

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

Civil Action No. 06-CV-00410

ATV SOLUTIONS, INC., a Nevada corporation;)
)
Plaintiff,)
)
v.)
)
R.A.M.P.S., Inc., an Arkansas corporation,)
d/b/a MEDRAMPS and ALLRAMPS;)
JEFF HILL, an individual; and)
BAGE Company, a Florida corporation;)
)
)
Defendants.)
)

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY

COMES NOW plaintiff ATV Solutions, Inc. and, for its claims for relief against defendants, R.A.M.P.S., Inc., d/b/a MedRamps and AllRamps, Jeff Hill, and BAGECo., states as follows:

THE PARTIES

1. Plaintiff ATV Solutions, Inc. ("Plaintiff" or "ATV") is a corporation organized and existing under the laws of the State of Nevada, with its principal office located in Arvada, Colorado.

2. Upon information and belief, defendant R.A.M.P.S., Inc., d/b/a MedRamps and AllRamps, ("RAMPS") is a company organized and existing under the laws of the State of Arkansas with a principal address of 611 Preston Drive, Russellville, Arkansas 72802.

3. Defendant Jeff Hill ("Hill") is an individual, who upon information and belief, resides in Russellville, Arkansas 72802.

4. Upon information and belief, defendant BAGE Company ("BAGECo.") is a company organized and existing under the laws of the State of Florida with a principal address of 139 Chuluota Road, Chuluota, Florida 32766.

5. Defendants RAMPS, Hill, and BAGECo. are hereinafter collectively referred to as "Defendants."

JURISDICTION AND VENUE

6. This Court may exercise subject matter jurisdiction over the claims set forth in this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

7. This Court may exercise personal jurisdiction over Defendants on the grounds that Defendants have availed themselves of the laws of the State of Colorado by, among other things, offering for sale and selling infringing products in Colorado.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

FIRST CLAIM FOR RELIEF **(Patent Infringement Against All Defendants)**

9. ATV is the owner of United States Letters Patent No. 6,139,247 issued on October 31, 2000, for the invention entitled "Tilttable Hauling Device" (hereinafter "the '247 Patent").

10. Defendants have, directly or indirectly, infringed the '247 Patent by (a) making, using, offering for sale, selling, and/or importing products that infringe one or more claims of the '247 Patent, (b) actively inducing infringement of the '247 Patent, or (c) contributing to the infringement of the '247 Patent.

11. Defendants' infringement of the '247 Patent has caused ATV monetary harm in an amount to be proved at trial. In addition, unless restrained, Defendants' continued infringement of the '247 Patent will cause ATV irreparable harm for which there is no adequate remedy at law.

12. ATV's products embodying the patented invention have properly been marked with references to the '247 Patent. In addition, ATV has previously notified Defendants of the infringement. Defendants, therefore, were on notice of the '247 Patent and their infringement but continued, directly or indirectly, to make, use, offer for sale, sell, and import products that infringe the '247 Patent and, thus, have knowingly and willfully infringed the '247 Patent in disregard of the rights of ATV.

WHEREFORE, ATV prays for (1) entry of judgment in its favor and against each of the Defendants on the claim of patent infringement; (2) an award of damages, including lost profits, resulting from Defendants' infringement, and/or reasonable royalties for such infringement pursuant to 35 U.S.C. § 284; (3) a trebling of damages because of the knowing, willful, and wanton nature of Defendants' conduct; (4) an assessment of interest, both prejudgment and postjudgment, on the damages so computed; (5) a finding that this case is exceptional and an award of attorneys' fees and costs incurred by ATV in pursuing this action; (6) preliminary and permanent injunctions against Defendants' continued infringement of the '247 Patent; and (7) such other and further relief as the Court deems just and proper.

SECOND CLAIM FOR RELIEF
(Trademark Infringement Against BageCo.)

13. ATV owns the rights and interests in the registered trademark TILT-A-RACK[®], which is registered in International Class 012 for automotive cargo trailers.

14. ATV and its predecessors-in-interest have continually used the TILT-A-RACK[®] mark in commerce in connection with carriers for all terrain vehicles, motorcycles, scooters, golf carts, medical carts, and wheel chairs.

15. Defendant has infringed ATV's rights in the TILT-A-RACK[®] mark without the authorization or consent of ATV.

16. Defendants's infringement of ATV's trademark rights has caused ATV monetary harm in an amount to be proved at trial. In addition, unless restrained, Defendant's continued infringement of the trademark rights will cause ATV irreparable harm for which there is no adequate remedy at law.

17. Defendant is on notice of ATV's rights and interest in the TILT-A-RACK[®] mark and, notwithstanding such notice, has continued to use the mark without ATV's authorization. Such use is willful and intentional, entitling ATV to treble damages under 15 U.S.C. § 1117(b).

WHEREFORE, ATV prays for (1) entry of judgment in its favor and against Defendant on the claim of trademark infringement; (2) an award of damages as provided in 15 U.S.C. § 1117(a) in the amount proved at trial; (3) for treble damages as provided in 15 U.S.C. § 1117(b); (4) preliminary and permanent injunctions against Defendant prohibiting the use of the trademark rights as provided in 15 U.S.C. §§ 1114 and 1116; (5) an assessment of interest, both prejudgment and postjudgment, on the damages awarded; (6) an award of attorneys' fees and costs incurred by ATV in pursuing this action as provided in 15 U.S.C. § 1117(a); and (7) such other and further relief as the Court deems just and proper.

THIRD CLAIM FOR RELIEF
(Unfair Competition Against All Defendants)

18. ATV incorporates herein by this reference the allegations contained in paragraphs 13 to 17 above.

18. ATV owns the rights and interests in the non-functional trade dress of its TILT-A-RACK[®] products.

20. ATV and its predecessors-in-interest have continually used the TILT-A-RACK[®] mark and trade dress in commerce in connection with carriers for all-terrain vehicles, motorcycles, scooters, golf carts, medical carts, and wheel chairs.

21. Defendants have infringed ATV's trademark rights by using the TILT-A-RACK[®] mark and/or the trade dress without the authorization or consent of ATV.

22. Defendants' unauthorized use of the TILT-A-RACK[®] mark and/or the trade dress constitutes use of a false designation of origin, or a false representation, which wrongly and falsely designates the carriers being sold by Defendants as originating from, being connected with, or otherwise authorized by ATV, and thereby constitutes a false description or representation used in interstate commerce. Defendants, therefore, have engaged in federal unfair competition in violation of 15 U.S.C. § 1125(a).

23. ATV has no adequate remedy at law and will be irreparably harmed if Defendants' actions are not enjoined.

24. ATV has been damaged in an amount to be proved at trial as a direct consequence of Defendants' violations of 15 U.S.C. § 1125(a).

25. Defendants' violations of 15 U.S.C. § 1125(a) have been willful and intentional, entitling ATV to treble damages.

WHEREFORE, ATV prays for (1) entry of judgment in its favor and against each of the Defendants on the claim of unfair competition; ((2) an award of damages as provided in 15 U.S.C. § 1117(a) in the amount proved at trial; (3) for treble damages as provided in 15 U.S.C. § 1117(b); (4) preliminary and permanent injunctions against Defendant, prohibiting the use of the trademark rights as provided in 15 U.S.C. §§ 1114 and 1116; (5) an assessment of interest, both prejudgment and postjudgment, on the damages awarded; (6) an award of attorneys' fees and costs incurred by ATV in pursuing this action as provided in 15 U.S.C. § 1117(a); and (7) such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial on all issues triable by a jury.

LATHROP & GAGE L.C.

s/ Neil L. Arney
Neil L. Arney
4845 Pearl East Circle, Suite 300
Boulder, CO 80301
Tele: 720-931-3000
Fax: 720-931-3001

Attorneys for Plaintiff