

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNDERCOVER, INC. and LAURMARK
ENTERPRISES, INC. d/b/a BAK
INDUSTRIES,

Plaintiff,

v.

ROUGH COUNTRY, LLC,

Defendant.

Case No. 1:24-cv-1093

JURY DEMAND

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiffs UnderCover, Inc. (“UnderCover”), and Laurmark Enterprises, Inc. d/b/a BAK Industries (“BAK”) (collectively, “Plaintiffs”) file this Complaint for patent infringement against Defendant Rough Country, LLC (“Defendant”), and allege as follows:

I. BACKGROUND

2. This is a Complaint for patent infringement of U.S. Patent Nos. 9,815,358 (“358 Patent”), 8,690,224 (“224 Patent”), and 7,537,264 (“264 Patent”) (collectively, “Asserted Patents”) under 35 U.S.C. § 271.

3. Plaintiffs are indirect wholly owned subsidiaries of RealTruck, Inc. (“RealTruck”). RealTruck and its subsidiaries are global leaders in the development, manufacture, and sale of high quality, innovative pickup truck and Jeep accessories. Headquartered in Michigan, RealTruck is located at the heart of the automotive industry. Plaintiffs are premier manufacturers of resilient and durable truck bed covers. These devices, also known as “tonneau covers” or “tonneaus,” are predominately used on pickup trucks to cover and secure truck beds against dirt, debris, weather,

and other environmental contaminants, as well as to improve the aesthetic quality, security, and aerodynamics of pickup trucks generally.

4. Whether driven on the highway or a back country road, Plaintiffs' innovative tonneau covers have earned a reputation second to none for keeping a truck bed and its cargo clean, secure, and dry, regardless of the weather.

5. Defendant has directly infringed and continues to infringe, directly and/or indirectly, the Asserted Patents by making, using, selling, offering to sell and/or importing in or into the United States, without authority, pickup truck bed covers that infringe one or more claims of each of the Asserted Patents. The accused pickup truck bed covers include at least the Rough Country Hard Tri-Fold Flip Up Bed Cover.

II. THE PARTIES

6. Plaintiff UnderCover is a domestic manufacturing company that is organized and existing under the laws of the State of Delaware, with its principal place of business located at 59 Absolute Drive, Rogersville, MO 65742.

7. Plaintiff BAK is a domestic manufacturing company that is organized and existing under the laws of the State of Texas, with its principal place of business located at 5400 Data Court, Ann Arbor, MI 48108.

8. On information and belief, Defendant is a limited liability company organized under the laws of Delaware with a regular and established place of business at 2450 Huish Road, Dyersburg, Tennessee 38024-1725.

9. On information and belief, Defendant's registered agent, through which it can receive service of process, is Cogency Global, Inc., with an address at 992 Davison Drive, Suite B, Nashville, Tennessee 37205-1051.

III. JURISDICTION AND VENUE

10. This action arises under the patent laws of the United States, 35 U.S.C. § 101, et seq. This Court's jurisdiction over this action is proper under the following statutes, including 35 U.S.C. § 271, et seq., 28 U.S.C. § 1331 (federal question jurisdiction), and § 1338 (jurisdiction over patent actions).

11. This Court has personal jurisdiction over Defendant because Defendant has purposefully availed itself of the rights and benefits of the laws of the State of Tennessee, having engaged in continuous, systematic, and substantial activities within this State, including marketing and sales of products within this State and this District. Defendant has its mailing address within this State and this District, and Defendant's agent is also located in this State. On information and belief, this Court has personal jurisdiction over Defendant because Defendant has committed the acts giving rise to Plaintiffs' claims for patent infringement within this State and this District.

12. On information and belief, Defendant maintains and operates commercial websites accessible to residents of the State of Tennessee and this District, through which Defendant promotes, offers for sale, and sells the infringing products. Defendant's website, at <https://www.roughcountry.com>, is accessible to consumers in the United States, including those in the State of Tennessee and this judicial District, where Rough Country supplies information about the infringing products that can be purchased and/or used in this judicial District.

13. On information and belief, Defendant has committed acts of infringement in this District and has one or more regular and established places of business within this District under the language of 28 U.S.C. § 1400(b). Defendant maintains a permanent physical presence within the Western District of Tennessee and conducts business from its 2450 Huish Rd, Dyersburg, TN 38024 location.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 1400(b) because the Defendant has a place of business and conducts business in this District, including: (i) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that these infringing products will be purchased by consumers in this forum; and (ii) regularly doing or soliciting business and deriving substantial revenue from goods and services to individuals in Tennessee and in this judicial District.

IV. PLAINTIFFS AND THE ASSERTED PATENTS

15. RealTruck acquired UnderCover in 2010. UnderCover is a dominant manufacturer of high quality, innovative one-piece ABS composite and hard folding tonneau covers world-wide. Since its inception in 1999, the UnderCover name has become synonymous with excellence and is one of the most recognized brands in the truck aftermarket industry.

16. Founded in 1988 as a plastics manufacturer of bed liners and caps, BAK entered the tonneau market in the early 2000s. BAK quickly expanded into a number of styles including quad-folding and aluminum slat roll-up tonneau covers. In 2014, RealTruck acquired BAK to add another premium brand name to its portfolio of products and to enhance its ability to service customers while continuing to offer innovative and high quality products.

17. Whether driven on the highway or a back country road, Plaintiffs' innovative tonneau covers have earned a reputation second to none for keeping a truck bed and its cargo clean, secure, and dry, regardless of the weather.

18. Plaintiffs continue to provide high quality, innovative tonneau products and accessories to this day. Plaintiffs' tonneau covers and accessories are well known for their quality, value, and ease of use. The stylish aesthetics, unique features, and ease of installation are hallmarks of Plaintiffs' products. A culture of innovation drives Plaintiffs' businesses.

19. Plaintiffs have a previous history with the Defendant. Starting in approximately 2015, a third party, Rugged Liner, assisted the Defendant in a direct import program from China. Rugged Liner was acquired by the successor entity that eventually became RealTruck in 2016.

20. Following its acquisition of Rugged Liner, RealTruck's subsidiaries, including the Plaintiffs, worked to offer additional product assortments including a soft folding cover, a top mount hard tri folding cover, and a Flush Mount Hard Fold to the Defendant. Additionally, Undercover had pitched a quad fold flip up cover to Defendant that contains nearly identical components as the Accused Product. As part of the agreement, Defendant expressly acknowledged that RealTruck's predecessor owned intellectual property, including but not limited to patents, used within Rough Country branded truck bed covers that shall remain the exclusive property of RealTruck's predecessor.

21. However, in 2023 the Defendant decided to cease its business relationship with RealTruck and its subsidiaries. Eventually, the Defendant sourced the Accused Product from another supplier resulting in the sales of the Accused Product.

A. U.S Patent 9,815,358

22. On November 14, 2017, U.S. Patent No. 9,815,358 entitled "Foldable Tonneau Cover with an Extruded Forward Section" was duly and lawfully issued. A true and correct copy of the '358 Patent is attached to this Complaint as **Exhibit A**.

23. UnderCover is the owner, by valid assignment, of the entire right, title, and interest in and to the '358 Patent. The '358 Patent is valid, enforceable, and is currently in full force and effect.

B. U.S. Patent 8,690,224

24. On April 8, 2014, U.S. Patent No. 8,690,224 entitled “Pick-Up Truckbox Cover” was duly and lawfully issued. A true and correct copy of the ‘224 Patent is attached to this Complaint as **Exhibit B**.

25. BAK is the owner, by valid assignment, of the entire right, title, and interest in and to the ‘224 Patent. The ‘224 Patent is valid, enforceable, and is currently in full force and effect.

C. U.S. Patent 7,537,264

26. On May 26, 2009, U.S. Patent No. 7,537,264 entitled “Pick-Up Truck Box Cover,” was duly and lawfully issued. A true and correct copy of the ‘264 Patent is attached to this Complaint as **Exhibit C**.

27. BAK is the owner, by valid assignment, of the entire right, title, and interest in and to the ‘264 Patent. The ‘264 Patent is valid, enforceable, and is currently in full force and effect.

V. GENERAL ALLEGATIONS

28. Defendant has not obtained a license to any of the Asserted Patents.

29. Defendant does not have Plaintiffs’ permission to make, use, sell, offer to sell, or import products or practice methods that are covered by one or more claims of any of the Asserted Patents.

30. Defendant has made, used, sold, offered to sell, and/or imported into the United States products as claimed in each of the Asserted Patents.

31. Defendant has infringed (literally and/or under the doctrine of equivalents), directly, indirectly, and/or through subsidiaries, agents, representatives, or intermediaries, one or more claims of each of the Asserted Patents by making, using, importing, testing, supplying, causing to be supplied, selling, and/or offering for sale in the United States truck bed covers that infringe at least one claim of one or more of the Asserted Patents, including but not limited to the

Rough Country Hard Tri-Fold Flip Up Bed Cover series of truck bed covers (the “Accused Products”).

32. Defendant’s customers have directly infringed the Asserted Patents by using the Accused Products. Through its product manuals, website, and/or sales and marketing activities, Defendant solicited, instructed, encouraged, and aided and abetted its customers to purchase and use the Accused Products in an infringing way.

33. Defendant has had knowledge of the Asserted Patents at least through Plaintiffs’ sending of (and Defendant’s receipt of) notice letters to Defendant via FedEx on January 30, 2024, which notice letters identified the Accused Products as infringing the ‘264 Patent, ‘224 Patent, and the ‘358 Patent.

34. By receiving such notice of infringement, Defendant obtained a subjective belief that there is a high probability that the Accused Products infringe the Asserted Patents. Despite being put on notice of infringement, on information and belief, Defendant has not taken any actions to avoid the conduct alleged to infringe and has not sought to remedy its infringements by offering to take a license. Defendant’s failure to act reflects deliberate actions to avoid learning that the Accused Products infringe the Asserted Patents and, more generally, a policy of not earnestly reviewing and respecting the intellectual property of others.

35. Defendant’s actions after learning of the Asserted Patents were with specific intent to cause infringement of one or more claims of each of the Asserted Patents.

36. Defendant was previously a Respondent in International Trade Commission Investigation No. 337-TA-1345, Certain Automated Retractable Vehicle Steps and Components Thereof, showing a pattern of infringement. In that investigation, Defendant agreed to a consent order prohibiting their continued importation of the accused product.

37. Further discovery may reveal earlier knowledge of one or more of the Asserted Patents, which would provide additional evidence of Defendant's specific intent, willful blindness, and/or willful infringement of the Asserted Patents.

38. Plaintiffs have been damaged as a result of Defendant's infringing conduct. Defendant is therefore liable to Plaintiffs in an amount that adequately compensates Plaintiffs for Defendant's infringement, 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.

39. In addition, for the reasons discussed herein, Defendant's infringing activities detailed in this Complaint and accompanying claim charts have been willful, egregious, wanton, and deliberate in disregard to Plaintiffs' rights, justifying a finding of willful infringement, enhanced damages under 35 U.S.C. § 284 and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. 47.

40. Attached hereto as **Exhibits D-F**, and incorporated herein by reference, are representative claim charts detailing how exemplar Accused Products have infringed the Asserted Patents.

41. For each count of infringement listed below, Plaintiffs incorporate and restate the allegations contained in the preceding paragraphs, including these General Allegations, as if set forth fully in each count of infringement.

VI. COUNT I: INFRINGEMENT OF U.S. PATENT 9,815,358

42. Plaintiffs incorporate the previous paragraphs of this Complaint as if fully set forth herein.

43. UnderCover is the owner of all rights, title, and interest in the '358 Patent, including the right to bring this suit for injunctive relief and damages.

44. Defendant has and continues to directly infringe one or more claims of the ‘358 Patent, including, for example, claim 1, in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States infringing products, including, but not limited to, the Accused Products.

45. An exemplary claim chart demonstrating Defendant’s infringement of the ‘358 Patent, as well as Defendant’s customers’ infringement of the ‘358 Patent, which is induced and contributed to by Defendant, is attached as **Exhibit D** and incorporated herein by reference.

46. On information and belief, Defendant has and continues to indirectly infringe the ‘358 Patent in violation of 35 U.S.C. § 271(b) at least by inducing customers to purchase the Accused Products and/or by instructing customers in the use of the Accused Products in a way that directly infringes at least claim 1 of the ‘358 Patent.

47. On information and belief, Defendant has had actual knowledge of the ‘358 Patent and of its infringement of the ‘358 Patent through at least Plaintiffs’ January 30, 2024 notice letter to Defendant.

48. On information and belief, Defendant’s actions represent a specific intent to induce infringement of at least claim 1 of the ‘358 Patent, including through the offer of customer support and installation instructions that direct and encourage its customers to infringe the ‘358 Patent through the use of the Accused Products.

49. On information and belief, Defendant has and continues to indirectly infringe the ‘358 Patent in violation of 35 U.S.C. § 271(c) by contributing to the direct infringement of Defendant’s customers. Since at least when it learned of the ‘358 Patent, Defendant has known or should have known that the intended use of the Accused Products by an end user is both patented and infringing.

50. The Accused Products are not staple articles of commerce suitable for substantial non-infringing use. Instead, the Accused Products are especially made and/or adapted for use in infringing the '358 Patent.

51. As a result of Defendant's infringement of the '358 Patent, Plaintiff has suffered and is owed monetary damages adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

52. Defendant's infringement has been knowing and intentional, egregious, wanton, and deliberate in disregard of Plaintiffs' rights, justifying a finding of willful infringement, enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

VII. COUNT II: INFRINGEMENT OF U.S. PATENT 8,690,224

53. Plaintiffs incorporate the previous paragraphs of this Complaint as if fully set forth herein.

54. BAK is the owner of all rights, title, and interest in the '224 Patent, including the right to bring this suit for injunctive relief and damages.

55. Defendant has and continues to directly infringe one or more claims of the '224 Patent, including, for example, claim 1, in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States infringing products, including, but not limited to, the Accused Products.

56. An exemplary claim chart demonstrating Defendant's infringement of the '224 Patent, as well as Defendant's customers' infringement of the '224 Patent, which is induced and contributed to by Defendant, is attached as **Exhibit E** and incorporated herein by reference.

57. On information and belief, Defendant has and continues to indirectly infringe the '224 Patent in violation of 35 U.S.C. § 271(b) at least by inducing customers to purchase the

Accused Products and/or by instructing customers in the use of the Accused Products in a way that directly infringes at least claim 1 of the '224 Patent.

58. On information and belief, Defendant has had actual knowledge of the '224 Patent and of its infringement of the '224 Patent through at least Plaintiffs' January 30, 2024 notice letter to Defendant.

59. On information and belief, Defendant's actions represent a specific intent to induce infringement of at least claim 1 of the '224 Patent, including through the offer of customer support and installation instructions that direct and encourage its customers to infringe the '224 Patent through the use of the Accused Products.

60. On information and belief, Defendant has and continues to indirectly infringe the '224 Patent in violation of 35 U.S.C. § 271(c) by contributing to the direct infringement of Defendant's customers. Since at least when it learned of the '224 Patent, Defendant has known or should have known that the intended use of the Accused Products by an end user is both patented and infringing.

61. The Accused Products are not staple articles of commerce suitable for substantial non-infringing use. Instead, the Accused Products are especially made and/or adapted for use in infringing the '224 Patent.

62. As a result of Defendant's infringement of the '224 Patent, Plaintiff has suffered and is owed monetary damages adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

63. Defendant's infringement has been knowing and intentional, egregious, wanton, and deliberate in disregard of Plaintiff's rights, justifying a finding of willful infringement,

enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

VIII. COUNT III: INFRINGEMENT OF U.S. PATENT 7,537,264

64. Plaintiffs incorporate the previous paragraphs of this Complaint as if fully set forth herein.

65. BAK is the owner of all rights, title, and interest in the '264 Patent, including the right to bring this suit for injunctive relief and damages.

66. Defendant has and continues to directly infringe one or more claims of the '264 Patent, including, for example, claims 16, 18, and 25, in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States infringing products, including, but not limited to, the Accused Products.

67. An exemplary claim chart demonstrating Defendant's infringement of the '264 Patent, as well as Defendant's customers' infringement of the '264 Patent, which is induced and contributed to by Defendant, is attached as **Exhibit F** and incorporated herein by reference.

68. On information and belief, Defendant has and continues to indirectly infringe the '264 Patent in violation of 35 U.S.C. § 271(b) at least by inducing customers to purchase the Accused Products and/or by instructing customers in the use of the Accused Products in a way that directly infringes at least claims 16, 18, and 25 of the '264 Patent.

69. On information and belief, Defendant has had actual knowledge of the '264 Patent and of its infringement of the '264 Patent through at least Plaintiffs' January 30, 2024 notice letter to Defendant.

70. On information and belief, Defendant's actions represent a specific intent to induce infringement of at least claims 16, 18, and 25 of the '264 Patent, including through the offer of

customer support and installation instructions that direct and encourage its customers to infringe the '264 Patent through the use of the Accused Products.

71. On information and belief, Defendant has and continues to indirectly infringe the '264 Patent in violation of 35 U.S.C. § 271(c) by contributing to the direct infringement of Defendant's customers. Since at least when it learned of the '264 Patent, Defendant has known or should have known that the intended use of the Accused Products by an end user is both patented and infringing.

72. The Accused Products are not staple articles of commerce suitable for substantial non-infringing use. Instead, the Accused Products are especially made and/or adapted for use in infringing the '264 Patent.

73. As a result of Defendant's infringement of the '264 Patent, Plaintiff has suffered and is owed monetary damages adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

74. Defendant's infringement has been knowing and intentional, egregious, wanton, and deliberate in disregard of Plaintiffs' rights, justifying a finding of willful infringement, enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

IX. PRAYER FOR RELIEF

Plaintiffs respectfully request this Court enter judgment in its favor and grant the following relief:

- a. A judgment that Defendant has directly and/or indirectly infringed one or more claims of the Asserted Patents;
- b. A judgment and order requiring Defendant to pay Plaintiffs past and future damages under 35 U.S.C. § 284, including for supplemental damages arising from a

continuing post-verdict infringement for the time between trial and entry of the final judgment with an accounting, as needed, as provided by 35 U.S.C. § 284;

c. A judgment and order that Defendant has willfully infringed the Asserted Patents and requiring Defendant to pay Plaintiffs enhanced damages under 35 U.S.C. § 284 and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285;

d. A judgment and order requiring Defendant to pay Plaintiffs pre-judgment and post-judgment interest on the damages award;

e. A judgment and order requiring Defendant to pay Plaintiffs' costs; and

f. Such other and further relief as the Court may deem just and proper.

X. DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable of right by a jury.

Respectfully submitted this 25th day of April, 2024.

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