

4. Exclusive subject matter jurisdiction over this matter is conferred upon the Court pursuant to 28 U.S.C. § 1331, 1338, 1367, and 15 U.S.C. § 1121(a).

5. Subject matter jurisdiction also exists under 28 U.S.C. § 1332. Diversity of citizenship exists and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this District under 28 U.S.C. § 1391, in that Akar's principal place of business is in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District.

CASE OR CONTROVERSY

7. An immediate, real, and justiciable controversy exists between the parties to this action.

FACTS

Hesco's Technology

8. Hesco's Concertainer units have been a key component in providing force protection since the 1991 Persian Gulf war. Subsequently it has been deployed with U.S., NATO, United Nations and other Allied military forces throughout the world. Hesco's products are extensively used to protect U.S. Armed Forces personnel, vehicles, equipment and facilities in military, peacekeeping, humanitarian, and civilian operations. Hesco's Concertainer units have become the most popular means of force protection within the military. It has also proved a valuable resource in combating floods and other natural disasters.

9. Hesco has grown substantially and it now has three manufacturing sites, all producing Concertainer units to ISO International Standards. Hesco's Concertainer units are one of the UK's most successful defense exports.

10. Hesco's Concertainer units are products that are easily and rapidly constructed to create effective and economical protective structures. Long since adopted as an alternative to conventional field fortification materials such as sandbags, Hesco's Concertainer units can be built to any length and to any required height, given the capability of the available equipment and appropriate ground space. Rapid construction is a key feature of the product -- a typical wall of Hesco's products, equivalent to a wall of approximately 1,500 sandbags, can be erected and filled by two men and a single common loader in less than twenty minutes. An equivalent wall constructed of sandbags would take ten persons approximately seven hours to build.

11. Hesco's Concertainer units can be filled with almost any infill material, such as sand, rubble, rocks, and available soil. The ideal fill is a sand/gravel mix.

12. The flat-pack design of the Concertainer units allows for extremely efficient storage and transportation. Folded units can be packaged on standard timber skids or pallets, in standard sea-freight containers or as bulk cargo.

13. Hesco's Concertainer products are supplied as prefabricated and linked baskets of varying sizes made of galvanized steel welded mesh and lined with a geotextile to retain the fill material. It is delivered flat-packed on timber skid/pallets for ease of handling by mechanical equipment. It can be extended using provided joining pins, and filled using minimal manpower, and commonly available equipment. Units may be joined and stacked in various configurations to provide effective and economical structures tailored to the specific threat and level of protection required. Generally, protective structures will be designed to protect against ballistic penetration of direct fire projectiles, splinters, and shaped charge war heads, and the blast effects of explosions in proximity to the structure. In most cases, effects will be combined as in the case of a bomb or artillery round which produces significant blast as well as fragments from the burst

casing. Protection is afforded by the fill material of the structure as a consequence of its mass and physical properties.

14. The following photograph is an example of Hesco's product in use in Iraq:



Hesco's Intellectual Property Rights

15. Hesco owns the entire right, title and interest to U.S. Patent No. 5,333,970 ("the '970 patent"), issued to James W. Heselden on or about August 2, 1994, entitled "Building and shoring blocks." A copy of the '970 patent is attached as Ex. 1 and incorporated by reference. Hesco also owns foreign equivalents to that patent.

16. Hesco owns the entire right, title and interest to U.S. Patent No. 5,472,297 ("the '297 patent"), issued to James W. Heselden on or about December 5, 1995, entitled "Building and shoring blocks." A copy of the '297 patent is attached as Ex. 2 and incorporated by reference. Hesco also owns foreign equivalents to that patent.

17. Hesco marks its product literature with one or more of its U.S. patents and foreign equivalents.

18. Hesco owns the entire right, title and interest to the trademark "Mil", serial number 78574318, registration number 3219415, filed February 24, 2005. Hesco uses the "Mil" trademark in its business and it has substantiated goodwill in the trademark.

19. Hesco has common law trademarks in the names "Hesco" and "Hesco Bastion" which have been used in commerce since 2002. Hesco has substantiated goodwill in the trademarks.

Akar

20. Akar purports to be in the supply and services business. Its customers purportedly include the U.S. Army, U.S. Air Force, embassies, non-governmental organizations, and the United Nations.

21. Akar maintains a website at www.akarlogistics.com and www.akarlogistics.net. A copy of a printout of relevant portions of Akar's website is attached hereto as Ex. 3 and incorporated by reference.

22. Akar represents on its website that it supplies "Hesco Walls" and "Hesco Walls (gabion boxes)."

23. The Hesco barrier products offered for sale by Akar on its website fall within the scope of one or more claims of the '970 patent.

24. The Hesco barrier products offered for sale by Akar on its website fall within the scope of one or more claims of the '297 patent.

25. Akar is not licensed or authorized to use any of Hesco's intellectual property.

**COUNT I
(Patent Infringement)**

26. The foregoing allegations of this complaint are incorporated by reference.

27. Akar has made, used, sold, and/or offered for sale products embodying the patented invention, including without limitation, an offer for sale on its website, thereby infringing, literally or under the doctrine of equivalents, one or more claims of the '970 patent, and will continue to do so unless enjoined therefrom.

28. Akar has contributed to the use by others of its infringing products.

29. Akar has induced the use by others of its infringing products.

30. Akar's infringement has been willful.

31. Hesco has been irreparably harmed by Akar's acts of infringement and has suffered damages in an amount to be determined at trial.

COUNT II
(Patent Infringement)

32. The foregoing allegations of this complaint are incorporated by reference.

33. Akar has made, used, sold, and/or offered for sale products embodying the patented invention, including without limitation, an offer for sale on its website, thereby infringing, literally or under the doctrine of equivalents, one or more claims of the '297 patent, and will continue to do so unless enjoined therefrom.

34. Akar has contributed to the use by others of its infringing products.

35. Akar has induced the use by others of its infringing products.

36. Akar's infringement has been willful.

37. Hesco has been irreparably harmed by Akar's acts of infringement and has suffered damages in an amount to be determined at trial.

COUNT III
(Lanham Act)

38. The foregoing allegations of this complaint are incorporated by reference.

39. Akar's products are used, sold, and/or offered for sale in interstate and foreign commerce.

40. In connection with its goods or services, Akar has used one or more words, terms, names, symbols, or devices, alone or in combination, as well as false designations of origin, false

or misleading descriptions or representations of fact, which are (a) likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Akar with Hesco, or as to the origin, sponsorship, or approval of its goods, services, or commercial activities by another person, and/or (b) in commercial advertising or promotion (including without limitation its website), Akar misrepresents the nature, characteristics, qualities, or geographic origin of its or Hesco's goods, services, or commercial activities.

41. By reason of Akar's statements and conduct, Akar has willfully violated section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and Hesco has suffered, and will continue to suffer, damage to its business, reputation, and good will and has lost sales and profits that Hesco would have made but for Akar's acts.

42. Hesco has been irreparably harmed by Akar's acts in violation of the Lanham Act and has suffered damages in an amount to be determined at trial.

COUNT IV
(Common Law Trademark Infringement)

43. The foregoing allegations of this complaint are incorporated by reference.

44. Akar's use of Hesco's valuable trademarks constitutes infringement, false designation of origin, false description, and unfair competition under the common law of trademark infringement. As a result of these practices, customers were confused and mistaken as to the association of Akar and its products with Hesco and its products.

45. Hesco has been irreparably harmed by Akar's acts and has suffered damages in an amount to be determined at trial, in excess of \$75,000.

COUNT V
(Unfair Competition and False Advertising (Maryland Law))

46. The foregoing allegations of this complaint are incorporated by reference.

47. Akar knowingly and willfully misrepresented to the public, that it was and is authorized to offer for sale and sell the Hesco technology.

48. Akar has engaged in other conduct which creates a likelihood of confusion or of misunderstanding regarding the goods or services supplied by Hesco and/or Akar.

49. By reason of Akar's statements and conduct, Akar has violated the Maryland state law of unfair competition and false advertising, and Hesco has suffered, and will continue to suffer, damage to its business, reputation, and good will and has lost sales and profits that Hesco would have made but for Akar's acts.

50. Hesco has been irreparably harmed by Akar's acts of infringement and has suffered damages in an amount to be determined at trial, in excess of \$75,000.

REQUEST FOR RELIEF

Hesco respectfully requests that this Court enter judgment against Akar and that the following relief be granted:

- a. judgment that Akar has infringed the claims of the '970 and/or '297 patents (35 U.S.C. § 271(a));
- b. judgment that Akar's infringement of the claims of the '970 and/or '297 patents was willful;
- c. a preliminary and permanent injunction against continued patent infringement (35 U.S.C. § 283);
- d. damages for past infringement (35 U.S.C. § 284);
- e. imposition of a constructive trust on all proceeds from the sale of accused products;
- f. increased and trebled damages for willful infringement (35 U.S.C. § 284);

- g. damages for Akar's infringement of Hesco's trademarks, including damage to Hesco's good will;
- h. treble damages and statutory damages;
- i. a preliminary and permanent injunction against continued trademark infringement;
- j. judgment and damages for Akar's violation of federal and state unfair competition law, and an injunction against continued violations;
- k. attorneys' fees as allowed by law, including without limitation, 35 U.S.C. §285 (patent infringement), and 15 U.S.C. §1117(a) (trademark infringement);
- l. costs pursuant to Fed. R. Civ. P. 54(d) or otherwise provided by law; and
- m. such other relief as the Court deems just and appropriate under the circumstances.

JURY DEMAND

Hesco hereby demands a jury trial on all issues so triable.

Dated: May 6, 2008

Respectfully submitted,

/s/ Richard J. Oparil

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