

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
(EASTERN DIVISION)**

AMERICAN GUTTER FILTER, INC., an Illinois Corporation,)	
)	
Plaintiffs,)	
v.)	
)	
PRIME TIME WINDOW CLEANING, INC., an Illinois Corporation and WILLIAM D. DRON, individually and in his capacity as President of Prime Time Window Cleaning, Inc.)	
)	
Defendants.)	

COMPLAINT

Plaintiff American Gutter Filter, Inc., (hereinafter, “AGF”) file this Complaint against Defendants Prime Time Window Cleaning, Inc. (hereinafter “Prime Time”) and William D. Dron (hereinafter, “Dron”) and allege as follows:

1. This is an action for a temporary restraining order, preliminary and permanent injunctive relief, and for further relief based on (1) false advertising under Section 43(a) of the Lanham Act; and (2) patent infringement under 35 U.S.C. § 271.

PARTIES

2. Plaintiff American Gutter Filter, Inc. is a corporation organized and existing under the laws of the State of Illinois, having a principal place of business in West Dundee, Kane County, Illinois.

3. Plaintiff is the Assignee of U.S. Patent No. 8,220,206 from the Assignor, Kenneth J. Konkey, as of January 25, 2010.

4. Defendant Prime Time Window Cleaning, Inc., is an Illinois corporation having a principal place of business at 515 E. Golf Road, # 208, Arlington Heights, IL 60005.

5. On information and belief, Defendant William D. Dron is the President and principal shareholder of Prime Time.

6. On information and belief, Defendant William D. Dron directed, authorized, participated in, assisted, and cooperated with Defendant Prime Time in all of the acts complained of herein.

JURISDICTION AND VENUE

7. This action arises under (1) the patent laws of the United States, 35 U.S.C. § 271 et seq.; and (2) the Lanham Act, 15 U.S.C. § 1051 et seq. Accordingly, the Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1338(a) and 15 U.S.C. §§ 1116, 1121.

8. This Court has personal jurisdiction over the Defendants as both have continuous and systematic general business contacts that approximate physical presence in the Northern District of Illinois as a result of pervasive activities conducted within Illinois, including without limitation the services offered to its customers throughout the region of Northern Illinois in the areas of window cleaning, gutter cleaning, and pressure washing of both residential and commercial buildings.

9. Further, upon information and belief, Defendants have committed and continue to commit acts of patent infringement, directly and/or through agents, intermediaries and/or third parties, by shipping, distributing, offering for sale and/or selling certain infringing products in Illinois. Defendants have purposefully and voluntarily placed their gutter filter foam insert product into the stream of commerce and offered that product Gianvi for sale in Illinois and this judicial district with the intent that consumers will purchase it in Illinois and this judicial district. On information and belief, Defendants have purposefully directed their infringing activities toward Illinois and its residents by promoting their gutter filter foam insert on their internet web sites with the intent of reaching potential customers in Illinois and selling to Illinois residents and distributors and even doing so by using a picture of the Plaintiff's own patented product.

10. Venue is proper in the Northern District of Illinois under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because, *inter alia*, this Court has personal jurisdiction over the Defendants' Lanham Act violations and infringing offers to sell have occurred and will continue to occur in this judicial district.

BACKGROUND

11. AGF is the holder of approved U.S. Patent No. 8,220,206 for Safe-T-Flow® foam gutter filter insert, which is distinguished from other foam gutter filter product by its front and rear drainage channels.

12. AGF sells Safe-T-Flow® throughout the United States via several channels, including the United States through the use of a licensing program "License Buy Zip" which grants licensees exclusive territory rights to market AGF products, including Safe-T-Flow®.

13. AGF sells Safe-T-Flow® in a highly competitive market for gutter filter foam inserts which all serve the same or similar functions to consumers, the filtering of leaves and other debris allowing water to pass through gutters and prevent clogging. But unlike all other combined such products, Safe-T-Flow® has both front and rear drainage channels which improves the flow of water through the foam filters and is an improvement on the "standard design."

14. Since receiving UPSTO approval of the patent, Safe-T-Flow® is poised to become one of the best-selling gutter filter foam inserts in the United States with projected sales in the millions of dollars. As a result of its improved, patented design, Safe-T-Flow® has become a target for companies such as Prime Time to either cut inferior products to mimic the Safe-T-Flow® design or to pass off such inferior products as Safe-T-Flow® by way of false advertising.

15. On information and belief, Dron directed Prime Time's webpage designer/developer to photograph Prime Time employees mimicking the installation of Safe-T-Flow®, or a product cut to look like Safe-T-Flow®, and to advertise that installation on Prime Time's website.

16. As part of the website advertising, Dron and Prime Time included on the Prime Time webpage a link to warranty information for a product manufactured by one of the Plaintiff's competitors, GutterStuff® Pro, which is a product actually believed to be one regularly installed by Prime Time and which does not possess the same attributes as Safe-T-Flow®.

17. On information and belief, the product regularly installed by Prime Time, GutterStuff® Pro, does not have both front and rear drainage channels, as manufactured.

PATENT-IN-SUIT

18. The patent-in-suit is U.S. Patent No. 8,220,206. The patent issued on July 12, 2012. AGF is the current owner of the patent and attaches a true and original copy of the patent as Exhibit A.

COUNT ONE: CLAIM FOR FALSE ADVERTISING UNDER 15 U.S.C. § 1125(A)

19. AGF refers to and incorporates herein the allegations of Paragraphs 1-18.

20. On information and belief, Prime Time markets its services as an installer of a gutter filter foam insert to customers and offers services thereto as an installer of that product via advertising on its website and otherwise.

21. In so marketing its services, Prime Time includes a picture of the Plaintiff's patented product, Safe-T-Flow®, being installed by one of its employees and it intends for these customers and others to rely on this picture and related information to form the belief that the product it installs is either identical to Safe-T-Flow® or that it is actually Safe-T-Flow® and contains the same attributes as does Safe-T-Flow®, including front and rear drainage channels.

22. To the extent the product actually installed by Prime Time does not contain front and rear drainage channels, the picture of a product with those attributes on Prime Time's website to the contrary is literally false and misleading.

23. Prime Time's use of the picture of the Plaintiff's product violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), which provides in relevant part that "any person who, on or in connection with any goods or services . . . uses in commerce any. . . false or misleading description of fact, or false or misleading representation of fact, which. . . in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is likely to be damaged by such act."

24. Prime Time's unauthorized use of the picture of Safe-T-Flow®, misrepresents the nature, characteristics and quality of the gutter filter product actually installed by Prime Time and has either deceived or has the tendency to deceive consumers.

25. By reason of Prime Time's conduct, AGF has suffered and will continue to suffer immediate damage to its business, reputation and goodwill. Pursuant to 15 U.S.C. § 1117, Prime Time's Lanham Act violations entitle AGF to damages, an accounting of profits made by Prime Time on sales of installation services of its gutter filter foam product and recovery of AGF's costs and reasonable attorney fees incurred in this action.

26. Prime Time's acts, at Dron's direction, are willful, wanton, and calculated to deceive, and are undertaken in bad faith, especially after having ignored the Plaintiff's repeated written requests to remove the misleading image on its website or (in the alternative) to participate in the Plaintiff's licensing program, which makes this an exceptional case entitling AGF to recover additional damages and reasonable attorney fees pursuant to 15 U.S.C. § 1117.

27. Unless enjoined by this Court, Prime Time's acts will immediately and irreparably injure AGF's goodwill and erode its market share. Pursuant to 15 U.S.C. § 1116, AGF is entitled to preliminary and permanent injunctive relief to prevent Prime Time's continuing acts.

28. Unless temporarily restrained by this Court, Prime Time's acts will immediately and irreparably injure AGF's goodwill and erode its market share. Pursuant to Federal Rule of Procedure 65(b) and the requirements for a preliminary injunction, AGF is entitled to a

temporary restraining order and preliminary injunction to prevent Prime Time's continuing acts. AGF is likely to prevail on the merits of its Lanham Act claim because, among other facts, Prime Time's use of the picture on its website is highly misleading. AGF's injury from Prime Time's continuing acts is irreparable and not fully compensable by money damages because the damage to AGF is irreversible and difficult to calculate. Prime Time's passing off the product it actually installs as possessing the same attributes as Safe-T-Flow prevents AGF from distinguishing and promoting its branded product to its customers and licensees based on the advantages of dual drainage. Finally, Prime Time's acts harm third-party purchasers and the public interest by sowing confusion and misinformation as a result of Prime Time's false advertising.

**COUNT TWO: CLAIM FOR PATENT INFRINGEMENT OF
UNITED STATES PATENT NO. 8,220,206**

29. AGF refers to and incorporates herein the allegations of Paragraphs 1-28.

30. The United States Patent and Trademark Office duly and legally issued the patent in 2012. The patent covers AGF's Safe-T-Flow® product.

31. Upon information and belief, Prime Time has been and is now directly infringing, and/or actively inducing infringement by others, and/or contributing to the infringement by others of U.S. Patent No. 8,220,206 in this District, and elsewhere in the United States. Prime Time infringes the patent literally and/or under the doctrine of equivalents.

32. By way of example and not limitation, Prime Time infringes at least claim 1 of the patent, which claims:

A rain gutter filter apparatus, for a gutter having an open top defining a top width of the gutter, the filter apparatus comprising: a filter element of reticulated foam material having a top surface thereof with a width substantially matching the top width of the gutter, a bottom surface having a width less than the width of the top surface of the filter element, and front and rear surfaces thereof extending upward from the bottom surface, to thereby form a front and a rear open passage for water to the front and rear of the bottom surface when the filter element is installed into the gutter.

33. Upon information and belief, Prime Time has offered for sale its services to install a foam gutter filter product known as GutterStuff Pro and it has either cut that product or a similar one to simulate the design of the Plaintiff's patented product.

34. Prime Time has actively infringed, induced infringement, and/or contributed to the infringement and is still actively infringing, inducing, and/or contributing to the infringement of the patent, and will continue to do so unless enjoined by the Court.

35. Prime Time has had actual notice that it has been infringing on the Plaintiff's patent for several months.

36. AGF has suffered and is suffering monetary damages from Prime Time's unauthorized infringement that are compensable under 35 U.S.C. § 284 in an amount to be determined at trial or hearing.

37. Upon information and belief, Prime Time's infringement of the patent has been and continues to be willful and deliberate, making this an exceptional case entitling AGF to recover additional damages and reasonable attorney fees pursuant to 35 U.S.C. § 285.

38. Prime Time's acts of infringement of the patent have immediately and irreparably harmed and will continue to harm AGF unless and until this Court permanently enjoins and restrains Prime Time's acts of infringement.

39. Unless temporarily and preliminarily restrained by this Court, Prime Time's acts will immediately and irreparably injure AGF's goodwill and erode its market share. Pursuant to Federal Rule of Procedure 65(b) and the requirements for a preliminary injunction, AGF is entitled to a temporary restraining order and preliminary injunction to prevent Prime Time's continuing infringing acts. AGF is likely to prevail on the merits of its Patent Infringement claim because, among other facts, Prime Time infringes on at least claim 1 of the patent. AGF's injury from Prime Time's continuing infringing acts are irreparable and not fully compensable by money damages because the damage to AGF is irreversible and difficult to calculate. Prime

Time's false advertising prevents AGF from distinguishing and promoting its branded product to its customers based on the patented advantages of dual channel drainage. Finally, Prime Time's infringing acts harm third-party purchasers and the public interest by sowing confusion and misinformation as a result of its false advertising

REQUEST FOR RELIEF

WHEREFORE, AGF requests that the Court enter judgment in its favor and against Prime Time as follows:

1. A temporary restraining order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, temporarily restraining Prime Time and its agents, servants, employees, attorneys, successors and assigns, and all others in active concert or participation from directly or indirectly falsely advertising or promoting its installation of a gutter filter product by claiming that it contains dual drainage channels; from making or inducing others to make any false, misleading or deceptive statement of fact, or representation of fact, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of the gutter filter product Prime Time installs in such fashion as to suggest that this product is Safe-T-Flow or contains the same patented attributes as Safe-T-Flow and from further infringement of U.S. Patent No. **8,220,206**.
2. A judgment and order preliminarily and permanently enjoining Prime Time and its agents, servants, employees, attorneys, successors and assigns, and all others in active concert or participation from directly or indirectly falsely advertising or promoting itself as an installer of AGF's Safe-T-Flow or from claiming that it installs a product with Safe-T-Flow's patented attributes, including but not limited to dual channel drainage.
3. A judgment and order preliminarily and permanently enjoining Prime Time and its agents, servants, employees, attorneys, successors and assigns, and all others in active concert or participation from making or inducing others to make any false, misleading or deceptive statement of fact, or representation of fact in connection with the

- promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of a gutter filter product in such fashion as to suggest that this product contains the patented attributes of Safe-T-Flow.
4. A judgment and order that Prime Time take corrective action to correct any erroneous impression persons may have derived concerning the nature, characteristics or qualities of the gutter filter product it installs.
 5. A judgment and order granting AGF such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression concerning the nature, characteristics or qualities of the product sold and installed by Prime Time.
 6. A judgment that Prime Time has infringed one or more claims of U.S. Patent No. **8,220,206** as alleged herein.
 7. A judgment and order preliminarily and permanently enjoining Prime Time and its agents, servants, employees, representatives, successors, and assigns, and all others in active concert or participation from further infringement of U.S. Patent No. **8,220,206**.
 8. A judgment and order requiring Prime Time to pay AGF damages under 35 U.S.C. § 284, including treble damages for willful infringement, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed.
 9. A judgment and order requiring Prime Time to pay AGF damages under 15 U.S.C. § 1117(a) in the amount of AGF's actual and consequential damages and any profits Prime Time obtained from marketing its gutter filter product as similar to or the same as Safe-T-Flow.

10. A judgment and order requiring Prime Time to pay AGF reasonable attorney fees, costs and expenses, including those available under 35 U.S.C. § 285, 15 U.S.C. § 1117(a) and any other applicable law.
11. A judgment and order requiring Prime Time to pay AGF's pre-judgment and post judgment interest on the damages awarded and assessing all costs of this action against Prime Time
12. A judgment and order providing such other and further relief as the Court deems just and equitable.

Respectfully Submitted

/s/Chris Cosentino

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