

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EASTWOOD AUTOMOTIVE GROUP, LLC,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.,

Defendant.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Eastwood Automotive Group, LLC (hereinafter “Eastwood”), by and through its undersigned counsel, brings this Complaint for Patent Infringement against Defendant Harbor Freight Tools USA, Inc. (“Harbor Freight”), and alleges as follows:

NATURE OF THIS ACTION

1. This is a patent infringement action brought by Eastwood against Harbor Freight based on Harbor Freight’s ongoing willful infringement of U.S. Design Patent No. D814,261 (“the ‘261 patent”), arising under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., and seeking damages and injunctive relief under 35 U.S.C. §§ 271, 281, 283-285.

THE PARTIES

2. Plaintiff Eastwood is a Pennsylvania limited liability company having a place of business at 263 Shoemaker Road, Pottstown, Pennsylvania 19464.

3. Upon information and belief, Defendant Harbor Freight is a corporation organized under the laws of the State of Delaware with a principal place of business at 3491 Mission Oaks Blvd, Camarillo, California 93011.

4. Upon information and belief, Harbor Freight is a discount tool and equipment retailer which currently sells its products in retail stores and on its website, which include hand tools and generators, air and power tools, shop equipment and automotive tools.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 1 et seq.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Harbor Freight because Harbor Freight regularly conducts business, operates regular and established places of business, and has offered for sale and sold infringing products within the Commonwealth of Pennsylvania and within this judicial district (“District”), among other places.

8. Venue is proper in this District over Harbor Freight pursuant to 28 U.S.C. § 1400(b).

COUNT I – PATENT INFRINGEMENT

9. Eastwood repeats and realleges the allegations contained in Paragraphs 1-8 above as fully set forth herein.

10. Eastwood designs, distributes, and sells a line of products in the field of automobile restoration and customization. Included among Eastwood’s line of products is a surface conditioning tool sold under the registered mark CONTOUR SCT. Eastwood’s CONTOUR SCT surface conditioning tool is an electric-operated multi-function tool for removing automotive paints, rust, corrosion, scale, varnish, and polyester body filler, as well as for conditioning and preparing wood and metal surfaces for coating and painting.

11. Images of Eastwood's CONTOUR SCT surface conditioning tool are attached as Exhibit A.

12. On April 3, 2018, U.S. Design Patent No. D814,261 ("the '261 patent"), entitled "Metal Finishing Rotary Tool", was duly and legally issued to Easthill Group, Inc. by the United States Patent and Trademark Office ("USPTO").

13. A true and correct copy of the '261 patent is attached to this Complaint as Exhibit B.

14. The '261 patent valid and enforceable.

15. Eastwood is the current, lawful owner by assignment of the '261 patent and holds all rights, title, and interest in the '261 patent.

16. Eastwood has the right to enforce the '261 patent, including the right to recover past damages, and pursue any other legal or equitable relief.

17. The '261 patent claims the ornamental design for a metal finishing rotary tool, as shown and described in the '261 patent.

18. Upon information and belief, Harbor Freight is making, using, selling, importing, and/or offering to sell, or causing others to make, use, sell, import, and/or offer to sell a surface conditioning tool in the United States under the name Bauer 9 Amp Surface Conditioning Tool. An image of Harbor Freight's Bauer 9 Amp Surface Conditioning Tool is shown in Exhibit C.

19. Upon information and belief, Harbor Freight is selling its Bauer 9 Amp Surface Conditioning Tool online at <https://www.harborfreight.com/9-amp-surface-conditioning-tool-58079.html>.

20. Upon information and belief, Harbor Freight is selling its Bauer 9 Amp Surface Conditioning Tool at Harbor Freight's retail locations in the United States, including at least one retail location in this District.

21. A side-by side comparison of the claimed design and images of Harbor Freight's Bauer 9 Amp Surface Conditioning Tool is attached hereto as Exhibit D.

22. Harbor Freight has infringed and continues to infringe the claim of the '261 patent in violation of 35 U.S.C. §§271 and 289.

23. The overall appearance of Harbor Freight's Bauer 9 Amp Surface Conditioning Tool is substantially the same as the claimed design of the '261 patent in the eyes an of ordinary observer, giving such attention as a purchaser usually gives, so as to deceive such an observer, inducing him to purchase one supposing it to be the other.

24. A "purchaser" for purposes of infringement of the '261 patent is a retail consumer who purchases the Harbor Freight's Bauer 9 Amp Surface Conditioning Tool at a Harbor Freight retail store or online through Harbor Freight's website.

25. The overall appearance of the Harbor Freight's Bauer 9 Amp Surface Conditioning Tool is not plainly dissimilar to the claimed design of the '261 patent.

26. Under 35 U.S.C. §289, infringement of the '261 patent entitles Eastwood to damages equal to Harbor Freight's entire profit on the sale of its Bauer 9 Amp Surface Conditioning Tool.

27. On March 2, 2020, through its counsel, Eastwood sent a letter to Harbor Freight's CEO, Mr. Eric Smidt, enclosing a copy of the '261 patent and taking the position that, if sold in the United States, the Bauer 9 Amp Surface Conditioning Tool would infringe the '261 patent.

28. On January 26, 2022, after receiving no response from Harbor Freight and becoming aware of the eminent introduction of the Bauer 9 Amp Surface Conditioning Tool to the U.S. market, Eastwood sent a second letter to Harbor Freight's CEO enclosing a draft of this Complaint.

29. On February 24, 2022, Jeffrey Cutler, Director – Intellectual Property for Harbor Freight, sent an email to counsel for Eastwood confirming receipt of the January 26, 2022 letter and draft Complaint, and indicated that they would “respond soon.”

30. As of the date of filing of this Complaint, no responsive communication has been received from Harbor Freight.

31. Despite Eastwood's attempts to seek resolution with Harbor Freight, Harbor Freight has introduced its Bauer 9 Amp Surface Conditioning Tool into the U.S. market and has willfully infringed the '261 patent. As such, Eastwood has brought this action to seek just compensation for Harbor Freight's past and ongoing infringement of the '261 patent.

32. Harbor Freight had actual or constructive knowledge of the '261 patent prior to the commencement of sales of its Bauer 9 Amp Surface Conditioning Tool.

33. Harbor Freight had actual knowledge of the '261 patent at least as early as February 24, 2022.

34. Notwithstanding its actual knowledge, Harbor freight introduced its Bauer 9 Amp Surface Conditioning Tool into the U.S. market and continues to sell this product in the U.S. market.

35. Harbor Freight's infringement of the '261 patent is willful, which entitles Eastwood to enhanced damages, including attorney's fees and costs.

36. On information and belief, the infringement of the '261 patent by Harbor Freight will continue unless enjoined by this Court.

37. As a direct and proximate cause of the infringement by Harbor Freight, Eastwood is being and will continue to be substantially and irreparably harmed in its business and property rights unless Harbor Freight is enjoined from making, using, selling, importing, and/or offering to sell, or causing others to make, use, sell, import, and/or offer to sell its Bauer 9 Amp Surface Conditioning Tool.

38. In addition, Eastwood is suffering injury for which it is entitled to monetary relief as a result of Harbor Freight's infringement.

PRAYER FOR RELIEF

WHEREFORE, Eastwood respectfully requests that this Court enter a Judgment and Order:

- (a) Declaring that the '261 patent is valid and enforceable;
- (b) Declaring that Harbor Freight has infringed and continues to infringe, either literally or under the doctrine of equivalents, the claim of the '261 patent under U.S.C. §271;
- (c) Declaring that Harbor Freight's infringement is willful, and that Eastwood is entitled to treble damages under 35 U.S.C. § 284 for past infringement;
- (d) Awarding Eastwood damages adequate to compensate for Harbor Freight's infringement, but in no event less than a reasonable royalty for past infringement, pursuant to 35 U.S.C. §284;
- (e) Declaring that this is an exceptional case under 35 U.S.C. §285 and awarding Eastwood its attorney's fees, costs, and expenses, based in part on, but not limited to, Harbor Freight's willful infringement;

(f) Awarding Eastwood the total extent of Harbor Freight's profits resulting from Harbor Freight's past infringement, pursuant to 35 U.S.C. §289;

(g) Permanently restraining and enjoining Harbor Freight, its officers, directors, agents, servants, employees, successors, assigns, parents, subsidiaries, affiliated or related companies, and all those persons in active concert or participation with any of them from infringing the '261 patent; and

(h) Granting Eastwood such other and further relief as this Court deems just, proper, and equitable.

DEMAND FOR JURY TRIAL

Pursuant Rule 38(b) of the Federal Rules of Civil Procedure, Eastwood hereby demands a trial by jury of all issues triable as of right by jury in the above action.

Respectfully submitted,

DESIGN IP, A PROFESSIONAL CORPORATION

Date: April 1, 2022

s/Damon A. Neagle

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