

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI**

GOLDEN RULE FASTENERS, INC.,

Plaintiff,

v.

THE NEVERLEAK COMPANY, LP.

Defendant.

CIVIL ACTION NO.

3:17cv249-MPM-JMV

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Golden Rule Fasteners, Inc. (hereinafter, "Plaintiff" or "Golden Rule"), by and through its undersigned counsel, files this Original Complaint for Patent and Copyright Infringement against The NeverLeak Company, LP. (hereinafter, "Defendant" or "NeverLeak") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop NeverLeak's infringement of Golden Rule's United States Patent Nos. 8,141,303 (hereinafter, the "'303 Patent"), 8,464,475 (hereinafter, the "'475 Patent"), and 8,534,002 (hereinafter, the "'002 Patent") (collectively, the "Patents-in-Suit"). The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office (hereinafter the "USPTO"), copies of which are attached hereto as **Exhibits A, B and C**,

respectively. Golden Rule is the owner of the Patents-in-Suit. Golden Rule seeks injunctive relief and monetary damages.

2. Each of the Patents-in-Suit traces its priority date back to Application No. 12/604,933 (hereinafter, the “933 Application”). The ‘933 Application was filed with the USPTO on October 23, 2009, and issued as United States Patent No. 8,141,303 on March 27, 2012. Application No. 13/403,444 (hereinafter, “the ‘444 Application”) was a continuation of the ‘933 Application. The ‘444 Application was filed with the USPTO on February 23, 2012 and issued as United States Patent No. 8,534,002 on September 17, 2013. Application No. 13/723,588 (hereinafter, “the ‘588 Application”) was a continuation of the ‘444 Application. The ‘588 Application was filed with the USPTO on December 21, 2012 and issued as United States Patent No. 8,464,475 on June 18, 2013.

3. Golden Rule registered and obtained a copyright for its “ZipSeal on Roof” photograph from the US Copyright Office. See Exhibit D. The US Copyright Registration number is VA 2-075-960. See Exhibit E.

PARTIES

4. Golden Rule is a corporation organized and existing under the laws of the State of Alabama and maintains its principal place of business at 5290 Alabama Highway 229 South, Tallassee, Alabama, 36078 (Elmore County).

5. Based upon public information, Defendant is a corporation duly organized and existing under the laws of the Mississippi and has its principal place of business (corporate headquarters) located at 8951 Yahweh Road, Olive Branch, MS 38654 (DeSoto County). Defendant may be served in Olive Branch, Mississippi at its corporate headquarters (DeSoto County).

6. Based upon public information, Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises its products under the names “Electrical Mast Connection for Shingle Roof” “Electrical Mast Connection,” “Master Flash® Retrofit,” and “Electrical Mast Connection Master Flash®”. See Exhibits F-I.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent and copyright infringement under 28 U.S.C. §§ 1331 and 28 U.S.C. 1338(a).

8. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Mississippi and in the Northern District of Mississippi; Defendant has purposefully availed itself of the privileges of conducting business in the State of Mississippi and in the Northern District of Mississippi; Defendant has sought protection and benefit from the laws of the State of

Mississippi; Defendant regularly conducts business within the State of Mississippi and within the Northern District of Mississippi, and Golden Rule's causes of action arise directly from Defendant's business contacts and other activities in the State of Mississippi and in the Northern District of Mississippi.

9. More specifically, Defendant, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and affiliated services in the United States, the State of Mississippi, and the Northern District of Mississippi. Based upon public information, Defendant has committed patent infringement in the State of Mississippi and in the Northern District of Mississippi. Defendant solicits customers in the State of Mississippi and in the Northern District of Mississippi. Defendant has many paying customers who are residents of the State of Mississippi and the Northern District of Mississippi and who use Defendant's products in the State of Mississippi and in the Northern District of Mississippi.

10. Venue is proper in the Northern District of Mississippi pursuant to 28 U.S.C. §§ 1391 and 1400(b).

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant resides in the Northern District of Mississippi because of its formation

under the laws of Mississippi, which subjects it to the personal jurisdiction of this Court.

BACKGROUND INFORMATION

12. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office on March 27, 2012 (the '303 Patent), June 18, 2013 (the '475 Patent), and September 17, 2013 (the '002 Patent) after full and fair examinations. Golden Rule is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patents-in-Suit including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages.

13. Based upon public information, Defendant owns, operates, advertises, and/or controls the website www.neverleakcompany.com, through which Defendant advertises, sells, offers to sell, provides and/or educates customers about its products and services, including but not limited to the following products and related services (the "Accused Product and Services"): Electrical Mast Connection for Shingle Roof, Electrical Mast Connection Master Flash, Master Flash® Retrofit, and Aztec Master Flash. See Exhibits F-I.

14. Golden Rule owns the copyright(s) to the photograph (the "Photograph") used by NeverLeak on the Website. See Exhibit D-F.

15. Golden Rule registered the Photograph with the US Copyright Office. See Exhibit D. The US Copyright Registration number is VA 2-075-960. See Exhibit E.

16. Without permission or authorization from Golden Rule, NeverLeak copied and displayed the Photograph in violation of Golden Rule's copyright. See Exhibit F.

17. On information and belief, the Photograph was copied from another website or publication and used by NeverLeak without license or permission, thereby infringing on the copyright.

18. On information and belief, Neverleak was aware of facts and/or circumstances from which this copyright infringement was apparent.

19. Based on this totality of circumstances, NeverLeak cannot claim that it is not aware of the widespread copyright infringement activities. Such a claim would amount to willful blindness to the copyright on the part of NeverLeak.

20. On information and belief, NeverLeak engaged in the unauthorized use of the Photograph knowingly and in violation of United States copyright laws.

21. On information and belief, NeverLeak has received a financial benefit directly attributable to the use of the Photograph, specifically by way of increased sales for NeverLeak.

22. As a result of NeverLeak's misconduct, Golden Rule has been substantially harmed.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,141,303

23. Golden Rule re-alleges and incorporates by reference each of paragraphs above.

24. Golden Rule is informed and believes that Defendant has infringed and continues to infringe the '303 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing products under the Electrical Mast Connection for Shingle Roof, Electrical Mast Connection Master Flash, Master Flash® Retrofit, and Aztec Master Flash product names. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '303 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises roof flashing products that form a weather-proof seal about pipes of different diameters where installation of the flashing over the top of the pipe is not possible, including at least the Accused Products and Services. For example, the Accused Products and Services infringe one or more of the claims of the '303 Patent by providing to Defendant's customers roof flashing with "easy to see pipe diameters make for painless on-site installation." See Exhibit H; *see also, e.g., See Exhibits F-I.* Defendant's Accused Product is described as providing

“weather protection,” and being “made of EPDM,” or ethylene propylene diene monomer, which is an elastomeric material. See Exhibit H. Defendant’s Accused Product also possesses a longitudinal opening that allows the flashing to be spread apart and placed about a pipe. See Exhibit I (See No. 4). Afterwards, the flashing’s opening members are pressed together and secured by coupling members that seal the longitudinal opening. Id. Defendant’s Accused Products and Services are available for sale on its website and at retailer locations in this district and throughout the United States. See Exhibits F-I.

25. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the ’303 Patent in this district and elsewhere in the United States, by its intentional acts which have, among other things, successfully encouraged, instructed, enabled, and otherwise caused Defendant’s customers to use the Accused Products and Services in an infringing manner. Despite knowledge of the ’303 Patent as early as the date of service of the Original Complaint in this action, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the ’303 Patent. See Exhibit I. Based upon public information, Defendant’s source of revenue and business focus is the provision of and sale of the Accused Products and Services. Based upon public

information, Defendant has specifically intended its customers to use its products and services in such a way that infringes the '303 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See Exhibits F-I. Specifically, Defendant offers services to select, deploy and integrate Defendant's products to assist its customers in installing roof flashing. See Exhibits F-I. Based upon public information, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products and Services.

26. Defendant's aforesaid activities have been without authority and/or license from Golden Rule.

27. Golden Rule is entitled to recover from Defendant the damages sustained by Golden Rule as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

28. Defendant's infringement of Golden Rule's rights under the '303 Patent will continue to damage Golden Rule, causing irreparable harm to Golden Rule for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 8,464,475

29. Golden Rule re-alleges and incorporates by reference each of paragraphs above.

30. Golden Rule is informed and believes that Defendant has infringed and continues to infringe the '475 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing products under the Electrical Mast Connection for Shingle Roof, Electrical Mast Connection Master Flash, Master Flash® Retrofit, and Aztec Master Flash product names. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '475 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises roof flashing products that form a weather-proof seal about pipes of different diameters where installation of the flashing over the top of the pipe is not possible, including at least the Accused Products and Services. For example, the Accused Products and Services infringe one or more of the claims of the '303 Patent by providing to Defendant's customers roof flashing with "easy to see pipe diameters make for painless on-site installation." See **Exhibit H**; *see also*,

e.g., See Exhibits F-I. Defendant's Accused Product is described as providing "weather protection," and being "made of EPDM," or ethylene propylene diene monomer, which is an elastomeric material. See Exhibit H. Further, Defendant's Accused Products have a foot associated with a reinforced material, such as metal. See Exhibit H. Defendant's Accused Products and Services are available for sale on its website and at retailer locations in this district and throughout the United States. See Exhibits F-I.

31. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '475 Patent in this district and elsewhere in the United States, by its intentional acts which have, among other things, successfully encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. Despite knowledge of the '475 Patent as early as the date of service of the Original Complaint in this action, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the '475 Patent. See Exhibit I. Based upon public information, Defendant's source of revenue and business focus is the provision of and sale of the Accused Products and Services. Based upon public information, Defendant has specifically intended its customers to use its products

and services in such a way that infringes the '475 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See Exhibits F-I. Specifically, Defendant offers design services to select, deploy and integrate Defendant's products to assist its customers in installing roof flashing. See Exhibits F-I. Based upon public information, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products and Services.

32. Defendant's aforesaid activities have been without authority and/or license from Golden Rule.

33. Golden Rule is entitled to recover from Defendant the damages sustained by Golden Rule as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

34. Defendant's infringement of Golden Rule's rights under the '475 Patent will continue to damage Golden Rule, causing irreparable harm to Golden Rule for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,534,002

35. Golden Rule re-alleges and incorporates by reference each of paragraphs above.

36. Golden Rule is informed and believes that Defendant has infringed and continues to infringe the '002 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing products under the Electrical Mast Connection for Shingle Roof, Electrical Mast Connection Master Flash®, Master Flash® Retrofit, and Aztec Master Flash product names. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '002 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises roof flashing products that form a weather-proof seal about pipes of different diameters where installation of the flashing over the top of the pipe is not possible, including at least the Accused Products and Services. For example, the Accused Products and Services infringe one or more of the claims of the '303 Patent by providing to Defendant's customers roof flashing with "easy to see pipe diameters make for painless on-site installation." See Exhibit H; *see also*,

e.g., See Exhibits F-I. Defendant's Accused Product is described as providing "weather protection," and being "made of EPDM," or ethylene propylene diene monomer, which is an elastomeric material. See Exhibit H. Defendant's Accused Product also possesses a longitudinal opening that allows the flashing to be spread apart and placed about a pipe that is not capable of receiving the roof flashing over the top. See Exhibit I (See No. 4). Defendant's Accused Products and Services are available for sale on its website and at retailer locations in this district and throughout the United States. See Exhibits F-I.

37. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '002 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. Despite knowledge of the '002 Patent as early as the date of service of the Original Complaint in this action, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the '002 Patent. See Exhibit I. Based upon public information, Defendant's source of revenue and business focus is the provision of and sale of the Accused Products and

Services. Based upon public information, Defendant has specifically intended its customers to use its products and services in such a way that infringes the '002 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See Exhibits F-I. Specifically, Defendant offers design services to select, deploy and integrate Defendant's products to assist its customers in installing roof flashing. See Exhibits F-I. Based upon public information, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products and Services.

38. Defendant's aforesaid activities have been without authority and/or license from Golden Rule.

39. Golden Rule is entitled to recover from Defendant the damages sustained by Golden Rule as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

40. Defendant's infringement of Golden Rule's rights under the '002 Patent will continue to damage Golden Rule, causing irreparable harm to Golden Rule for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT IV
INFRINGEMENT OF U.S. COPYRIGHT NO. VA 2-075-960

41. Golden Rule repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

42. The Photograph was an original, creative work in which Golden Rule owns protectable copyright interests.

43. Golden Rule has not licensed Neverleak or any of its users to use the Photograph in any manner, nor has Golden Rule assigned any exclusive rights in the copyright to NeverLeak

44. Without permission or authorization from Golden Rule and in willful violation of Golden Rule's rights under 17 U.S.C. §106, NeverLeak reproduced the Photograph.

45. On information and belief, without permission or authorization from Golden Rule and in willful violation of Golden Rule's rights under 17 U.S.C. §106, NeverLeak displayed the Photograph on the internet and/or in print publication.

46. NeverLeak's reproduction of the Photograph and display of the Photograph on the internet and/or in print publication constitutes copyright infringement.

47. On information and belief, thousands of people have viewed the unlawful copies of the Photograph.

48. On information and belief, NeverLeak had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction of Golden Rule's copyrighted material.

49. NeverLeak's copyright infringement has damaged Golden Rule in an amount to be proven at trial.

JURY DEMAND

50. Golden Rule demands a trial by jury on all issues.

PRAYER FOR RELIEF

51. Golden Rule respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;
- B. An adjudication that Defendant has induced infringement of one or more claims of the Patents-in-Suit;

- C. An adjudication that Defendant has infringed on Golden Rule's copyright in the Photograph in violation of 17 U.S.C §501 *et seq.*;
- D. An award of damages to be paid by Defendant adequate to compensate Golden Rule for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Golden Rule for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- E. That the Court award damages and monetary relief as follows:
 - a. Statutory damages against Neverleak pursuant to 17 U.S.C. §504 (c) of \$150,000 per infringement or in the alternative Golden Rule's actual damages and Defendant's wrongful profits in an amount to be proven at trial;
 - b. Plaintiff's attorney's fee pursuant to 17 U.S.C. §505;
 - c. Plaintiff's costs;
- F. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and its respective officers, agents, servants,

employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;

G. That this Court declare this to be an exceptional case and award Golden Rule its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,

H. Any further relief that this Court deems just and proper.

Respectfully submitted: December 12, 2017



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