

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

CAUGHT FISH ENTERPRISES, LLC, a Colorado limited liability company, and
METAL ROOF INNOVATIONS, LTD., a Colorado corporation,

Plaintiffs,

v.

BLAZE WHARTON CONSTRUCTION, INC., d/b/a
MOUNTAIN SNOW STOPS, a Montana corporation, and
BLAZE WHARTON, an individual,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiffs Caught Fish Enterprises, LLC ("Caught Fish") and Metal Roof Innovations, Ltd. ("MRI"), for their Complaint against Defendants Blaze Wharton Construction, Inc., d/b/a Mountain Snow Stops ("BWC") and Blaze Wharton ("Wharton"), state and allege as follows:

I. PARTIES

1. Caught Fish is a Colorado limited liability company with its principal place of business in Colorado Springs, Colorado. Caught Fish is the owner of U.S. Patent No. 5,983,588 ("the '588 patent") by assignment from Robert M.M. Haddock.

2. MRI is a Colorado corporation with its principal place of business in Colorado Springs, Colorado. MRI is a licensee of the '588 patent (Caught Fish and MRI will hereinafter be collectively referred to as "Caught Fish").

3. Upon information and belief, BWC is a corporation formed under the laws of the State of Montana, having a principal place of business at 401 North 31st Street, Suite 1650, P.O. Box 7054, Billings, Montana 59103-7054.

4. Wharton is an individual who resides in Montana. At all times relevant hereto, Wharton has been the President of BWC. As President, Wharton has contributed to, aided and abetted BWC's manufacture, distribution and sale of a number of products, including mounting devices used on metal roofs.

II. SUBJECT MATTER JURISDICTION

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*

6. This Court has subject matter jurisdiction over this patent infringement claim pursuant to 28 U.S.C. §§ 1331 and 1338.

III. PERSONAL JURISDICTION AND VENUE

7. BWC sells a variety of products and devices used on or in connection with the installation and/or maintenance of metal roofs, such roofs including standing metal seams. BWC has sold and continues to sell metal roofing products and services throughout the country. BWC operates an interactive website upon which mounting devices used on metal roofs are offered for sale and which facilitates the sale of such products. Upon information and belief, BWC also has a regular and established business presence within the State of Colorado and/or has sold and/or offered to sell within the State of Colorado products which fall within one or more claims of the patent asserted herein.

8. As President of BWC, Wharton has regularly and systematically conducted business in Colorado and/or has offered to sell and/or has sold products accused of infringing the '588 patent in Colorado.

9. BWC and Wharton are subject to personal jurisdiction in this judicial district.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

IV. GENERAL ALLEGATIONS

11. Caught Fish is in the business of developing, manufacturing, marketing and selling mounting devices for holding various apparatus to the standing seams of metal roofs.

12. On November 16, 1999, the USPTO granted the '588 patent for a "Mounting Device for Building Surfaces" naming Robert M.M. Haddock as the inventor.

13. Among other things, the '588 patent describes and claims a novel mounting device for building surfaces and methods of using that device. At least one of the clamping devices claimed in the '588 patent is comprised of a body with a slot integrally formed therein, and a securing assembly comprising holes and members positioned within the holes that can extend within the slot to secure the mounting body to a standing seam on a metal roof.

14. Caught Fish manufactures, markets and sells mounting devices incorporating the inventions disclosed and claimed in the '588 patent.

BWC's and Wharton's Infringing Systems

15. BWC is making, using, offering for sale, and selling within the United States clamps used for controlling snow movement upon metal roofing panels. The clamps are comprised of a body, into which is formed a slot designed to accept the profile of a standing metal roof seam. In

operation, the clamps are placed over the standing metal roof seam and secured to the standing metal roof seams by use of threaded set screws. The screws have a blunt end and thus do not pierce the metal roof.

16. Upon information and belief, Wharton has aided, abetted, contributed to and induced BWC to make, use, offer for sale and sell within the United States, including Colorado, the clamps described above. Upon information and belief, Wharton has the authority and power to control all activities of BWC, including the activities of manufacture, distribution, offer for sale and sale of the clamps in Colorado as described above.

V. CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,983,588)

17. Caught Fish incorporates paragraphs 1 through 16 as though fully set forth herein.

18. BWC and Wharton have contributed to, and/or induced the infringement of, and/or infringed the '588 patent by making, using, selling and/or offering for sale at least its clamps described above in the United States, all without license or authority from Caught Fish, in violation of 35 U.S.C. §§ 271(a), (b) and/or (c).

19. BWC/Wharton have been informed of their infringement, but have continued their infringing activities.

20. BWC's/Wharton's infringing acts have thus been willful and wanton and in reckless disregard of Caught Fish's rights, entitling Caught Fish to a trebling of its actual damages under 35 U.S.C. § 284, and making this an exceptional case for which attorney's fees should be awarded pursuant to 35 U.S.C. § 285.

21. As a result of BWC's/Wharton's infringing acts, Caught Fish has suffered and will continue to suffer irreparable injury for which there is no adequate remedy at law, entitling it to injunctive relief under 35 U.S.C. § 283.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Caught Fish prays that this Court enter its Judgment and enter an Order:

1. Preliminarily and permanently enjoining BWC and Wharton and their officers, agents, servants, employees, successors, assigns, and all persons in active concert with any of them, from infringing and/or inducing others to infringe and/or contributing to the infringement of U.S. Patent No. 5,983,588;

2. Awarding to Caught Fish monetary damages in an amount equal to the greater of Caught Fish's lost profits or a reasonable royalty pursuant to 35 U.S.C. § 284, and trebling those damages by reason of the willful, wanton, and deliberate nature of the infringement, also pursuant to 35 U.S.C. § 284;

3. Awarding to Caught Fish its reasonable attorney's fees pursuant to 35 U.S.C. § 285;

4. Awarding to Caught Fish its costs incurred in this action, including expert witness fees; and

5. Awarding to Caught Fish prejudgment interest, post judgment interest and any such other and further relief as the Court may deem just and proper.

VII. JURY DEMAND

Caught Fish hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

Dated: December 9, 2009

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