

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Takonix Incorporated, a Minnesota Corporation,  
Plaintiff  
vs.  
BrakeAway Products, Inc.,  
an Oregon corporation,  
Defendant.

Civil File No.:

**COMPLAINT**  
**JURY TRIAL DEMANDED**

Plaintiff, Takonix Incorporated, a Minnesota corporation (hereafter "Takonix"), for its Complaint against Defendant BrakeAway Products, Inc., an Oregon corporation (hereafter "BrakeAway"), alleges as follows:

**THE PARTIES**

1. Plaintiff, Takonix, is a corporation organized and existing under the laws of the State of Minnesota, having a registered office located at 457 Bear Avenue South, Vadnais Heights, MN 55127.
2. Upon information and belief, Defendant, BrakeAway, is an Oregon corporation, having a principal place of business located at 4191 S.E. Witch Hazel Rd, Hillsboro, OR 97123.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. §§1331, 1338(a), 2201(a), and 2202.

4. Upon information and belief, this Court has personal jurisdiction over BrakeAway because BrakeAway had business contact with Takonix within the State of Minnesota, and has accused Takonix of infringement by mailing a letter to Takonix within the State of Minnesota.

5. Upon information and belief, this Court also has personal jurisdiction over BrakeAway because BrakeAway transacts business within the State of Minnesota, and operates an interactive web site which is directed to residents of the State of Minnesota, through which Minnesota consumers can review detailed information about BrakeAway, can purchase BrakeAway products, and can exchange electronic mail with BrakeAway.

6. Venue is proper in this District under 28 U.S.C. §1391(b).

#### **BACKGROUND**

7. Takonix is a Minnesota corporation, with its principal place of business located at 457 Bear Avenue South, Vadnais Heights, MN 55127.

8. Takonix manufactures a motorcycle throttle control device, the Tak-Lok™, which may be installed on a motorcycle throttle grip, to serve as a throttle lock device.

9. By letter dated August 16, 2010, counsel for BrakeAway notified Takonix that BrakeAway is the licensee of U.S. Patent No. 6,820,710 (the '710 Patent), that the Tak-Lok™ infringes the '710 Patent, and demanding that Takonix cease "making, using or offering for sale" its allegedly infringing product. A true and correct copy of the August 16, 2010 correspondence, and the '710 Patent, are attached hereto as Exhibits A and B, respectively.

10. BrakeAway threatened follow-up action unless Takonix agreed “to completely stop making, using, and selling such products . . . by a reasonable date certain by August 27, 2010.” See Exhibit A, attached hereto.

11. Takonix requested an extension to September 10, 2010, to complete its review of BrakeAway’s allegations, to which it received no response.

12. Takonix requested an additional extension to September 24, 2010, to complete its review, which drew a response from BrakeAway, again demanding that Takonix cease making, using, and selling the alleged infringing product, and also demanding a response by September 20. A true and correct copy of said email dated September 17, 2010 is attached hereto as Exhibit C.

13. Based on the communications from BrakeAway, Takonix has a reasonable apprehension that it will face a patent infringement lawsuit.

14. An actual controversy exists as to Takonix’s alleged infringement of U.S. Patent No. 6,820,710.

**COUNT I**  
**DECLARATORY JUDGMENT THAT TAKONIX’S**  
**TAK-LOK™ DOES NOT INFRINGE U.S. PATENT NO. 6,820,710.**

15. Takonix re-alleges and incorproates by reference the allegations set forth in all of the paragraphs above, as fully set forth herein.

16. Upon information and belief, BrakeAway has alleged that Takonix’s Tak-Lok™ product infringes U.S. Patent No. 6,820,710 in the August 16, 2010 letter. A copy of the August 16, 2010 letter and ‘710 Patent were previously attached as Exhibits A and B.

17. Takonix’s Tak-Lok™ product does not infringe the ‘710 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Takonix, prays for the following relief:

- a. A judgment that Takonix's Tak-Lok<sup>TM</sup> product does not infringe the '710 Patent;
- b. An award of costs and attorney's fees incurred by Takonix in prosecuting this action, plus interest; and
- c. That Takonix be awarded such other relief as the Court deems just and proper.

**JURY DEMAND**

Takonix demands a jury trial on all issues so triable.

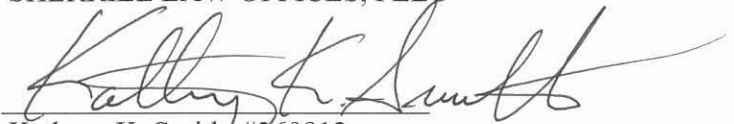
Respectfully submitted,

SHERRILL LAW OFFICES, PLLC

Dated:

September 20, 2010

By:



Kathryn K. Smith, #260812

Attorney for Plaintiff

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