws of the United States (Lanham Act), 15 U.S.C. §§ 1051 *et seq.* This Court has jurisdiction over the aforesaid patent infringement, false advertising, and unfair competition infringement matters alleged in this complaint pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1338(a) (original jurisdiction under the Patent and Trademark Laws).

8. This Court has jurisdiction over the Michigan claims, including the common law claims, herein under 28 U.S.C. § 1338(b), and the doctrine of pendant jurisdiction because those claims are joined with substantial and related claims under the Trademark Act, 15 U.S.C. §§ 1051 *et seq.* This Court also has supplemental jurisdiction for those claims under 28 U.S.C. § 1367.

9. Concerning Quality Edge's use of a blower assembly, there is an actual and justiciable controversy between the parties under the Lanham Act, 15 U.S.C. §§ 1125 *et seq.*, and under the state laws governing unfair competition and false advertising. The Court therefore has

original jurisdiction for the declaratory judgment claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b) and 2201 and has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a).

10. This Court also has jurisdiction over all claims in this action pursuant to 28 U.S.C. § 1332 (diversity of citizenship). The matter in controversy regarding these aspects of this action exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) (general venue statute), 28 U.S.C. § 1400 (venue for patent infringement claims), and because Rollex resides in this District and is subject to the personal jurisdiction of the Courts of this State.

FACTUAL BACKGROUND

12. Quality Edge and Rollex are both engaged in the business of manufacturing and selling aluminum soffits and related accessories. Rollex sells or attempts to sell its products to the same customers, including distributors, as Quality Edge.

13. In multiple markets, including, without limitation, the State of Michigan, and more specifically in this district, Rollex and Quality Edge are direct competitors of each other.

14. On November 21, 2006, United States Letters Patent No. 7,137,224 (“the ‘224 Patent”) was duly and legally issued naming inventors, C. Scott Rasmussen and Thomas A. McDonald, for an invention entitled “VENTED SOFFIT PANEL AND METHOD FOR BUILDINGS AND LIKE” (attached as Exhibit 1).

15. Quality Edge is a leading supplier of building materials, including soffit panels, throughout the United States.

16. Quality Edge has manufactured and sold soffit panels for many years. Recently, Quality Edge has developed a product known as the Quality Edge TruVent® Hidden Vent Soffit. This product is covered by one or more of the claims of the '224 Patent.

17. Quality Edge has also developed a blower assembly for comparing its soffit panels to competitors' soffit panels. This blower assembly consists of two chambers with equally powered fans in each chamber. The blower assembly allows the placement of soffit panels over each chamber of the blower assembly. Net free area (NFA) is the amount of intake venting of a vented soffit. The NFA is important because buildings need to be properly ventilated pursuant to building codes and in order to prevent moisture buildup, mold, mildew, etc. Proper ventilation is based upon the amount of air flowing in through the soffits and up through the attic through the ridge vents at the top of the roof. The blower assembly allows customers to feel the difference between soffit panels based upon the NFA of the soffit panels. The higher the NFA value, the more air will pass through the ventilation and to the outside of the chamber.

18. Rollex has objected to the use of this blower assembly with Rollex's soft panels. *See Exhibit 6 hereto.* However, it is a fair way for customers to feel the difference between NFA values of different soffit panels, including those sold by Rollex.

19. Rollex has now introduced a product that it calls a Stealth Soffit, which infringes at least claim 1 of the '224 Patent.

20. In early 2010, Rollex sent materials throughout the building industry, which included a snake bite kit and a false description of a comparison of Rollex to Quality Edge. *See Exhibit 2 hereto.*

21. In early 2010, Rollex created product specifications and brochures for the Stealth Soffit. *See Exhibit 3 hereto.* That document purports to set forth facts concerning Rollex's

infringing Stealth Soffit panel. The information is false and misleading. Rollex's infringing Stealth Soffit panel does not provide the circulation needed for proper ventilation and does not outperform vented soffit. In addition, Rollex has provided a specification sheet for its infringing Stealth Soffit panel, which specification sheet is false and misleading. *See* Exhibit 4 hereto. A third party measured the NFA of Rollex's infringing Stealth Soffit panel. The third party determined that the NFA of the Stealth Soffit panel was 5.3, while Rollex's specification sheet claims an NFA of 8.

22. Upon information and belief, beginning on about March 2010, Rollex began showing a false and misleading video comparing Rollex's infringing Stealth Soffit product to Quality Edge's patented TruVent® Hidden Vent Soffit product. *See* Exhibit 5 hereto. This video and the information contained therein was widely disseminated to customers of soffits, which persons and entities were and are located in a multitude of cities and states, including, without limitation, within this district.

23. Rollex on or about March 2010, published that video on its website. This video purports to demonstrate the alleged superiority of the infringing Rollex Stealth Soffit panel to the patented Quality Edge TruVent® Hidden Vent Soffit panel. However, the Quality Edge TruVent® Hidden Vent Soffit panel appears to have been manipulated by Rollex.

24. Quality Edge hired a third party to test its patented TruVent® Hidden Vent Soffit panel. That third party determined that the Quality Edge TruVent® Hidden Vent Soffit panel cuts as easily, if not more easily, than the infringing Rollex Stealth Soffit panel. In addition, the third party tested the strength of the Quality Edge patented TruVent® Hidden Vent Soffit panel, and the results show that the panel used in Rollex's video must have been manipulated and/or weakened. Rollex also claims in the video that Quality Edge's patented TruVent® Hidden Vent

Soffit is made with inferior material specifications and equipment. However, the aluminum specifications for Rollex's infringing Stealth Soffit are the same as the Quality Edge TruVent® Hidden Vent Soffit, and the TruVent® Hidden Vent Soffit is made on equipment that is of the same quality or better than that used by Rollex for the infringing Stealth Soffit.

25. The specification sheets, video, and other materials supplied by Rollex are literally false and misleading, and their dissemination to distributors and others continues, and will continue, to damage the sales, good will, reputation, and standing of Quality Edge in the building products industry.

COUNT I
PATENT INFRINGEMENT

26. Quality Edge reasserts and incorporates herein by reference paragraphs 1-25 of this Complaint.

27. Quality Edge is the owner of all right, title, and interest in and to the '224 Patent, and has the right to sue and recover for all infringements thereof, including the right to recover for past infringement.

28. Rollex has, in violation of 35 U.S.C. § 271, infringed the '224 Patent at least by making, using, offering for sale, and/or selling the inventions claimed in the '224 Patent, and/or by directing, contributing to, and/or inducing others to do the same. Such infringement has caused and will continue to cause irreparable damage to Quality Edge, which will continue unless enjoined by this Court.

29. Upon information and belief, such infringement of the '224 Patent was and continues to be willful, deliberate, and in knowing disregard of Quality Edge's patent rights. Quality Edge has given notice to Rollex of such infringement and of the '224 Patent, but Rollex's activities have not ceased.

30. Quality Edge has in the past been damaged and continues to suffer irreparable injury as a result of Rollex's actions.

COUNT II
FEDERAL UNFAIR COMPETITION

31. Quality Edge reasserts and incorporates herein by reference paragraphs 1-30 of this Complaint.

32. Rollex has willfully committed unfair competition and has willfully published advertising that is false and misleading in violation of § 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1). Rollex's acts, as described above, constitute a false or misleading material misrepresentation of fact concerning Quality Edge's hidden vent soffit panel, and Quality Edge itself.

33. The superiority claims made by Rollex for its infringing Stealth Soffit panel are false or misleading and misrepresent the nature, characteristics, or qualities of Rollex's Stealth Soffit panel and/or Quality Edge's TruVent® Hidden Vent Soffit panel. Moreover, the claims about Quality Edge and its products and warranties are false or misleading and misrepresent the nature, characteristics, or qualities of Quality Edge and its products.

34. Upon information and belief, the claims are likely to deceive or confuse a substantial segment of the buying public, and in fact have actually deceived or confused a substantial segment of the buying public. Moreover, the claims have influenced or are likely to influence the buying public's purchasing decisions. This deceptive conduct by Rollex is and has been deliberate and has injured and continues to injure customers.

35. Rollex's infringing Stealth Soffit panel is not superior to Quality Edge's patented TruVent® Hidden Vent Soffit panel, and Rollex knew or should have known that to be so.

36. Rollex's advertising, as described above, violates § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

37. Quality Edge has been and continues to be damaged by Rollex's false advertising. Quality Edge has suffered and will continue to suffer irreparable harm unless Rollex is restrained from such conduct. Quality Edge has no adequate remedy at law.

38. Because of Rollex's acts, Quality Edge has suffered damages and Rollex has been unjustly enriched.

COUNT III
COMMON LAW UNFAIR COMPETITION

39. Quality Edge reasserts and incorporates herein by reference paragraphs 1-38 of this Complaint.

40. Rollex has willfully committed unfair competition and has willfully published advertising that is false and misleading in violation of the common law of Michigan. Rollex's acts, as described above, constitute a false or misleading material misrepresentation of fact concerning Quality Edge and Quality Edge's TruVent® Hidden Vent Soffit panel.

41. The superiority claims made by Rollex for its infringing Stealth Soffit panel are false or misleading and misrepresent the nature, characteristics, or qualities of Rollex's Stealth Soffit panel and/or Quality Edge's TruVent® Hidden Vent Soffit panel.

42. Upon information and belief, the claims are likely to deceive or confuse a substantial segment of the buying public, and in fact have actually deceived or confused a substantial segment of the buying public. Moreover, the claims have influenced or are likely to influence the buying public's purchasing decisions. This deceptive conduct by Rollex is and has been deliberate and has injured and continues to injure customers.

43. Rollex's infringing Stealth Soffit panel is not superior to Quality Edge's patented TruVent® Hidden Vent Soffit panel, and Rollex knew or should have known that to be so.

44. Rollex's advertising, as described above, violates the common law of Michigan.

45. Quality Edge has been and continues to be damaged by Rollex's false advertising. Quality Edge has suffered and will continue to suffer irreparable harm unless Rollex is restrained from such conduct. Quality Edge has no adequate remedy at law.

46. Because of Rollex's acts, Quality Edge has suffered damages and Rollex has been unjustly enriched.

COUNT IV
UNJUST ENRICHMENT

47. Quality Edge reasserts and incorporates herein by reference paragraphs 1-46 of this Complaint.

48. Upon information and belief, as a result of Rollex's actions, as set forth above, Rollex has unlawfully received financial and other benefits at Quality Edge's expense.

49. Rollex has been unjustly enriched through its false advertising, and Quality Edge has suffered and will continue to suffer damages both financially and to its business relationships with its customers.

50. It is unjust to allow Rollex to retain the benefit of its unlawful actions without compensating Quality Edge.

COUNT V
BUSINESS DEFAMATION/PRODUCT DISPARAGEMENT

51. Quality Edge reasserts and incorporates herein by reference paragraphs 1-50 of this Complaint.

52. Rollex has made false and defamatory statements concerning Quality Edge and Quality Edge's patented TruVent® Hidden Vent Soffit panel.

53. These false and defamatory statements are unprivileged publications to third parties.

54. Rollex was, at least, negligent in making these false and defamatory statements, and the statements actually rise to actual malice.

55. Since these business defamation claims relate to Quality Edge and Quality Edge's business reputation or practices, defamation is *per se*, not requiring proof of special damages. Nevertheless, Quality Edge has pecuniary loss directly attributed to Rollex's false statements.

COUNT VI
MICHIGAN CONSUMER PROTECTION ACT

56. Quality Edge reasserts and incorporates herein by reference paragraphs 1-55 of this Complaint.

57. Rollex's false advertising violates the Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901 *et seq.*, because it has caused, and continue to cause, a probability of misunderstanding and/or misleading of customers.

58. Upon information and belief, Rollex has received substantial revenues and substantial profits as a result of its false advertising to which Rollex is not entitled, and Quality Edge has also suffered damages as a result of Rollex's false advertising, for which Rollex is responsible.

59. Upon information and belief, Rollex's unlawful conduct, as set forth herein, has been, and continues to be, willful, deliberate, and in bad faith.

60. Quality Edge and the general public have been, and continue to be, irreparably damaged by violation of the statute, and Quality Edge has no adequate remedy of law.

61. Unless enjoined, Rollex will continue its false advertising, causing further injury to Quality Edge and misrepresentations to the public.

COUNT VII
DECLARATORY JUDGMENT THAT ROLLEX CANNOT ASSERT ANY
FEDERAL OR STATE CLAIMS AGAINST QUALITY EDGE

62. Quality Edge reasserts and incorporates herein by reference paragraphs 1-61 of this Complaint.

63. Quality Edge's use of the blower assemblies in connection with Rollex's soffit panels is not actionable as false advertising under 15 U.S.C. § 1125(a) because the blower assemblies are not: 1) a false or misleading description of facts; 2) a false or misleading representation of facts; 3) likely to cause confusion, or to cause a mistake, or to deceive as to affiliation, connection, or association of Quality Edge, or as to the origin, sponsorship, or approval of Quality Edge's goods, services, or commercial activities; or 4) misrepresentative of the nature, characteristics, or qualities of Quality Edge's and/or Rollex's goods.

64. The aforementioned conduct of Quality Edge in using its blower assembly in connection with Rollex's soffit panels does not constitute unfair competition under Michigan law, including common law, and is not actionable as injurious falsehood under state law.

65. There is no evidence that such use of the blower assemblies is misleading to a substantial number of customers.

66. Rollex has not sustained any cognizable injury as a consequence of Quality Edge's use of the blower assemblies.

PRAYER FOR RELIEF

WHEREFORE, Quality Edge prays that this Court grant judgment as follows:

A. That Rollex has infringed United States Letters Patent No. 7,137,224;

B. Rollex has no claim against Quality Edge with respect to its use of the blower assemblies in connection with Rollex's soffit panels, and that Quality Edge is free to use the blower assemblies with Rollex's panels in its advertising;

C. That Quality Edge has suffered injuries as a result of Rollex's unfair business practices, including false advertising;

D. That Quality Edge be awarded damages pursuant to 35 U.S.C. § 284, including treble damages for willful infringement, as provided by 35 U.S.C. § 284, together with prejudgment interest and costs;

E. That Quality Edge be awarded damages for Rollex's false advertising, including exemplary damages and/or punitive damages, because of the willful and malicious nature of Rollex's tortious conduct;

F. That Rollex be required to account for and pay Quality Edge for all profits realized by Rollex by reason of its unlawful acts alleged herein, and that such amounts be trebled, as provided by law;

G. That Rollex be required to pay Quality Edge exemplary and/or punitive damages, as may be permitted by law and/or in the discretion of this Court;

H. That Quality Edge recovers its reasonable attorneys' fees and costs incurred in this litigation, including a declaration that this is an exceptional case, and an award of reasonable attorneys' fees and litigation expenses to Quality Edge, pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117;

I. That an injunction issue enjoining Rollex from:

1. Continued infringement of the '224 Patent;
2. Unfairly competing with Quality Edge in any manner whatsoever;

and

3. That Rollex, its officers, directors, agents, servants, employees, successors, assigns, and all those controlled by or enacting in contract or participation with it be enjoined from any further publication, dissemination, or use of the advertising materials described above, or any other false, deceptive, or misleading information or documents pertaining in any way to Quality Edge and its products;

J. That the Court enter an Order requiring Rollex to:

1. Provide a true, accurate, and complete list of the names and addresses of all persons and entities to whom one or more of the false advertisements, as described above, were sent, delivered, provided, or shown (whether by mail, electronic delivery, or otherwise);

2. To send a full, complete, clear, and understandable retraction of this false advertising in a form acceptable to Quality Edge and the Court to each and every person and entity on the list provided under subsection J(1) and to include the retraction on the home page of Rollex's website; and

K. Any and all such other and further relief as this Court may deem just and appropriate, including the costs of this action.

JURY DEMAND

Quality Edge hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: August 11, 2010

s/Matthew J. Gipson

Matthew J. Gipson (P60169)
PRICE, HENEVELD, COOPER,
DEWITT & LITTON, LLP
695 Kenmoor, S.E.
P.O. Box 2567
Grand Rapids, MI 49501
Tel: (616) 949-9610
Fax: (616) 957-8196