

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

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AUSTIN DIVISION  
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MARK W. IRVINE  
Plaintiff,

v.

KOOL-STOP INTERNATIONAL, INC.  
and RECREATIONAL EQUIPMENT,  
INC.

Defendants.

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CIVIL ACTION NO. BY: [Signature]

**PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Plaintiff Mark W. Irvine and files this his Original Complaint complaining of Defendant Kool-Stop International, Inc. and Recreational Equipment, Inc. and as grounds would respectfully show the Court as follows:

**I. THE PARTIES**

1. Plaintiff Mark W. Irvine is an individual residing in California.
2. Defendant Kool-Stop International, Inc. ("Kool Stop") is a corporation incorporated under the laws of the State of Oregon. Kool Stop may be served with summons and a copy of this Complaint by serving, via certified mail, return receipt requested, duplicate copies to the Texas Secretary of State, as its agent for service. Kool Stop conducts business in this state, but does not have a registered agent for service of process. Accordingly, the Texas Secretary of State is by law the agent for service of process for Kool Stop. Defendant Kool Stop's home office is located at P.O. Box 1304, Lake Oswego, OR 97034.
3. Defendant Recreational Equipment, Inc. ("REI") is a corporation incorporated under the laws of the State of Washington. REI may be served with summons and a copy of this Complaint by serving its registered agent for service of process, C T Corporation System,

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350 North St. Paul St., Dallas, Texas 78201.

## II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the relief requested in this action concerning Plaintiff's enforcement of his patent rights pursuant to 28 U.S.C. §1331 and §1338(a).

5. Defendants are subject to the personal jurisdiction of this District because they have purposefully availed themselves of Texas and this District by soliciting customers within Texas and this District.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) as Defendants are subject to personal jurisdiction in this District.

## III. FACTS

7. Plaintiff Irvine is an inventor. After an expenditure of an enormous amount of time and labor, in 1998 he developed a novel approach to the design of bicycle brake pad holders. One of the purposes of the new brake pad holder arrangement was to assist bicycle owners in replacing worn brake pads. After some time, all bicycle brake pads become worn and need to be replaced. Some brake assemblies have the pad fixed to the brake mounts meaning that the entire assembly needs to be replaced. Other brake pads can be replaced independently of the assembly but are difficult to adjust to ensure that the replacement pad is mounted to meet flush with the bicycle tire rim. Irvine invented a type of brake pad holder that allowed a bicycle owner to easily install new brake pads and allow the owner to move the brake pad in three dimensions so that the pad can be easily be adjusted to meet the bicycle tire rim. Irvine created this invention in his business as an inventor. The papers describing his invention and his prototype devices were

kept secret. Irvine intended to profit from his invention by, *inter alia*, seeking a partner or licensee to the use of his invention.

8. Kool Stop is a manufacturer of bicycle brake pads. Kool Stop is owned by Gene Smith and Richard Everett.

9. Irvine approached Smith and Everett in 1998 to confidentially inform them of his new invention in the hopes that they could agree on an arrangement where Kool Stop would manufacture Irvine's invention and provide him with a royalty on all sales.

10. Kool Stop expressed interest in the brake pad holder and Irvine confidentially provided Kool Stop's owners with a sample of his invention. After examining Irvine's invention, Everett informed Irvine that, while they liked the idea, they did not wish to enter into a business arrangement with Irvine.

11. Irvine filed an application for a patent on his invention on December 29, 1998. Recognizing the novelty of Irvine's idea, the United States Patent and Trademark Office issued U.S. Patent No. 6,125,973 ("the '973 Patent") to Irvine on October 3, 2000. Irvine has never assigned any of his rights in the '973 Patent to any other person or entity. As such, Irvine is the owner of all right, title, and interest in and to the '973 Patent, including rights relating to the manufacture and sale of brake pad holders utilizing the technology within the scope of the claims of the '973 Patent.

12. Irvine has now discovered that Defendants Kool Stop and REI are manufacturing, selling and offering for sale devices that are remarkably similar, if not virtually identical, to that which he shared with Kool Stop in 1998 and are now disclosed in his '973 Patent.

13. For example, Kool Stop is advertising and selling, on its website, a brake pad holder that

it describes as the “Dura Road Holder.” The manufacture and sale of the Dura Road Holder infringes on one or more of the claims of the ‘973 Patent.

14. At no point did Kool Stop or its owners inform Irvine that it intended to or was selling a product that was derived from his invention and which infringed his ‘973 Patent.

15. At no point did Kool Stop seek or obtain the authority from Irvine to manufacture, sell or offer for sale a product covered by the ‘973 Patent.

16. REI also sells and offers for sale the Kool Stop “Dura Road Holder.”

17. At no point did REI seek or obtain the authority from Irvine to sell or offer for sale a product covered by the ‘973 Patent.

#### **IV. CAUSE OF ACTION: INFRINGEMENT OF U.S. PATENT NO. 6,125,973**

18. Irvine incorporates herein by reference and re-alleges paragraphs 1-16 inclusive.

19. On October 3, 2000, U.S. Patent No. 6,125,973 (“the ‘973 Patent”), entitled “Brake Pad Holder” was duly and legally issued to Irvine. Since its issuance, Irvine has been, and continues to be, the owner of all right, title and interest in and to the ‘973 Patent. A copy of the ‘973 Patent is attached as Exhibit 1 and incorporated herein by reference.

20. Kool Stop has infringed and continues to infringe, has induced and continues to induce others to infringe, and/or committed and continues to commit acts of contributory infringement of, one or more claims of the ‘973 Patent by making, selling, and offering for sale devices covered by one or more of the claims of the ‘973 Patent.

21. Irvine alleges on information and belief that the foregoing acts of infringement were and continue to be willful and deliberate in nature and thus Irvine is entitled to treble damages, as well as its actual attorney’s fees and litigation costs. The filing of this Original Complaint

constitutes notice to the Defendant in accordance with 35 U.S.C. §287.

22. As a direct and proximate result of Kool Stop's infringement, Irvine has suffered monetary damages in an amount yet to be determined and will continue to suffer damages.

23. REI has infringed and continues to infringe, has induced and continues to induce others to infringe, and/or committed and continues to commit acts of contributory infringement of, one or more claims of the '973 Patent by selling and offering for sale devices covered by one or more claims of the '973 Patent.

24. As a direct and proximate result of REI's infringement, Irvine has suffered monetary damages in an amount yet to be determined and will continue to suffer damages.

#### **V. JURY DEMAND**

25. Irvine hereby demands a trial by jury.

#### **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Irvine, reserving the right to amend its pleadings to add additional claims if warranted by discovery in this case, prays for judgment against Kool Stop and REI as follows:

A. That Kool Stop has infringed, induced others to infringe, and/or committed acts of contributory infringement with respect to the claims of U.S. Patent No. 6,125,973;

B. That Kool Stop's infringement of U.S. Patent No. 6,125,973 has been, and continues to be, willful and deliberate and that this is an exceptional case;

C. That Kool Stop be ordered to account for and pay to Irvine all damages caused to Irvine by reason of Kool Stop's infringement pursuant to 35 U.S.C. §284;

D. That all damages awarded in favor of Irvine against Kool Stop be trebled;

E. That Kool Stop be ordered to pay Irvine's costs, expenses, and reasonable attorney's fees pursuant to 35 U.S.C. §§284 and 285;

F. That Irvine be awarded pre-judgment and post-judgment interest on the damages caused to it by Kool Stop's infringement;

G. That REI has infringed, induced others to infringe, and/or committed acts of contributory infringement with respect to the claims of U.S. Patent No. 6,125,973;

H. That REI be ordered to account for and pay to Irvine all damages caused to Irvine by reason of REI's infringement pursuant to 35 U.S.C. §284;

I. That REI be ordered to pay Irvine's costs, expenses, and reasonable attorney's fees pursuant to 35 U.S.C. §§284 and 285;

J. That Irvine be awarded pre-judgment and post-judgment interest on the damages caused to it by REI's infringement; and

K. That this Court grant Irvine such other and further relief as it may deem just and proper.

Respectfully submitted,

By: 

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Notice of Document/Attachment(s) Not Imaged  
but Stored with Document in Case File**

**See Original File to View/Copy Document/Attachment(s)**

Civil Case No. 1:04cv182

Mark W. Irvine

VS.

Kool -Stop International, Inc., et al

Attachments to  
Document #: 1

Description: Complaint

File Date: 03/31/04

Prepared by: sh