

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TOUGH BAGS, LLC

Plaintiff,

v.

**SURPLUS LINK 1, LLC, a
Georgia Limited Liability
Company d/b/a RAM
INSULATION, INC., d/b/a RAM
INSULATION VACUUM BAGS,
d/b/a RHINO INSULATION
VACUUM BAGS and BARRY
DUFAULT a/k/a CHRIS
DUFAULT**

Defendants.

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

CASE NO:

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT

Plaintiff Tough Bags, LLC (“Plaintiff” or “Tough Bags”) files this its Complaint (“Complaint”) seeking injunctive and compensatory relief against Defendants Surplus Link 1, LLC, d/b/a Ram Insulation, Inc. d//b/a Ram Insulation Vacuum Bags, d/b/a Rhino Insulation Vacuum Bags and Barry Dufault a/k/a Chris Dufault (collectively, “SL1” or “Defendants”) for (i) infringement of U.S. Patent No. D872,397 S (“397 patent” or “Patent-in-Suit”); and (ii) common law unfair competition.

In support of its Original Complaint, Tough Bags shows as follows:

PARTIES

1. Tough Bags, LLC is a Texas Limited Liability Company with its principal place of business in Frisco, Texas.

2. On information and belief, Surplus Link 1, LLC is a Georgia Limited Liability Company located at 835 Malvern Hill, Johns Creek, GA 30022 and at their warehouse at 6649 Peachtree Industrial Blvd Suite B, Norcross, GA 30092 that does business in Georgia. Further, on information and belief, Surplus Link 1, LLC does business as the following: Ram Insulation, Inc., (on information and belief, this is not a registered corporation); (ii) ‘Ram’ Insulation Vacuum Bags; and (iii) ‘Rhino’ Insulation Vacuum Bags.

3. On information and belief, Barry Dufault a/k/a Chris Dufault is an individual who resides at 835 Malvern Hill, Alpharetta, GA 30022 or 835 Malvern Hill, Johns Creek, GA 30022 and is regularly present at the business warehouse at 6649 Peachtree Industrial Blvd Suite B, Norcross, GA 30092.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.* and the common law of the state of Georgia.

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

6. This Court has supplemental jurisdiction over the claims in this Complaint that arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a).

7. This Court has personal jurisdiction over Defendants because Defendants have sufficient contacts with the state of Georgia and this Judicial District to subject them to specific and general jurisdiction. The contacts with the state of Georgia and this Judicial District and Division include the sales of insulation vacuum bags and related items. As set forth in this Complaint, Defendants resides in this district and has a regular place of business in this district.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 1400(b), because Defendants have committed acts in this judicial district giving rise to this action, reside in this district and has a regular place of business in this district.

BACKGROUND FACTS

A. Patent-in-Suit

9. The ‘397 Patent entitled, “Insulation Vacuum Bag,” was duly and legally issued by the United States Patent and Trademark Office on January 7, 2020, after full and fair examination. A copy of the ‘397 Patent is attached as Exhibit “A.”

10. Tough Bags has owned the ‘397 Patent throughout the period of Defendants’ infringing acts and still owns this patent. Tough Bags is the sole owner of all rights, title, and interest in the ‘397 Patent and possess all rights of recovery, including the right to recover all past damages under the ‘397 Patent.

11. The claims of the patent-in-suit carry a presumption of validity under 35 U.S.C. § 282(a) and are enforceable.

B. Tough Bags’ Innovations

12. Tough Bags is a family-owned business that began designing, manufacturing, distributing, offering for sale and selling insulation vacuum bags to consumers and professionals in 2014. At this same time, Tough Bags developed its website at www.toughbags.com and www.insulationvacbags.com (“Tough Bags’ Websites”) to promote and sell its Tough Bags and related goods. Since Tough Bags began operating its business, it has expended significant resources and funds designing its insulation vacuum removal bags, developing and maintaining relationships with customers and factory representatives, manufacturing processes, technical data, developing and maintaining its website, marketing, and search engine optimization (“SEO”). Tough Bags has developed a significant amount of goodwill associated with its common law trademark TOUGH BAGS along with the distinctive design of its ‘397 Patent in the construction and insulation industry. This bag is distinctive due to its size, shape, and visible fabric weave design.

13. Tough Bags designed the below-pictured distinctive patented insulation vacuum bag that is marketed and sold under the Tough Bags brands, ToughBags + Collar (featured on Tough Bags' Websites). (*See also* Exhibit "A").

TOUGHBAGS[™]
Collar



C. Infringing Use

14. Defendants manufacture and import into the United States to distribute, offer for sale and sell insulation vacuum bags for consumer and professional insulation removal, storage and disposal. Defendants market, distribute, offer for sale and sell their products through their online websites, their own distribution facilities in the United States and a network of retailers in the United States, including at least one of Tough Bags' former Texas customers.

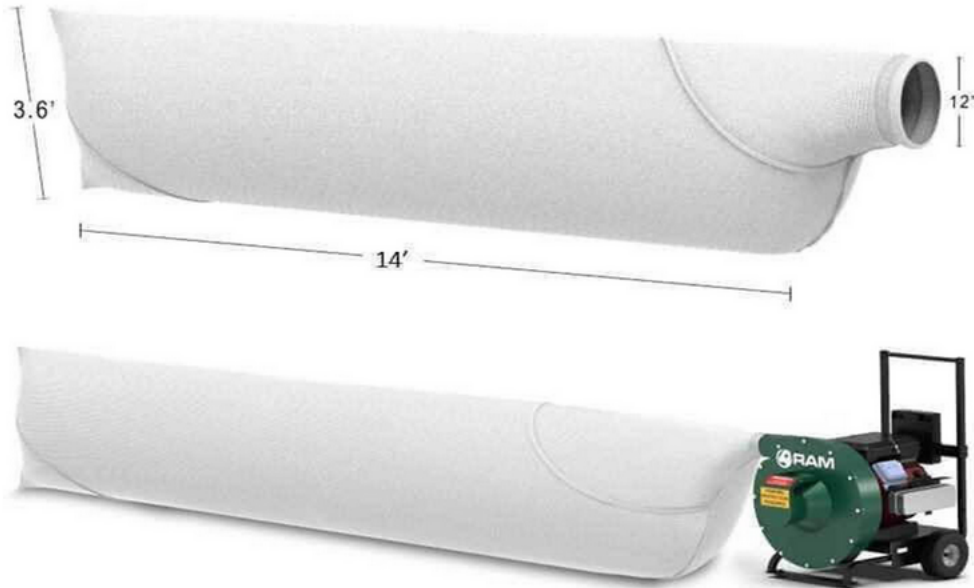
15. Defendants do business through their websites at <https://www.ramvacbags.com> , <https://rhinovacbag.com> (“Defendants’ Websites”) along with third-party retailer websites, and their infringing products can be purchased within the Northern District of Georgia. Also, on information and belief, Defendants have a pending patent for an insulation vacuum trailer bag (*see* <https://www.ramvacbags.com/insulation-vacuum-trailer-bag-2-bags/>) and each of Defendants’ Websites include a copyright notice, indicating Defendants’ desire for others to respect their intellectual property.

16. Specifically, Defendants directly ship, distribute, offer for sale, sell and advertise insulation vacuum bags that infringe, either literally or under the doctrine of equivalents, the ‘397 Patent. Defendants’ infringing bags are substantially similar to Tough Bags’ ‘397 Patent, such that there is a likelihood of confusion as to the source or origin of Defendants’ bags.

17. Defendants’ infringing products are marketed and sold under the Ram or Ramvac brand and Rhino brand for the same two infringing insulation vacuum bags with a collar, as pictured below (featured on Defendants’ websites):

FLEX BAG

115 CF COLLAR



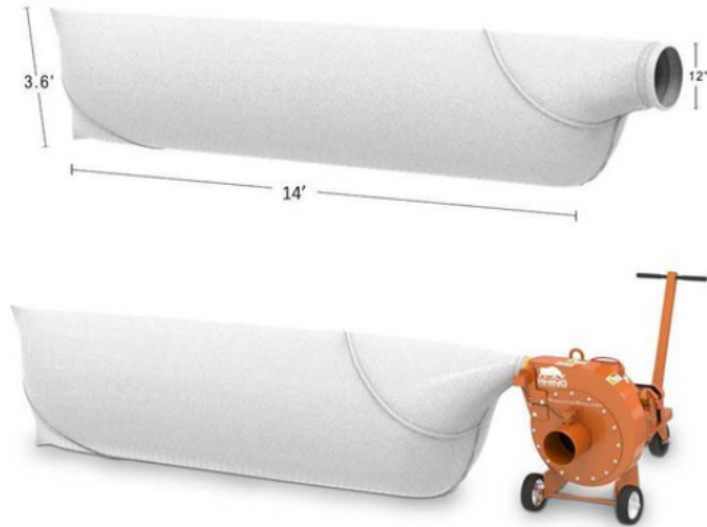
RAM

Insulation Vacuum Bag - 14 FT Flex-Bag + EZ Fill Collar

\$200.00

FLEX BAG

14-FT COLLAR



RHINO

Insulation Vacuum Bag 14 FT EZ-FILL COLLAR 125 CF

\$200.00

18. Comparing the drawings in the '397 patent set forth in attached Exhibit "A" with the infringing products as shown above, an ordinary observer with an understanding of the relevant prior art would be deceived into believing that each of the Infringing Products is the same as the patented design of the '397 patent.

19. Defendants have never had and continue to have no authority, license or other permission from Tough Bags to manufacture, sell, distribute, market, advertise, promote or offer for sale the infringing products.

20. On information and belief, Defendants were aware, should have been aware or were willfully blind of their infringing activities at least by the date they began manufacturing, importing to the United States, advertising, marketing, promoting, distributing, selling, and/or offering for sale the infringing products.

21. Defendants have been engaging in the above-described infringing activities and unfairly competing with Tough Bags knowingly, intentionally, or with reckless disregard or deliberate ignorance to Tough Bags' rights.

22. Defendants' above-described infringing activities are likely to create a false impression and deceive consumers, the public, and professionals in the trade into believing that there is a connection or affiliation between the infringing products and Tough Bags. Thus, Defendants' infringement is likely to cause confusion as to the source or origin of the infringing products.

23. Defendants unfairly compete with Tough Bags by selling its nearly identical infringing products at a substantially lower price than Tough Bags sells its distinctive patented insulation vacuum bags. Specifically, insulation vacuum

bags are often purchased in bulk and Defendants provide steep discounts far below the price of Tough Bags' bulk order pricing to the same pool of customers.

24. On information and belief, Defendants will continue their infringing activities, unless otherwise restrained.

25. Tough Bags is suffering irreparable injury, has suffered substantial damages resulting from Defendants' above-described activities, and has no adequate remedy at law.

COUNT I – INFRINGEMENT OF DESIGN PATENT NO.

D872,397

26. Tough Bags realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

27. Defendants have infringed, literally and/or under the doctrine of equivalents, and continue to directly infringe one or more claims of the '397 patent by, among other things, making, manufacturing, importing, offering for sale, selling, and using insulation vacuum bags that embody the patented design in the '397 Patent in violation of 35 U.S.C. § 271. The infringing products identified above are 14-foot collar insulation vacuum bags marketed under the "RAM" or "RAMVAC" brand and "RHINO" brands. Defendants advertise and sell their infringing products through their websites and third-party retailers. Defendants will continue to infringe the '397 Patent unless enjoined by the Court.

28. Comparing the drawings in the '397 patent set forth in attached Exhibit "A" with the infringing products as shown above, an ordinary observer with an understanding of the relevant prior art would be deceived into believing that each of the Infringing Products is the same as the patented design of the '397 patent.

29. Plaintiff has complied with the marking and notice requirements of 35 U.S.C. § 287.

30. Defendants' infringement has caused Plaintiff to suffer damages. On information and belief, said infringement was willful, making this an exceptional case under 35 U.S.C. § 285.

31. As an additional remedy, Plaintiff is entitled to an award of Defendants' total profits earned, under 35 U.S.C. § 289, from Defendants' infringement of the '397 Patent.

COUNT II – UNFAIR COMPETITION

32. Tough Bags realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

33. By their foregoing deceptive and infringing activity, each of the Defendants have unfairly competed by creating a likelihood of confusion as to the source or origin of Tough Bags' distinctive insulation vacuum bags.

34. Tough Bags created its patented product (protected under the ‘397 Patent) through extensive time, labor, skill and expense.

35. Defendants slightly modified Tough Bags’ product and design and sold these products in competition with Tough Bags, thereby gaining an advantage over Tough Bags, as Defendants were not burdened with investing extensive time, labor, skill and expense of Tough Bags.

36. Defendants also unfairly compete with Tough Bags by selling its nearly identical infringing products at a substantially lower price than Tough Bags sells its distinctive patented insulation vacuum bags. Specifically, insulation vacuum bags are often purchased in bulk and Defendants provide steep discounts far below the price of Tough Bags’ bulk order pricing to the same pool of customers.

37. Tough Bags has suffered significant economic loss as a result of Defendants’ actions.

38. Therefore, Defendants have unfairly competed in violation of Georgia common law.

JURY DEMAND

Plaintiff demands a trial by jury for all those things triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. A judgment that Defendants infringed on Tough Bags' '397 Patent;
- b. That Defendants, their agents, servants and employees and all those in privity, concert or participation with them, be enjoined from importing, manufacturing, using, marketing, advertising, offering for sale and selling any product in violation of Plaintiff's '397 Patent.
- c. A judgment awarding Tough Bags all damages, including treble damages, based on any design patent infringement found to be willful, pursuant to 35 U.S.C. § 284;
- d. That Defendants provide an accounting for and under 35 U.S.C. § 289, pay to Plaintiff all profits which Defendants derived from the infringement of Plaintiff's '397 Patent;
- e. That Defendants be required to pay Plaintiff its costs incurred herein and reasonable attorney's fees, as provided under 35 U.S.C. § 285;
- f. That Defendants be required to pay Plaintiff pre-judgment and post-judgment interest; and
- g. Grant all other relief to Tough Bags that Tough Bags may be entitled at law or in equity, whether pled or unpled.

Date: February 22, 2024

Respectfully submitted,

/s/ Samuel S. Woodhouse

Samuel S. Woodhouse

Georgia Bar No. 755070

The Woodhouse Law Firm, LLC

260 Peachtree Street, NW, Suite 1402

Atlanta, Georgia 30303

Telephone: (404) 214-7200

Email: swoodhouse@woodhouselawfirm.com

/s/ Wendy B. Mills

Wendy B. Mills

Texas Bar No. 24032861

(To Be Admitted *Pro Hac Vice*)

WB Mills, PLLC

2626 Cole Ave., Suite 300

Dallas, Texas 75204

Telephone: (214) 969-5995

Email: wbm@wbmillslaw.com

ATTORNEY FOR PLAINTIFF

TOUGH BAGS, LLC