



Provided by:
Overhauser Law Offices LLC
www.iniplaw.org
www.overhauser.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

13 NOV -5 PM 3:27

AM
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

WINDSTREAM TECHNOLOGIES, INC.,
a California Corporation,
819 Buckeye Street
North Vernon, IN 47265

Plaintiff,

v.

RAMBO LLC,
an Indiana Limited Liability Corporation
Serve On:
1112 Wells Drive
Madison, IN 47250

And

RAMBO MONTROW CORPORATION,
an Indiana corporation;
Serve On:
1112 Wells Drive
Madison, IN 47250

And

RICK KEEBLER, an individual;
1112 Wells Drive
Madison, IN 47250

And

DOES 1 through 10,

Defendants.

4 : 13 -cv- 180 SEB -WGH

Case No. _____

J. _____

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF WITH
JURY DEMAND
ENDORSED HEREON**

INTRODUCTION

1. Plaintiff WindStream Technologies, Inc. hereby sues defendants Rambo LLC, Rambo Montrow Corporation and Rick Keebler and, in connection therewith, alleges as follows.

OVERVIEW

2. Plaintiff WindStream Technologies, Inc. ("WindStream") manufactures wind turbines. WindStream contracted with Defendants to provide component parts and to act as an authorized dealer in certain territories. Defendants have blatantly breached the relevant agreements and, in violation of the Lanham Act, have misappropriated WindStream's creations and are passing off WindStream's products as their own. In doing so, Defendants have also infringed WindStream's registered trademark. By this action, WindStream seeks damages (including treble damages, punitive damages, and attorney's fees) and injunctive relief under the Lanham Act and related statutory and common law of the State of Indiana.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the Lanham Act claims (15 U.S.C. §1111 et seq.) pursuant to 28 U.S.C. §§1331 and 1338.

4. This Court has supplemental jurisdiction over the claims arising under the statutory and common law of the State of Indiana pursuant to 28 U.S.C. §1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution and derive from a common nucleus of operative fact.

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b) in that Defendants reside in this District and/or because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

PARTIES

6. WindStream is, and at all relevant times has been, a corporation duly organized and existing under the laws of the State of California with its principal place of business in North Vernon, Indiana.

7. WindStream is informed and believes, and on that basis alleges, that defendant Rambo LLC (“Rambo”) is, and at all relevant times has been, a limited liability corporation duly organized and existing under the laws of the State of Indiana with its principal place of business in Madison, Indiana.

8. WindStream is informed and believes, and on that basis alleges, that defendant Rambo Montrow Corporation is, and at all relevant times has been, a corporation duly organized and existing under the laws of the State of Indiana with its principal place of business in Madison, Indiana. WindStream is further informed and believes, and on that basis alleges, that Rambo Montrow Corporation has previously operated under the name Rambo and Montrow China Division, Inc. (“RMCD”). Rambo Montrow Corporation and RMCD and collectively referred to as “RMC.”

9. WindStream is informed and believes, and on that basis alleges, that defendant Rick Keebler (“Keebler”) is, and at all relevant times has been, an individual residing in the State of Indiana. WindStream is further informed and believes, and on that basis alleges, that Keebler is a principal of Rambo and RMC.

10. WindStream is ignorant of the true names and capacities of defendants fictitiously named as DOES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. WindStream will amend its complaint to allege the true names and capacities when ascertained. Each of the fictitiously named defendants is responsible in some manner for the wrongdoing alleged herein and the damages caused to WindStream.

11. At all relevant times, and except as stated differently herein, each of the defendants was the agent, representative, and/or employee of each of the remaining defendants, and in doing the things herein alleged, was acting within the course and scope of such relationship and each of the defendants approved and ratified the conduct of each of the remaining defendants.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

12. WindStream manufactures wind turbines that are small enough, efficient enough, and affordable enough for everyone to lessen their environmental impact, while reducing their electricity cost. WindStream has designed, manufactured and shipped worldwide from its Indiana manufacturing facility an innovative line of vertical axis wind turbines for municipal, residential, and commercial use, both on and off grid.

13. To distinguish its line of products from competitors, WindStream has developed distinctive trademarks for its products. One such product is the TurboMill®. WindStream has used this trademark in commerce since at least 2009, and has caused to be registered with the United States Patent and Trademark Office the mark, TurboMill®, under Reg. No. 3,986,494, registered on June 28, 2001. WindStream's registration of the mark continues to be in full force and effect.

14. WindStream began manufacturing its wind turbines in the summer of 2011. Each turbine includes a generator. On or about August 19, 2011, WindStream entered into a contract with Montrow Tool and Machine, Inc. ("Montrow") to provide the generators. The contract is reflected in Purchase Order No. Montrw11.1.2011 ("the Generator PO"). The payment terms set forth in the Generator PO are as follows:

- a. the first payment of \$165,000.00 due at the time of the purchase order;
- b. the second payment of \$165,000.00 due upon delivery of the first units;

- c. the third payment of \$165,000.00 due upon delivery of the final units; and
- d. final payment of \$60,000.00 due 45 days after delivery of the final units.

15. WindStream made the first payment of \$165,000.00 to Montrow on or about August 26, 2011. Sometime thereafter, in or around October 2011, WindStream was advised that Montrow had assigned, transferred or otherwise conveyed to RMC the responsibility for procuring the parts to be used by Montrow to assemble the generators. RMC, in turn, procured the parts through Rambo and Keebler. On or about November 17, 2011, after WindStream received the first 1,500 pieces, WindStream made the second payment of \$165,000.00 to RMC.

A. Failure to Deliver Under the Purchase Orders

16. On or about October 14, 2011, WindStream entered into a separate contract with Montrow to purchase 144,000 magnets at a cost of \$141,120.00. The contract is reflected in Purchase Order Montrow11012011PO ("the Magnet PO"). These magnets were to be used to build a second run of 1,500 generators. WindStream is informed and believes that on or about February 20, 2012, Montrow assigned to RMC all of Montrow's right and responsibilities under the Magnet PO. WindStream paid in full for the magnets on July 9, 2013. These magnets are a critical component necessary to manufacture the generators contained within the wind turbine products. Though half of the magnets were delivered to WindStream, RMC has failed and refused to deliver the other half of the order.

17. On or about February 12, 2012, WindStream entered into a separate contract with RMC for 3,100 stators at a cost of \$62,744.00. The contract is reflected in Purchase Order WS-143-MD. WindStream paid in full for the stators on July 9, 2013. They are a critical component necessary to manufacture wind turbines. On or about July 30, 2013, WindStream entered into a separate contract with RMC for an additional 1,500 stators at a cost of \$38,175.00. The contract is reflected in Purchase Order WS-333-MD. Payment for this additional purchase order was

completed on August 22, 2013. (The two stator purchase orders are collective referred to as “the Stator POs”.)

18. In blatant breach of the various purchase orders, RMC has failed and refused to deliver the stators and magnets that WindStream ordered and paid for. To make matters worse, RMC, through Rambo and Keebler, have already procured these items, and they are sitting in warehouses within miles of WindStream’s facility. RMC, through Rambo and Keebler, are holding these items hostage in an effort to exact concessions from WindStream (including a release of liability) and to renegotiate the terms of the Generator PO.

19. Keebler freely admits these facts. For example, in an October 15, 2013 email, Keebler states that “if this is signed & returned and the warranty deposit made then *we will have the parts delivered in 20-30 minutes.*” (Emphasis added.) In a later email that same day, Keebler states “if you want them quicker release me from any liability by signing the simple agreement.”

20. Keebler also admits that another reason he has refused to release the parts is because of disputes among and between Defendants that have nothing to do with WindStream. Specifically, Keebler has stated in emails that he does not intend to deliver the parts until he is paid by Montrow. Thus not only is Keebler holding these parts hostage, he is doing so as part of a dispute that does not even concern WindStream.

21. Keebler’s refusal to release the parts that RMC is contractually required to deliver is causing substantial damage to WindStream. Without these parts, production at WindStream came to a standstill. WindStream is unable to fill customer orders, and is currently late in delivering several orders. In an attempt to satisfy its customers, WindStream has been forced to make concessions to some customers by upgrading their systems at no charge. In other cases, WindStream has been forced to tell its customers that it cannot deliver as promised, damaging the goodwill and the credibility of the company. Furthermore, any new business that has come

to the attention of WindStream has been put on hold until a consistent supply chain can be established.

22. In an effort to minimize the damage caused by Defendants' refusal to deliver the parts, WindStream has been forced to obtain these parts from alternate sources, at great expense to WindStream. The damage caused to WindStream is further exacerbated by the fact that, for many months, Keebler continued to string WindStream along, promising that everything was moving forward and that the parts would be delivered. This "all is well" attitude delayed by several months WindStream's decision to seek parts from alternate sources.

B. Unfairly Competing with WindStream.

23. On or about December 20, 2011, WindStream entered into an Authorized Dealer Agreement with RMC ("the Dealer Agreement"). Pursuant to the terms of the Dealer Agreement, RMC (through Rambo and Keebler) was authorized to sell and distribute WindStream's TurboMill® wind turbine in Australia, New Zealand and the Far East, and was required to "actively promote, market, advertise, sell and distribute the Products" in those areas. The Dealer Agreement specifically provides that RMC "has no rights or claims on any Products" other than as set forth in the Dealer Agreement. In addition, RMC "covenants and agrees" that it will "not make any change to any of the Marks or to the labeling of any Products."

24. WindStream is informed and believes, and on that basis alleges that, fraudulently and in direct violation of the Dealer Agreement, Keebler and Rambo are now selling WindStream products, including the TurboMill®, as their own.

25. WindStream is informed and believes that Keebler and Rambo have placed orders with overseas suppliers for parts used to assemble WindStream's TurboMill® product. These are the same suppliers from who Keebler, on behalf of RMC, ordered the parts to fulfill the various POs described above. WindStream is informed and believes that Keebler and Rambo

ordered on their own behalf the same parts that had been ordered for WindStream with only one design change – they removed the WindStream logo (but did not remove the TurboMill® logo).

26. WindStream is informed and believes that Keebler and Rambo are now actively marketing their knock-off wind turbines. WindStream is further informed and believes that Keebler and Rambo are marketing these products to individuals and entities that had previously been identified and potential customers of WindStream.

27. Keebler's and Rambo's wrongful conduct is also evident on the Rambo website (www.rambolc.com). Specifically, the home page of the website contains a section titled "Wind Mill." When a visitor clicks the link, the first image seen by the visitor is a picture of WindStream's TurboMill® product. However, the WindStream logo has deliberately been removed from the image. Even more egregious, the image is the same image that is attached to the Dealer Agreement (of course, in the Dealer Agreement, the WindStream logo is intact) as evidence of the "Product" that is the subject of the Dealer Agreement – *i.e.*, the "Product" that Keebler and Rambo acknowledge they have "no rights or claims to" and to which they represent and warrant they will "not make any change to any of the Marks."

FIRST CLAIM FOR RELIEF

Federal Unfair Competition and Passing Off (15 U.S.C. §1125(a))

(Against Rambo and Keebler)

28. WindStream realleges and incorporates by reference paragraphs 1 through 27, above, as though fully set forth herein.

29. Rambo and Keebler have deliberately and willfully attempted to trade on WindStream's hard-earned goodwill in its name and trademarks. In so doing, Rambo and Keebler have confused consumers as to the origin of their wind turbine products, and have attempted to pass off their products as the products of WindStream. Rambo's and Keebler's

unauthorized and tortious conduct deprives WindStream of the ability to control consumer perception of its products and services, thus jeopardizing its reputation and goodwill.

30. Rambo's and Keebler's conduct is likely to cause confusion, mistake or deception as to (a) the affiliation, connection or association of their products with WindStream, and (b) the origin, sponsorship or approval by WindStream of their products.

31. Rambo and Keebler both had direct and full knowledge of WindStream's prior use, of and rights in, its products and trademarks before it engaged in the conduct alleged in this complaint. The knowing, intentional and willful nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a). As a result, Rambo and Keebler are liable to WindStream for treble damages and reasonable attorney's fees, investigative fees and prejudgment interest.

32. WindStream has been, and continues to be, damaged by Rambo's and Keebler's activities and conduct. Unless their conduct is enjoined, WindStream's reputation and goodwill will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages. Accordingly, WindStream is entitled to injunctive relief.

SECOND CLAIM FOR RELIEF

Trademark Infringement (15 U.S.C. §1114)

(Against Rambo and Keebler)

33. WindStream realleges and incorporates by reference paragraphs 1 through 27, above, as though fully set forth herein.

34. WindStream has registered TurboMill® with the United States Patent and Trademark Office, and has used the mark in connection with WindStream's goods and services in interstate commerce since at least 2009. WindStream engages in interstate activities designed to promote the goods and services it sells and the goodwill associated with its trademarks.

35. The TurboMill® trademark is distinctive and/or has acquired secondary meaning based on WindStream's extensive sales and advertising under the trademark.

36. Without the authorization or consent of WindStream, and in direct violation of the Dealer Agreement, Rambo and Keebler used, and continue to use, the trademark TurboMill® in commerce in connection with their sale, distribution, promotion and advertising of knock-off wind turbine products. Rambo's and Keebler's use of WindStream's trademark is likely to cause, and has caused, confusion, mistake or deception as to the source of the goods or services they provide, and as to their affiliation, connection or association with WindStream.

37. By using the trademark to sell, offer for sale, market or advertise good or services to the general public for profit without the authorization of WindStream, Rambo and Keebler are depriving WindStream of its exclusive right to control, and benefit from, its trademark, and are unfairly competing with WindStream. If allowed to continue, this conduct will deprive WindStream of the right to the exclusive use of its mark, free from infringement, and will have a substantial and adverse effect on WindStream's ability to market and sell products identified by its trademarks.

38. Rambo and Keebler had actual and constructive knowledge of WindStream's ownership and rights in its federally registered trademark prior to their infringement of the trademark. Rambo and Keebler used, and continued to use, WindStream's federally registered mark with full knowledge of WindStream's superior rights, and with full knowledge that their infringing use was intended to cause confusion, mistake or deception. The knowing, intentional and willful nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a). As a result, Rambo and Keebler are liable to WindStream for treble damages and reasonable attorney's fees, investigative fees and prejudgment interest.

39. WindStream has been, and continues to be, damaged by Rambo's and Keebler's activities and conduct. Unless their conduct is enjoined, WindStream's reputation and goodwill

will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages. Accordingly, WindStream is entitled to injunctive relief.

THIRD CLAIM FOR RELIEF

Breach of Contract (Dealer Agreement)

(Against RMC)

40. WindStream realleges and incorporates by reference paragraphs 1 through 27, above, as though fully set forth herein.

41. On or about December 20, 2011, WindStream and RMC entered into the Dealer Agreement. The Dealer Agreement specifically provides that RMC “has no rights or claims on any Products” other than as set forth in the Dealer Agreement. In addition, RMC “covenants and agrees” that it will “not make any change to any of the Marks or to the labeling of any Products.” The Dealer Agreement also contains an attorney’s fees provision entitling WindStream to recover attorney’s fees and court costs incurred in enforcing its rights under the Dealer Agreement.

42. WindStream has performed all of the obligations required of it under the Dealer Agreement.

43. RMC, through its agents and/or representatives Rambo and Keebler, have breached the Agreement by, among other things, (a) making changes to the marks and labeling on the Products, and (b) asserted rights in the Products by passing off the Products as its own.

44. As a result of RMC’s breach of the Dealer Agreement, WindStream has been damaged in an amount to be proven at trial, which amount includes the attorney’s fees and costs incurred in bringing this action.

FOURTH CLAIM FOR RELIEF

Breach of Contract (Purchase Orders)

(Against RMC)

45. WindStream realleges and incorporates by reference paragraphs 1 through 27, above, as though fully set forth herein.

46. On or about October 14, 2011, WindStream and Montrow entered into the Magnet PO. That contract was subsequently assigned to RMC. On or about February 12, 2012 and July 30, 2013, WindStream and RMC entered into the Stator POs.

47. WindStream has performed all of the obligations required of it under the Magnet PO and the Stator POs.

48. RMC has breached the Magnet PO and the Stator POs by failing and refusing to timely deliver to WindStream the parts required by those contracts despite the fact that WindStream has paid in full under each of the contracts.

49. As a result of RMC's breach of the Dealer Agreement, WindStream has been damaged in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF

Interference with Contract and Prospective Economic Advantage

(Against all Defendants)

50. WindStream realleges and incorporates by reference paragraphs 1 through 27, above, as though fully set forth herein.

51. WindStream has entered into contracts with customers for delivery of wind turbine products. WindStream has also negotiated with prospective customers for the delivery of wind turbine products. Each of the Defendants was aware of those contracts and prospective contracts. Furthermore, each of the Defendants was aware that, in order to fulfill these contracts

and prospective contracts, WindStream needed the parts that are the subject of the Magnet PO and the Stator POs.

52. Defendants, and each of them, interfered with these contracts and prospective contracts by refusing to deliver, or causing the refusal to deliver, the parts WindStream needed to comply with its contractual obligations to its customers. Defendants' conduct was intentional, wrongful and without justification. Specifically, RMC, Rambo and Keebler are wrongfully and intentionally holding these critical parts hostage (a) in an effort to exact concessions from WindStream (including a release of liability), (b) in an effort to renegotiate the terms of the Generator PO, and (c) because of internal disputes between Defendants that have nothing to do with WindStream.

53. As a direct and proximate result of Defendants' interference with contract and prospective economic advantage, WindStream has been damaged in an amount to be proven at trial.

54. In unlawfully interfering with WindStream's contract and prospective contracts, Defendants have engaged in conduct constituting fraud, malice and/or oppression. Accordingly, WindStream is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, WindStream prays for relief as follows:

1. That the Court enter an injunction ordering Rambo and Keebler, along with their agents, employees, representatives, and all other persons in privity or acting in concert with them, are preliminarily and permanently enjoined and restrained from:

a. Using in any manner the TurboMill® mark, or any name or mark that incorporates the TurboMill® mark or is confusingly similar to or an imitation of this mark;

b. Engaging in any conduct calculated or likely to cause confusion or mistake in the minds of the public, or customers or prospective customers of WindStream, as to the source of the products or services offered for sale, distributed, sold, marketed or advertised by the enjoined parties;

c. Engaging in any conduct calculated to, or like to, deceive the public, or customers or prospective customers of WindStream, into believing that there is some connection between the enjoined parties and WindStream;

d. Engaging in any conduct intended to injure WindStream's business reputation or dilute the distinctive quality of the TurboMill® mark;

e. Manufacturing, producing, distributing, selling, marketing, advertising or promoting any products and services not authorized by WindStream that bear any simulation, reproduction, counterfeit, copy of colorable imitation of the TurboMill® mark; and

f. Effecting assignments or transfers, forming new entities, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth above;

2. That the Court order Rambo and Keebler to file and serve WindStream with a sworn statement, in accordance with 15 U.S.C. §1116(a), setting forth in detail the manner and form in which they have complied with the injunction;

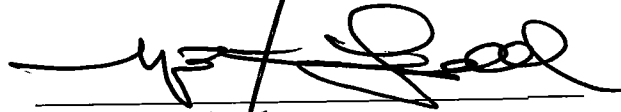
3. That WindStream be awarded damages, according to proof at trial, including treble damages where appropriate;

4. That WindStream be awarded punitive damages for Defendants' willful and malicious acts;

5. That WindStream be awarded attorney's fees and costs of suit; and

6. For such other and further relief that the Court deems just and proper.

Respectfully submitted,

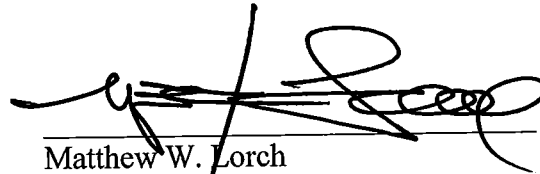


Matthew W. Lorch
Indiana Attorney No. 25001-22
LORCH LAW OFFICE LLC
223 E. Spring Street
New Albany, IN 47150
Telephone: 812-949-2111
Facsimile: 502-805-0482
Email: matthew@lorchlaw.com

ATTORNEY FOR PLAINTIFF
WINDSTREAM TECHNOLOGIES, INC.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.



Matthew W. Lorch
Indiana Attorney No. 25001-22
LORCH LAW OFFICE LLC
223 E. Spring Street
New Albany, IN 47150
Telephone: 812-949-2111
Facsimile: 502-805-0482
Email: matthew@lorchlaw.com