

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BESTOP, INC.,

Plaintiff,

v.

TUFFY SECURITY PRODUCTS, INC.,

Defendant.

Case No.
Honorable
Magistrate Judge

HOWARD & HOWARD ATTORNEYS PLLC

By: Jeffrey A. Sadowski (P28163)

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COMPLAINT AND JURY DEMAND

TABLE OF EXHIBITS

Exhibit A

United States Patent No. 6,065,794 3

Exhibit B

Tuffy Security Products, Inc. Website 4

For its Complaint against Defendant Tuffy Security Products, Inc. (“Defendant” or “Tuffy”), Bestop, Inc. (“Bestop”) hereby complains and alleges as follows:

THE PARTIES

1. Bestop, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a registered address of 30600 Telegraph Road, Bingham Farms, Michigan, 48025 and a place of business within this District at 600 Wilshire Drive, Troy, Michigan 48084.

2. Tuffy is a corporation organized and existing under the laws of the State of Colorado, and having its corporate headquarters at 25733 Road H, Cortez, Colorado 81321, and, upon information and belief, has a sales office in this District.

3. Tuffy is doing business within the State of Michigan and within the Eastern District of Michigan, and is engaged in continuous and systematic business within the Eastern District of Michigan, and including the commission of acts of infringement as hereinafter stated.

JURISDICTION AND VENUE

4. This Court has jurisdiction in this action under 28 U.S.C. §§ 1331 and 1338, as there is a federal question, and upon information and belief, the matter in controversy exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars.

5. The cause of action for patent infringement arises under the Patent Laws of the United States, Title 35 U.S.C. §§ 101 and 271, and this Court has federal jurisdiction of this claim pursuant to §§ 1331, 1338, and 2201 *et seq.*

(VIOLATION OF 35 U.S.C. §§ 101 AND 271)

6. Bestop repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

8. On May 23, 2000, United States Patent No. 6,065,794, entitled “Security Enclosure For Open Deck Vehicles,” was duly and legally issued by the United States Patents and Trademark Office. A true and correct copy of United States Patent No. 6,065,794 is attached hereto as **Exhibit A** (hereinafter “the ‘794 Patent”).

9. Bestop is the current Assignee of all right, title, and interest in the ‘794 Patent, including the right to bring and maintain this action with respect to the ‘794 Patent.

10. Tuffy, upon information and belief, in the past has been and presently still is infringing the ‘794 Patent by making, importing, using, selling, and/or offering for sale in and to the United States products embodying the patented inventions of the ‘794 Patent enclosure. Beyond selling and/or offering to sell directly to vehicle owners or other purchasers in this District, such as via the internet as shown in Exhibit B for direct sales into this District, and, upon information and belief, at least one of the OEM automotive companies, Tuffy also sells to intermediaries as sales representatives, wholesalers and distributors who are located in this District and sell to directly and/or indirectly to customers in this District in a manner infringing the ‘794 Patent. Tuffy, upon information and belief, has also attended shows and made sales demonstrations within this District. Such manufacture, sale, offer for sale and use by Tuffy directly infringes, as well as infringes by inducement and contributory infringement, the ‘794 Patent.

11. In addition to Tuffy’s direct infringement, upon information and belief, original equipment manufacturers (“OEMs”), such as Chrysler/Jeep, and/or dealers in the sale of new or used vehicles include and/or otherwise reference Tuffy’s sales materials in relation to the sale of vehicles and accessories for those vehicles. Vehicles manufactured and sold by original equipment manufacturers, such as Chrysler/Jeep, may be equipped with Tuffy’s enclosure as an

accessory item to constitute direct infringement of the '794 Patent by Tuffy. Tuffy has caused, assisted, aided and abetted infringement of the '794 Patent within this District.

12. Use by third parties of the aforesaid enclosure as obtained from or through Tuffy, upon information and belief, infringes the '794 Patent. Tuffy has had knowledge of the '794 Patent since at least 2000. Upon information and belief, with knowledge and/or reckless disregard amounting to knowledge of the infringement of the '794 Patent by the aforesaid products and entities utilizing enclosures obtained from or through Tuffy, Tuffy has provided Tuffy's enclosures to at least one third party for use in infringement of the '794 Patent, and otherwise aided and abetted third parties in infringing the '794 Patent. Tuffy knew or should have known that its actions would induce actual infringement of the '794 Patent by these third parties. Tuffy marketing and product/technical literature (including but not limited to Tuffy's websites actively, affirmatively and specifically induces usage of Tuffy's enclosures in a manner that constitutes infringement of the '794 Patent. See **Exhibit B**.

13. Upon information and belief, Tuffy makes, imports, sells, and/or offers to sell its enclosures and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '794 Patent and that are especially made or especially adapted for use in infringement of the '794 Patent, and said interior rear view mounting systems and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Tuffy constitute contributory infringement of the '794 Patent. Tuffy knew of the '794 Patent; Tuffy communicated with another person(s), such as at OEM automotive manufacturers with the intent of causing that person(s) to infringe the '794 Patent; and that other person(s) actually infringed and continues to infringe the '794 Patent. Tuffy has exhibited

willful blindness of infringement of the '794 Patent. The actions of Tuffy induced and continue to induce infringement of the '794 Patent.

14. Despite any statement to the contrary, and upon information and belief, Tuffy will continue to infringe, contributorily infringe, and induce infringement of the '794 Patent unless enjoined by the Court.

15. Upon information and belief, Tuffy's infringement, contributory infringement, and inducement of infringement have been willful.

16. Upon information and belief, Tuffy's infringement, contributory infringement, and inducement of infringement have resulted in damage to Bestop and will continue to do so unless enjoined by this Court.

17. Bestop has no adequate remedy at law and is, therefore, entitled to a permanent injunction prohibiting further infringement by Tuffy.

18. Tuffy's manufacture, use, sale, offer to sell, and/or distribution of these products that infringe, contributorily infringe, and induce infringement of the '794 Patent have caused Bestop to suffer damages in an amount not yet determined but will be proven at trial.

19. Bestop, therefore, seeks judgment as set forth herein.

WHEREFORE, Bestop demands judgment against Tuffy as follows:

A. Permanently enjoining Tuffy, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further manufacture, importation, sale, offer for sale, and/or use of a product which infringes, contributorily infringes, or induces infringement of the '794 Patent.

- B. Permanently enjoining Tuffy, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further acts of infringement of the '794 Patent.
- C. Ordering an accounting of damages.
- D. Awarding damages in an amount to be determined at trial, but adequate to compensate Bestop for Tuffy's infringement, contributory infringement, and inducement of infringement of the '794 Patent.
- E. Increasing the damages up to three times the amount found or assessed for Tuffy's willful acts of infringement.
- F. Awarding prejudgment interest and costs.
- G. Finding this to be an exceptional case and awarding reasonable attorneys' fees to Bestop.
- H. Such other and further relief as this Court deems necessary and appropriate.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: February 22, 2013

By: /s/ Jeffrey A. Sadowski
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JURY DEMAND

Plaintiff requests a jury for all issues triable by jury in this action.

Respectfully submitted,

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