

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2002 OCT 12 AM 11:30

CLERK'S OFFICE
J. GREENBELT
BY _____ DEPUTY

CARPAD, INC.
400 Main St.
Dayton, Nevada 89403

and

DAVID SAYLOR
400 Main St.
Dayton, Nevada 89403

Plaintiffs

v.

BROOKSTONE COMPANY, INC.
17 Riverside Street
Nashua, New Hampshire 03062

Defendant

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED

OCT 21 2002

CLERK, U.S. DISTRICT COURT

Civil Action No. **PJM 02 CV 1984**

CV-N-02-0557-ECR-VPC

COMPLAINT FOR INJUNCTIVE RELIEF, COMPENSATORY AND PUNITIVE DAMAGES; JURY TRIAL DEMANDED

I.

Nature of the Case

1. This is a case for patent, trademark and trade dress infringement and unfair competition.

II.

Parties

2. Plaintiff Carpad, Inc. is a Nevada corporation.
3. Plaintiff David Saylor is a resident of the State of Nevada.
4. Defendant Brookstone Company, Inc. is New Hampshire corporation, headquartered in Nashua, New Hampshire. Brookstone Company, Inc. produces a catalog titled "Brookstone" that is distributed nationwide, and operates approximately 200 retail

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stores in the United States including six in the State of Maryland, and several in the Southern Division of Maryland.

III.

Jurisdiction

5. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 (federal question), 1332 (diversity) and 1338 (copyrights, patents and trademarks).

IV.

Factual Allegations

6. Plaintiffs are the owners of U.S. patent No. 5,308,670 dated May 3, 1994 on an invention titled "FLOOR COVER WITH RAISED SIDES." A copy of this patent is attached to this complaint as plaintiffs' exhibit 1 and is incorporated herein by reference.

7. Plaintiffs are the owners of the trademark "CarPad," registered with the United States Patent and Trademark Office Registration Number 1,833,910, dated May 3, 1994. A copy of the trademark is attached to the complaint as plaintiffs' exhibit no. 2 and is incorporated herein by reference.

8. Plaintiffs are the owners of copyrighted material appearing in Brookstone catalogs describing CarPad[®] products.

9. Plaintiffs' CarPad[®] products were sold in Brookstone catalogs for several years.

10. Brookstone Company, Inc. had actual knowledge of plaintiffs' trademark and patent on the CarPad.

11. Plaintiffs and employees of plaintiffs have spent valuable time, labor and substantial sums of money in creating the CarPad[®].

12. As a result of quality work, long experience and skill in creating and marketing the CarPad[®] plaintiffs acquired a reputation of excellent quality and is recognized for its high-quality products. Plaintiffs commanded and still command, an extensive sale of these items, that is and has been a source of profits to it.

13. Plaintiffs have established trade dress rights to its CarPad[®] design.

14. During the year 2001 defendant began selling throughout the United States a garage floor cover with raised sides that looks similar to plaintiffs CarPad[®].

15. Defendant filled orders for the original CarPad[®] with imported and inferior imitations that it had made for Brookstone in Taiwan.

V.

First Cause of Action: Patent Infringement

16. Plaintiffs incorporate by reference paragraphs one through 15, inclusive.

17. Defendant intentionally infringed plaintiffs' patent No. 5,308,670 dated May 3, 1994 on an invention titled "FLOOR COVER WITH RAISED SIDES."

18. Plaintiffs have been harmed by this infringement by lost sales and injury to their reputation as quality manufacturers.

VI

Second Cause of Action: Trademark Infringement

19. Plaintiffs incorporate by reference paragraphs one through 18, inclusive.

20. Defendant intentionally infringed on plaintiffs' trademark "CarPad," registered with the United States Patent and Trademark Office Registration Number 1,833,910, dated May 3, 1994.

VII

Third Cause of Action: Trade Dress Infringement

21. Plaintiffs incorporate by reference paragraphs one through 20, inclusive.

22. Plaintiffs have developed a reputation in the automotive industry for the distinctive look of its CarPad.

23. Defendant has infringed on plaintiffs' trade dress in violation of the Lanham Act by copying the look and feel of the CarPad[®]

24. Defendant's imitation CarPad[®] looks like plaintiffs', but is of inferior quality and has caused harm to plaintiffs' business by selling inferior and cheap imitations.

25. Consumers confuse the imitation CarPad[®] with the real CarPad[®].

26. This confusion has caused substantial harm to plaintiffs in terms of lost sales and diminished reputation for quality.

VIII.

Fourth Cause of Action: Unfair Competition

27. Plaintiffs incorporate by reference paragraphs one through 26 inclusive.

28. Without the consent or approval of plaintiffs, defendant wrongfully misappropriated, sold and distributed unauthorized duplications of plaintiffs' CarPad[®].

29. Defendants' copies are inferior to plaintiffs' in craftsmanship and appearance, but have virtually identical shapes and designs to plaintiffs' patented designs.

30. Stores selling plaintiffs' designs, and consumers, have been confused by defendants' products, believing that the plaintiff was the source of the illegal copies.

31. As a direct and proximate result of this unauthorized copying, plaintiffs have suffered injury to their reputation and a loss of income.

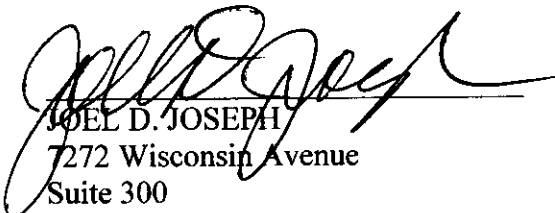
IX

Request for Relief

WHEREFORE, plaintiffs requests that this court order defendant to:

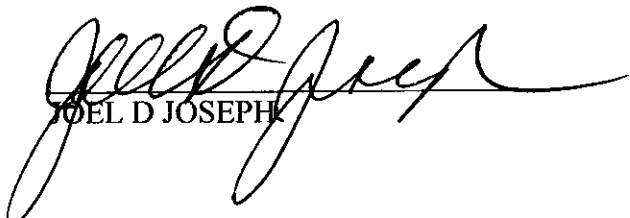
- A. Cease and desist from making, selling and distributing copies of plaintiffs' patented design; and
- B. Notify immediately to all stores and individuals who purchased these items, ordering an immediate recall at defendants' expense; and
- C. Deliver to plaintiffs all inventory, models, molds and unfinished pieces; and
- D. Pay plaintiffs compensation in the amount of one million dollars (\$2,000,000.00) for actual damages; and
- E. Pay plaintiffs a total of twenty million dollars (\$20,000,000.00) as punitive damages; and
- F. Pay plaintiffs' attorneys fees and costs; and

G. Take such other action as the Court deems just and proper.


JOEL D. JOSEPH
7272 Wisconsin Avenue
Suite 300
Bethesda, Maryland 20814
(301) 263-0652
Fax (240) 209-4000

JURY DEMAND

Plaintiff demands a trial by jury.


JOEL D JOSEPH

5,308,670

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FLOOR COVER WITH RAISED SIDES

SUMMARY OF THE INVENTION

This invention relates to a pad for a garage floor, beneath a vehicle. The pad is designed to catch and contain water, snow, salt, sand, dirt, grease, oils and solvents falling off the vehicle. The pad prevents runoff of water, damage to floor and surroundings from salts, grinding sand, flooding and solvents.

BRIEF DESCRIPTION OF DRAWINGS

FIG. 1 is a top plan view of the full vinyl sheet.

FIG. 2 is a corner detail of welded vinyl sheet with hose insert in a vinyl pocket.

FIG. 3 is a cross section of the vinyl pocket with hose insert.

DESCRIPTION OF PREFERRED EMBODIMENT

FIG. 1 shows a top view of the vinyl pad, 6. The corners of the pad are trimmed at a 45 degree angle, 2. The outer edge 1 of the trimmed pad 6 is folded over, as at 3, and RF (radio frequency) butt welded, at 4. This creates a pocket 5. Pocket 5 is open on each end, as at 8 (FIG. 2). A piece of reinforced rubber hose 7 (FIGS. 2

and 3), the length of pocket 5, is inserted into the open end 8, thus raising the sides of the pad. This is done on all four sides, creating a basin to contain the elements falling off the vehicle onto the pad. The pad can be made in various sizes with varying size hose diameters.

I claim:

1. A pad for positioning underneath a vehicle for collecting and retaining fluid and solid materials falling from the vehicle, comprising a flat and generally rectangular base of vinyl material having outer edge portions folded over and affixed to the base material thereby forming a hollow pocket extending along each edge of the base, and a tubular member inserted into and extending along a length of each of the edge pockets, thereby forming raised sides and creating, with a flat portion of the pad, a basin to contain the materials falling off the vehicle.

2. A pad according to claim 1, wherein the outer edge portions of the base are folded over and welded to the base material.

3. A pad according to claim 2, wherein the tubular member is reinforced hose.

4. A pad according to claim 3, wherein corners of the base are trimmed at an angle of 45 degrees.

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U.S. Patent

May 3, 1994

5,308,670

Fig. 1

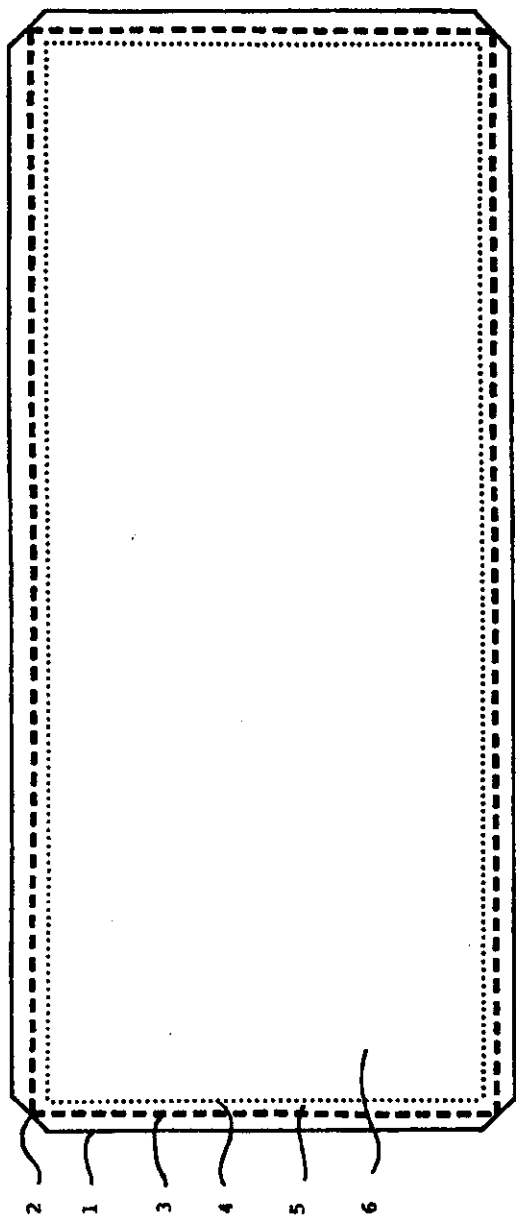


Fig. 3

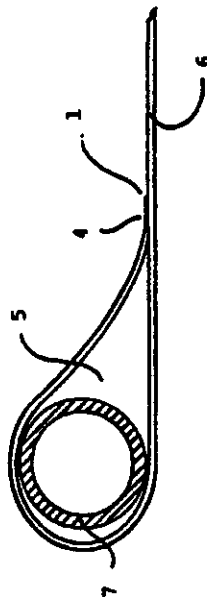
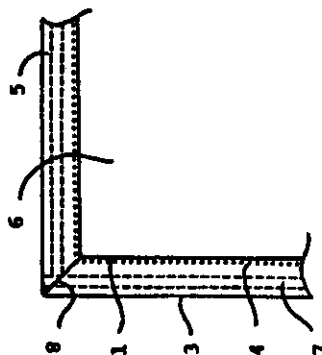


Fig. 2



PLAINTIFFS' EX NO. 2



Word Mark	CARPAD
Goods and Services	IC 027. US 042 050. G & S: vinyl vehicle drip mats in a variety of sizes used under the vehicle to catch and contain melting snow, water, sand, salts, solvents, oils, mud, and dirt. FIRST USE: 19921204. FIRST USE IN COMMERCE: 19921204
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	74362434
Filing Date	February 25, 1993
Published for Opposition	February 8, 1994
Registration Number	1833910
Registration Date	May 3, 1994
Owner	(REGISTRANT) Saylor, Steven DBA Evergreen Studios INDIVIDUAL UNITED STATES 400 Main Street Dayton NEVADA 894030204
Type of Mark Register	TRADEMARK PRINCIPAL