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Blackstrap Industries, Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BLACKSTRAP INDUSTRIES, INC.,

Plaintiff,

v.

ROCKBROS USA LLC,

Defendant.

CASE NO. _____

JURY TRIAL DEMAND

(Filed Electronically)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackstrap Industries, Inc. (“Plaintiff” or “Blackstrap”), by counsel and pursuant to Federal Rule of Civil Procedure 8(a), hereby alleges the following in support of its Complaint against Defendant Rockbros USA LLC (“Defendant” or “Rockbros USA”):

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.* Blackstrap owns exclusive rights in the ornamental designs claimed in U.S. Design Patent No. D758,703 (the “D’703 patent”). The USPTO duly issued the D’703 patent, entitled “Hooded Facemask with a Pivoting Mouth Piece,” to inventor and

Blackstrap CEO Abe Shehadeh on June 14, 2016. The priority date of the D'703 patent is April 25, 2013. Blackstrap is the owner and assignee of all rights, title, and interest in the D'703 patent and holds the right to sue at law and recover damages for infringement thereof, including current and past infringement, and to pursue remedies in equity. A true and correct copy of the D'703 patent is attached as Exhibit A.

2. Rockbros USA has infringed and continues to infringe the D'703 patent by, without Blackstrap's authorization, making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, balaclavas that are substantially similar to, or a colorable imitation of, the ornamental balaclava design claimed in the D'703 patent.

3. Blackstrap seeks, among other relief, a permanent injunction preventing Rockbros USA from further infringing the D'703 patent, and damages to compensate Blackstrap for Rockbros USA's infringement.

PARTIES

4. Blackstrap Industries, Inc. is a corporation organized under the laws of the State of Oregon, with a principal place of business at 1305 SE Armour Rd., Suite 100, Bend, Oregon 97702. Blackstrap is a mountain lifestyle gear company that sells balaclavas and various other types of outdoor apparel and accessories. Blackstrap's flagship products have been its balaclavas, many of which are protected by the D'703 patent.

5. On information and belief, Rockbros USA is a limited liability company organized under the laws of the State of New Jersey, with a principal place of business at 758 Lidgerwood Avenue, Elizabeth, NJ 07202. Rockbros USA sells balaclavas under the Rockbros brand via websites such as Amazon, Walmart, eBay, Shien, AliExpress, Alibaba, rockbrosbike.us, and

rockbrosusa.com. See Ex. B, Original Complaint, *Rockbros USA LLC v. Shehadeh, et al.*, Case No. 1:23-cv-17193, ECF No. 1 (N.D. Ill. Dec. 31, 2023); Exs. C¹, D², E³.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is an action arising under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*

7. This Court has personal jurisdiction over Defendant at least because (a) Defendant is incorporated in the State of New Jersey and thus resides in this District; and (b) upon information and belief, Defendant regularly transacts and solicits business in the State of New Jersey by offering for sale, selling, and/or importing products in the State of New Jersey, including via

¹ “ROCKBROS Cold Weather Balaclava Ski Mask for Men Windproof Thermal Winter Scarf Mask Women Neck Warmer Hood for Cycling,” AMAZON, <https://www.amazon.com/ROCKBROS-Weather-Balaclava-Windproof-Thermal/dp/B0814NZ338> (last visited June 27, 2024).

² “ROCKBROS Balaclava for Autumn and Winter Outdoor Sports Unisex,” ROCKBROS, <https://rockbrosbike.us/products/rockbros-cold-weather-balaclava-ski-mask-neck-warmer-hood-for-cycling> (last visited June 27, 2024).

³ “RockBros Ski Mask Balaclava Face Mask for Winter Windproof Fleece Mask Skiing Snowboarding Motorcycle Riding Cycling Neck Warmer for Men Women,” WALMART, <https://www.walmart.com/ip/RockBros-Ski-Mask-Balaclava-Face-Mask-for-Winter-Windproof-Fleece-Mask-Skiing-Snowboarding-Motorcycle-Riding-Cycling-Neck-Warmer-for-Men-Women/676169775> (last visited June 27, 2024); “Sun Protective Anti UV ROCKBROS Cold Weather Balaclava Ski Mask For Men Windproof Thermal Winter Scarf Mask Women Neck Warmer Hood For Cycling,” SHEIN, <https://us.shein.com/goods-p-21844521.html> (last visited June 27, 2024); “ROCKBROS Full Face Masks Winter Balaclava Warm Windproof Ski Hood Cycling Hats,” EBAY, <https://www.ebay.com/itm/175077505862> (last visited June 27, 2024); “ROCKBROS Winter Cycling Mask Fleece Thermal Keep Warm Windproof Cycling Face Mask Balaclava Ski Mask Fishing Skiing Hat Headwear,” ALIEXPRESS, <https://www.aliexpress.us/item/3256806611510915.html> (last visited June 27, 2024); “Outdoor Sports Nylon Windproof Head Cover Hat Ski Bicycle Cycling Motorcycle Full Face Mask Hats Balaclava,” ALIBABA, https://www.alibaba.com/product-detail/Outdoor-Sports-Nylon-Windproof-Head-Cover_1600995145796.html (last visited June 27, 2024).

websites such as Amazon, Walmart, eBay, Shien, AliExpress, Alibaba, rockbrosbike.us, and rockbrosusa.com.

8. Venue is proper under 28 U.S.C. § 1400 at least because Defendant is incorporated in the State of New Jersey.

BACKGROUND

Blackstrap's Pioneering Balaclava Design

9. In 2013, Blackstrap developed its pioneering externally-hinged balaclava design, which is protected by the D'703 patent. The D'703 patent claims an ornamental design of a balaclava that features, among other things, a flared base and a T-shaped mouthpiece that is partially detached from the side pieces of the balaclava such that the horizontal portion of the mouthpiece overlaps the side pieces. The horizontal portion of the T-shaped mouthpiece can be positioned such that it fully covers the wearer's face (Fig. 2), partially covers the wearer's face (Fig. 1), or minimally covers the wearer's face (Fig. 9). Blackstrap pioneered various features of a balaclava, including the T-shaped mouthpiece where the horizontal portion of the "T" is detached from the rest of the balaclava except at both ends where the horizontal portion is attached to the side and center pieces of the balaclava while the vertical portion of the "T" is integrated into the neck portion of the balaclava. Annotated patent figures illustrating certain features of the claimed balaclava are below:

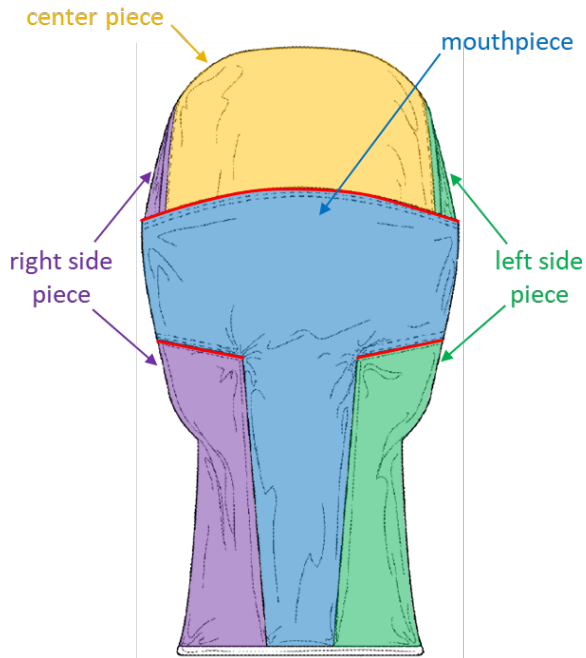


Figure 1. Annotated Figure 2 of the D'703 Patent (showing front view)

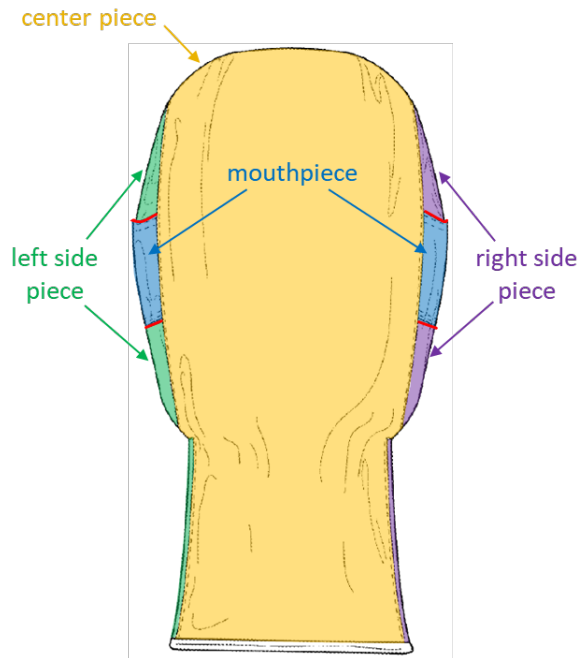


Figure 2. Annotated Figure 4 of the D'703 Patent (showing back view)

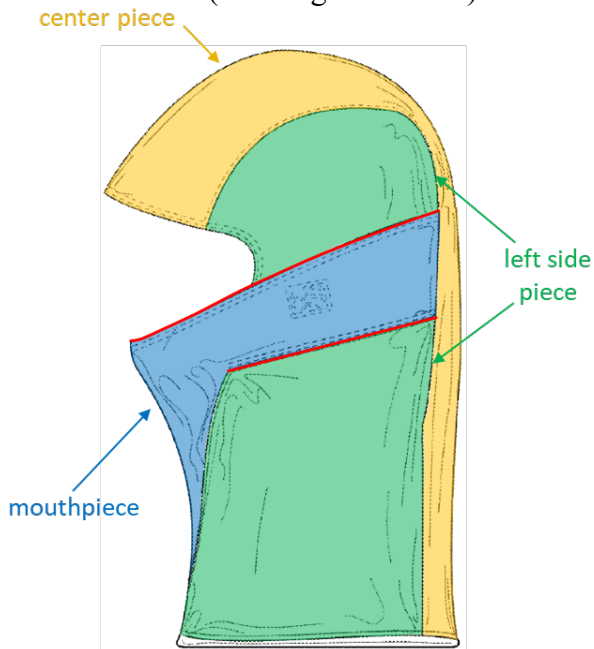


Figure 3. Annotated Figure 5 of the D'703 Patent (showing left side view)

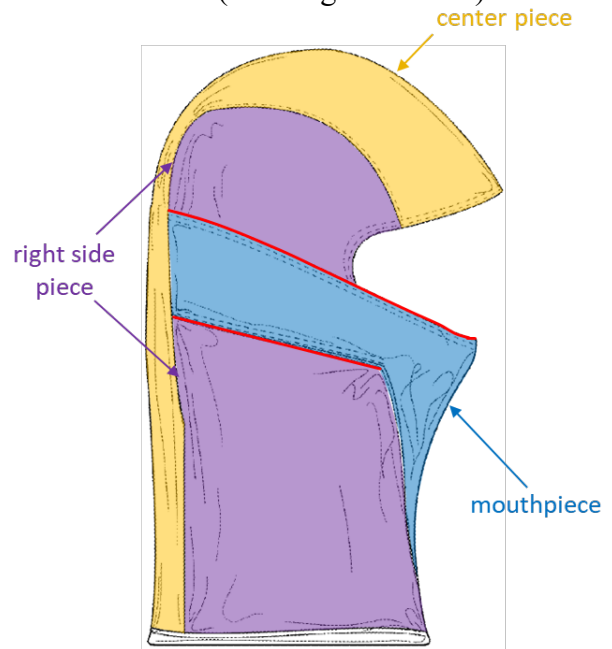


Figure 4. Annotated Figure 6 of the D'703 Patent (showing right side view)

The T-shaped mouthpiece is shown in blue, and the T-shaped mouthpiece's horizontal edges, which are not secured to the underlying side pieces, are indicated by red lines.

10. The balaclava design protected by D'703 patent is embodied by Blackstrap's Hood Balaclava product, shown below:



Figure 5. Marketing image of Blackstrap Hood Balaclava

11. The Blackstrap Hood Balaclava is prominent in the balaclava space. For example, Forbes has recognized it as the “Best Value Ski Mask” for 2024.⁴ It is also one of the first listed search results for “balaclava” on prominent outdoor retailers REI and evo, where it is presented with “top rated” and “bestseller” labels, respectively.⁵ Accordingly, Blackstrap’s intellectual property rights related to its Hood Balaclava product are important to Blackstrap’s success and

⁴ Chris Haslam, *The Best Ski Masks And Balaclavas To Keep The Chills Away This Season*, FORBES (Feb. 22, 2024, 1:25 PM EST), <https://www.forbes.com/sites/forbes-personal-shopper/article/best-ski-masks/>.

⁵ Results for “balaclava”, REI CO-OP, <https://www.rei.com/search?q=balaclava> (last visited June 27, 2024); Balaclavas, EVO, <https://www.evo.com/shop/accessories/balaclavas> (last visited June 27, 2024).

competitive position. However, the success of Blackstrap's Hood Balaclava has made it a target for knockoffs, like the ones at issue in this case.

Rockbros USA and Its Infringing Activities

12. On information and belief, Rockbros USA is a direct competitor of Blackstrap as a seller of balaclavas on various e-commerce platforms, including balaclavas that infringe the D'703 patent.

13. The Rockbros Balaclavas are substantially similar to, or at least a colorable imitation of, the claimed design of the D'703 patent. For example, the "Balaclava Face Mask Adjustable Windproof UV Protection Hood" sold via the Rockbros USA Amazon storefront and shown below has the same construction as the claimed balaclava, including a flared base and a T-shaped mouthpiece that is partially detached from the side pieces of the balaclava (indicated by red lines) such that the horizontal portion of the T-shaped mouthpiece is detached from and overlaps the side pieces except at both ends where the horizontal portion is attached to the side and center pieces of the balaclava while the vertical portion of the "T" is integrated into the neck portion of the balaclava.



Figure 6. Rockbros Balaclava



Figure 7. Rockbros Balaclava, annotated to illustrate detached horizontal edges of T-shaped mouthpiece



Figure 8. Side view of Rockbros Balaclava



Figure 9. Side view of Rockbros Balaclava, annotated to illustrate detached horizontal edges of T-shaped mouthpiece

14. On information and belief, Rockbros USA has made, used, offered for sale, sold, and/or imported into the United States the Rockbros Balaclavas, which infringe the D’703 patent, since at least September 8, 2021. *See* Ex. C. Blackstrap has not provided Rockbros USA with any license or other authorization to permit them to use the D’703 patent. Rockbros USA’s infringing activities are ongoing.

Pre-Suit Notice of Infringement and Prior Action

15. Rockbros USA has been aware of its infringement of the D’703 Patent since at least November 15, 2023, when a complaint notifying them of their intellectual property rights infringement was filed with Amazon (the “Amazon Complaint”). These complaints are summarized below:

Store	Date	Complaint ID	ASINs
Rockbros USA	November 15, 2023	14293467541	B0814NZ338; B09FP5JG9B; B09FNW1TV5; B09FNZM28T; B0BFCTCN6X; B0BFCSNHKT; B0BFCTK1DH; B0CL5S47XF

16. Rockbros USA previously initiated a declaratory judgment action regarding the D’703 Patent in the Northern District of Illinois on December 31, 2023. Ex. B. In doing so, Rockbros USA acknowledged receipt of the Amazon Complaint. *See id.* at ¶ 17. Rockbros USA voluntarily dismissed its declaratory judgment action on April 17, 2024. Ex. F, Notice of Voluntary Dismissal Pursuant to Rule 41(a)(1)(A)(i), *Rockbros USA LLC v. Shehadeh, et al.*, Case No. 1:23-cv-17193, ECF No. 10 (N.D. Ill. Apr. 17, 2024).

17. Rockbros USA appears to have stopped listing the infringing Rockbros Balaclavas under the ASINs specified in the Amazon Complaint. However, Rockbros USA still offers to sell and sells the same infringing Rockbros Balaclavas under a new ASIN. *See* Ex. C. Furthermore, Rockbros USA altered the primary image for the product listing to remove features illustrating the

design similarities to the D'703 Patent, including the detached horizontal portion of the T shaped mouthpiece section, as shown below:



Figure 10. Excerpt of original marketing image from Amazon listing⁶



Figure 11. Excerpt of current, altered marketing image from Amazon listing

However, the T-shaped mouthpiece can still be seen in other marketing images. *See Ex. C.* When purchased, contrary to the altered image, the product delivered is an infringing Rockbros Balaclava.

CLAIM I:

INFRINGEMENT OF U.S. Patent No. D758,703

18. The allegations of Paragraphs 1-17 are incorporated by reference as if fully set forth herein.

⁶ This original image is still used for listings of the same product on other platforms, such as rockbrosbike.us. *See Ex. D.*

19. Rockbros USA has made, used, offered to sell, sold, and/or imported into the United States, and is still making, using offering to sell, selling, and/or importing into the United States, Infringing Balaclavas that infringe the D'703 patent without Blackstrap's authorization.

20. By the foregoing acts, Rockbros USA has infringed and continues to infringe the D'703 patent in violation of 35 U.S.C. §§ 271(a) and 289.

21. Rockbros USA has profited off its infringement of the D'703 patent, and Blackstrap has suffered actual harm as a result of Rockbros USA's infringement. Blackstrap is entitled to recover damages under 35 U.S.C. § 284 (in no event less than a reasonable royalty) and/or 35 U.S.C. § 289 to adequately compensate for Rockbros USA's infringement.

22. Rockbros USA's conduct in infringing the D'703 patent has been and continues to be willful. Accordingly, Blackstrap is entitled to treble damages under 35 U.S.C. § 284, and this is an exceptional case under 35 U.S.C. § 285.

23. Blackstrap has been and continues to be damaged and irreparably harmed by Rockbros USA's infringement of the D'703 patent. This irreparable harm will continue unless this Court enjoins Rockbros USA. Rockbros USA has already shown this by its bad-faith actions to circumvent Blackstrap's enforcement efforts using Amazon's complaint system by creating new ASINs for the same Infringing Balaclava products and misleadingly altering product images. *See supra* ¶ 17. Accordingly, Blackstrap is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Blackstrap respectfully prays for:

- A. A permanent injunction enjoining, restraining, and ordering Rockbros USA, and its officers, agents, servants, attorneys, and other persons who are in active concert or participation with them:

- a. To cease making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use any products that infringe upon U.S. Design Patent No. D758,703.
 - b. To cease aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon U.S. Design Patent No. D758,703.
- B. A judgment that Rockbros USA has infringed U.S. Design Patent No. D758,703 in violation of 35 U.S.C. § 271;
 - C. An award of damages to Blackstrap for Rockbros USA's infringement of U.S. Design Patent No. D758,703 in an amount to be proven at trial, but in no event less than a reasonable royalty, pursuant to 35 U.S.C. § 284, or the total profit made by Rockbros USA from its infringement of U.S. Design Patent No. D758,703 pursuant to 35 U.S.C. § 289, together with interests and costs;
 - D. A judgment that Rockbros USA's infringement of U.S. Design Patent No. D758,703 has been willful;
 - E. An award of treble damages under 35 U.S.C. § 284 for Rockbros USA's willful infringement of U.S. Design Patent No. D758,703;
 - F. A declaration that this case is exceptional under 35 U.S.C. § 285;
 - G. An award to Blackstrap of reasonable attorneys' fees and costs; and
 - H. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Blackstrap hereby demands a trial by jury of all issues so triable.

Dated: June 28, 2024

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULES 11.2 & 40.1

Pursuant to Local Civil Rules 11.2 and 40.1, I hereby certify that the D'703 patent is the subject of a USPTO re-examination (No. 90/019,487), initiated on April 16, 2024.

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: June 28, 2024

s/ William C. Baton
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