

PETER E. HEUSER, OSB No. 81128

Email: heuser@khpateent.com

PIERRE C. VAN RYSELBERGHE, OSB No. 91523

Email: pierre@khpateent.com

NICHOLAS A. THEDE, OSB No. 07546

Email: nick@khpateent.com

KOLISCH HARTWELL P.C.

200 Pacific Building

520 Southwest Yamhill Street

Portland, OR 97204

Telephone: (503) 224-6655

Facsimile: (503) 295-6679

Attorneys for Plaintiff Yakima Products, Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

YAKIMA PRODUCTS, INC., a Delaware corporation,

Plaintiff,

v.

HOLLYWOOD ENGINEERING, INC.
d/b/a **HOLLYWOOD RACKS**, a California corporation,

Defendant.

Case No. 08-CV-01338-HU

**SECOND AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

For its complaint, Plaintiff Yakima Products, Inc. alleges against Defendant Hollywood Engineering, Inc. d/b/a Hollywood Racks as follows:

THE PARTIES

1. Plaintiff Yakima Products, Inc. (“Yakima”) is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business at 15025 SW Koll Parkway, Beaverton, Oregon 97006.

2. Defendant Hollywood Engineering, Inc. d/b/a Hollywood Racks, upon information and belief, is a California corporation having a principal place of business at 12812 South Spring Street, Los Angeles, California 90061.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the claim for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code.

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the value of the matter in controversy exceeds \$75,000.

5. On information and belief, Defendant is engaged in conducting business in the state of Oregon in connection with the allegations of this suit, and is subject to personal jurisdiction in this district.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and (c), and 1400(b) because a substantial part of the events giving rise to the claim occurred in Oregon.

BACKGROUND

7. Yakima designs, makes, and sells bicycle and rooftop automobile racks, rooftop cargo boxes, and other related accessories.

8. Yakima owns U.S. Patent No. 6,431,423 (the '423 patent), attached as Exhibit 1, covering assemblies for carrying a bicycle on a vehicle as defined in the claims of the patent. The '423 patent was filed on May 17, 2000, was fully examined, and was issued on August 13, 2002.

9. Yakima owns U.S. Patent No. 6,467,664 (the ‘664 patent), attached as Exhibit 2, covering bicycle carriers as defined in the claims of the patent. The ‘664 patent was filed on September 10, 2001, was fully examined, and was issued on October 22, 2002.

10. Yakima owns U.S. Patent No. 6,840,418 (the ‘418 patent), attached as Exhibit 3, covering bicycle carriers as defined in the claims of the patent. The ‘418 patent was filed on September 25, 2002, was fully examined, and was issued on January 11, 2005.

11. Yakima has marked its bicycle racks and assemblies with the U.S. Patent Nos. 6,431,423; 6,467,664; and 6,840,418 (collectively, “the Yakima patents”).

INFRINGEMENT OF THE YAKIMA PATENTS

12. Yakima incorporates by reference the preceding paragraphs.

13. On information and belief, Defendant is making, using, offering for sale, and selling, and inducing others to make, use, offer for sale, and sell, bicycle carriers and assemblies that infringe the Yakima patents, including hitch-mounted racks Traveler and Road Runner and trunk-mounted racks Baja and F6 Expedition, and contributing to infringement by others of the Yakima patents, without authorization from Yakima, all in violation of 35 U.S.C. § 271, causing damages to Yakima including, without limitation, lost profits.

14. On information and belief, Defendant has been aware of the Yakima patents, and this case is exceptional under 35 U.S.C. § 285.

15. Unless restrained by this Court, Defendant’s infringement of the Yakima patents will continue. Yakima has been and will continue to be irreparably injured by this infringement.

16. Yakima is entitled to relief provided by 35 U.S.C. §§ 281, 283, 284, and 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Yakima demands this Court to enter judgment against Defendant and its subsidiaries, affiliates, agents, servants, employees, attorneys, and all persons in active concert or participation with it, granting the following relief:

- A. A decree that Defendant has infringed the Yakima patents;
- B. A preliminary and permanent injunction prohibiting and enjoining further infringement of the Yakima patents pursuant to 35 U.S.C. § 283;
- C. An accounting against Defendant for an amount adequate to compensate for the infringement of the Yakima patents, including profits lost by Yakima as a result of infringement of the Yakima patents pursuant to 35 U.S.C. § 284; in any event, Yakima shall be awarded no less than a reasonable royalty for the unauthorized use of the claimed inventions in the Yakima patents by Defendant;
- D. An award of reasonable attorney fees against Defendant, pursuant to 35 U.S.C. § 285; and
- E. Such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff Yakima hereby demands a trial by jury of all issues so triable.

Dated this 23rd day of March, 2009.

Respectfully,

KOLISCH HARTWELL, P.C.

By /s/ Peter E. Heuser
Peter E. Heuser, OSB No. 81128
Pierre C. Van Rysselberghe, OSB No. 91523
Nicholas A. Thede, OSB No. 07546
of Attorneys for Yakima Products, Inc.

CERTIFICATE OF SERVICE

I herby certify that on March 23, 2009, I served a true and correct copy of **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT** by the method indicated below on the following persons:

Via Notice of Electronic Filing and U.S. Mail, postage prepaid:

Johnathan E. Mansfield
Schwabe, Williamson & Wyatt
PacWest Center
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
Phone 503-222-9981
Fax 503-796-2900
Email jmansfield@schwabe.com

of Attorneys for HOLLYWOOD ENGINEERING, INC. d/b/a HOLLYWOOD RACKS,
Defendant

/s/ Peter E. Heuser
Peter E. Heuser, OSB No. 811281
of Attorneys for YAKIMA PRODUCTS, INC, Plaintiff