

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION



Provided by:
Overhauser Law Offices LLC
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SHIELD EXTERIORS INC.,)
)
Plaintiff,)
)
vs.)
)
4EVER METAL ROOFING, LLC;)
TRAVIS SLIGER; JOHN)
ESTABROOK, Individually; JOHN)
ESTABROOK, d/b/a)
LOCAL2ONLINE; and JOHN)
ESTABROOK, d/b/a ROOF GENIUS)
PRO;)
)
Defendants.)

CASE NO. ____

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Shield Exteriors Inc., by and through its counsel, hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for violation of the laws of the United States relating to copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 501, along with associated claims under Indiana law; an action for trademark infringement under the Declaratory Judgment Act, 28 U.S.C. § 2201, along with associated claims under Indiana law; and an action for unfair competition, false designation of origin, and trademark dilution under the Lanham Act, 15 U.S.C. § 1125, along with associated claims under Indiana law.

2. This action results from Defendants' unauthorized use of Plaintiff's photos, videos, business reputation, and business name.

THE PARTIES

3. Plaintiff, Shield Exteriors Inc. ("Shield Exteriors"), is an Indiana corporation with a principal office address at 202 Twin Eagles Blvd. W., Huntertown, Indiana 46748.

4. Shield Exteriors owns Copyright Registration Number VA 2-174-290, a group registration of eight (8) photographs.

5. Defendant 4Ever Metal Roofing, LLC ("4Ever Metal Roofing") is an Indiana limited liability company with a principal place of business at 1911 Production Road, Fort Wayne, Indiana 46804.

6. Upon information and belief, Defendant Travis Sliger ("Sliger") owns and operates 4Ever Metal Roofing.

7. Sliger is an individual residing at 5407 Maurane Drive, Fort Wayne, Indiana 46804.

8. Upon information and belief, Local2Online Local2Online is a Sole Proprietorship owned and operated by Defendant John Estabrook.

9. Upon information and belief, Sliger was a Director of Local2Online and is still affiliated with Local2Online.

10. Upon information and belief, Roof Genius Pro is a Sole Proprietorship owned and operated by Defendant John Estabrook ("Estabrook").

11. Estabrook is an individual residing at 210 1/2 Standish Avenue, Apt 3, Plymouth, Massachusetts 02360.

12. Upon information and belief, Roof Genius Pro is operating the websites at <www.roofgenius.pro> and <www.selectmetalroof.com>. Both websites prominently use the name, logo, and photographs of Shield Exteriors, and display a phone number that does not belong to Shield Exteriors for potential customers to call.

13. Upon information and belief, Roof Genius Pro is rendering advertising services to 4Ever Metal Roofing via Facebook.

14. Upon information and belief, Local2Online is operating a landing page for Roof Genius Pro's advertising services of 4Ever Metal Roofing via an interactive link on Facebook.

15. Defendants promote and sell their services in direct competition with Shield Exteriors.

JURISDICTION AND VENUE

16. This Court has jurisdiction over Shield Exteriors federal claims pursuant to 28 U.S.C. § 1331 and 1338, and pursuant to the principles of supplemental jurisdiction under 28 U.S.C. § 1367.

17. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claim occurred in this district; 28 U.S.C. § 1391(b)(2), in that a substantial part of property that is the subject of the action is situated in this district; and/or 28 U.S.C. § 1391(b)(3), in that Defendants are subject to personal jurisdiction in this district with respect to this action.

18. This Court has jurisdiction over Defendants because Defendants are conducting business, carry on a business venture, have committed tortious acts, and

maintain an interactive webpage which is accessible in this State and this District.

SHIELD EXTERIOR'S INTELLECTUAL PROPERTY RIGHTS

19. Since at least as early as August 16, 2017, Shield Exteriors published 8 photographs to the public of roof installations Shield Exteriors had completed for various customers.

20. On September 23, 2019, Shield Exteriors obtained a Copyright Registration for the 8 photographs under Registration Number VA 2-174-290 ("Exhibit A") (hereafter the "Registration").

21. In addition to the 8 photographs covered under the Registration, Shield Exteriors also has copyright protection in unregistered photographs taken for the purpose of promoting Shield Exteriors business.

22. Shield Exteriors has acquired trademark rights in the word mark "SHIELD EXTERIORS," along with Shield Exteriors' logo. Shield Exteriors has been operating under the name "SHIELD EXTERIORS" since as early as 2015 in connection with roofing services. Since that time, Shield Exteriors has experienced substantial year-after-year growth.

23. As a result of extensive and continuous advertising, promotion, and use of the "SHIELD EXTERIORS" marks in connection with roofing services, and through favorable industry and trade acceptance and recognition, the consuming public and trade recognize and identify the "SHIELD EXTERIORS" marks with Shield Exteriors.

24. Accordingly, Shield Exteriors' "SHIELD EXTERIORS" marks are an asset of incalculable value as an identifier of Shield Exteriors, its high quality services, and its

goodwill.

DEFENDANTS' ACTS OF COPYRIGHT INFRINGEMENT,
TRADEMARK INFRINGEMENT, FALSE DESIGNATION
OF ORIGIN, TRADEMARK DILUTION, AND UNFAIR
COMPETITION

25. Upon information and belief, Roof Genius Pro owns and operates the website content located at <www.selectmetalroof.com> and <www.roofgenius.pro>.

26. The website at <www.selectmetalroof.com> prominently displays the name "SHIELD EXTERIORS" along with Shield Exterior's logo at the top left of the webpage. Next to the name and logo, the website also displays the telephone number 260-305-7558 for customers to call ("Exhibit B"). Shield Exteriors does not own or operate this telephone number. As of February 7, 2020, this website displays several photographs of metal roofs installed by Shield Exteriors ("Exhibit C"). Seven of the eight photographs shown on the website are covered under the Registration.

27. The website at <www.roofgenius.pro> is almost identical to the <www.selectmetalroof.com> website. It prominently displays the name "SHIELD EXTERIORS" along with Shield Exterior's logo at the top left of the webpage. Next to the name and logo, the website also displays the telephone number 260-305-7558 for customers to call ("Exhibit D"). As of February 7, 2020, this website displays several photographs of metal roofs installed by Shield Exteriors ("Exhibit E"). Seven of the eight photographs shown on the website are covered under the Registration.

28. On or about January 9, 2020, Roof Genius Pro posted a video advertisement through Facebook, which advertised for Defendant 4Ever Metal Roofing. The

advertisement included photographs of metal roofs installed by Shield Exteriors, and lead consumers to believe that 4Ever Metal Roofing installed said roofs (“Exhibit F”). The link accompanying the description of the video takes the viewer to a website hosted by Local2Online. That website displays 4Ever Metal Roofing’s name and logo, and solicits customer information in an attempt to receive business from the customers. As of January 13, 2020, the video had 20,800 views on Facebook, and received several inquiry comments from potential customers (“Exhibit G”).

29. On or about February 2, 2020, Defendants republished the Facebook advertisement as described in paragraph 28.

30. On or about January 13, 2020, the Facebook page operated by Roof Genius Pro included a website link on the home page to <roofgenius.pro> (“Exhibit H”).

31. Defendants are operating a business which solicits customers by acting as Shield Exteriors and using photographs from roof installations completed by Shield Exteriors.

COUNT I – COPYRIGHT INFRINGEMENT

32. Shield Exteriors hereby alleges copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C. § 501. Shield Exteriors repeats and realleges the allegations of paragraphs 1-31 as though fully set forth herein.

33. Shield Exteriors filing for the Registration for the photographs constitutes prima facie evidence of the validity of Shield Exteriors copyright, under the facts stated in the application.

34. Defendants have violated Shield Exteriors exclusive right as the copyright

owner of the registered photographs by reproducing and publishing the copyright work without Shield Exteriors consent.

35. Defendants' unauthorized use of Shield Exteriors photographs covered under the Registration on the Defendants' websites, Facebook page, and YouTube channel constitutes copyright infringement.

36. Defendants' unauthorized and infringing use of Shield Exteriors copyrighted photographs, as alleged herein, constitutes intentional and willful infringement of Shield Exteriors rights in and to Shield Exteriors photographs covered by the Registration;

37. Shield Exteriors further alleges copyright infringement of all unregistered photographs taken by Shield Exteriors.

38. Defendants have violated Shield Exteriors right in its unregistered photographs by reproducing and publishing the unregistered photographs without Shield Exteriors consent.

39. Defendants' unauthorized use of Shield Exteriors unregistered photographs on the Defendants' websites, Facebook page, and YouTube channel constitutes copyright infringement.

40. Defendants' infringing acts regarding Shield Exteriors registered and unregistered photographs have caused, and unless restrained by this court will continue to cause, serious and irreparable injury to Shield Exteriors, for which Shield Exteriors has no adequate remedy at law.

COUNT II - TRADEMARK INFRINGEMENT

41. Shield Exteriors hereby alleges trademark infringement under the Declaratory Judgment Act, 28 U.S.C. § 2201, along with associated claims under Indiana law. Shield Exteriors repeats and realleges the allegations of paragraphs 1-40, as though fully set forth herein.

42. Defendants' unauthorized use of "SHIELD EXTERIORS" on Defendants' websites and in Defendants advertising, as described herein, is likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' products by Shield Exteriors. The consuming public of the trade is likely to believe that Defendants' services originate with Shield Exteriors, are licensed, sponsored, or approved by Shield Exteriors, or in some way are connected with or related to Shield Exteriors.

43. Defendants' unauthorized and infringing use of "SHIELD EXTERIORS," as alleged herein, constitutes intentional and willful infringement of Shield Exteriors rights in and to Shield Exteriors mark.

44. Such infringing acts have occurred in interstate commerce and have caused, and unless restrained by this court, will continue to cause serious and irreparable injury to Shield Exteriors, for which Shield Exteriors has no adequate remedy at law.

COUNT III -FALSE DESIGNATION OF ORIGIN

45. Shield Exteriors hereby alleges false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125. Shield Exteriors repeats and realleges the allegations of paragraphs 1-44, as though fully set forth herein.

46. Defendants' unauthorized use in commerce of "SHIELD EXTERIORS", as described herein, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Shield Exteriors, or as to the origin, sponsorship, or approval of Defendants' services or Defendants' commercial activities by Shield Exteriors in violation of § 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

47. Defendants' unauthorized use of "SHIELD EXTERIORS" in Defendants' commercial advertising or promotion, as described herein, misrepresents the nature, characteristics, qualities, and origin of Defendants' services, and attempts to pass off Shield Exteriors nature, characteristics, qualities, and origin of services as Defendants own, in violation of § 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

48. Defendants' unauthorized and infringing acts, as alleged herein, constitutes intentional and willful infringement in violation of Shield Exteriors rights, and constitutes use of false designations of origin and false and misleading descriptions or representations that are likely to cause confusion, to cause mistake, or to mislead as to the affiliation, connection, or association of Defendants or its goods or services with Shield Exteriors' and the services provided under the trademarks of Shield Exteriors.

49. Any failure, neglect, or default by Defendants in providing excellent customer service or quality goods will reflect adversely on Shield Exteriors as the believed source of origin of the service and goods.

50. This hampers Shield Exteriors' efforts to continue to protect its outstanding reputation for high quality goods, at a reasonable price, and with excellent customer

service.

51. That adverse reflection has resulted, or will result, in the loss of sales by Shield Exteriors and has or will negate the considerable expenditures by Shield Exteriors to promote its goods under the mark – all to the detriment of Shield Exteriors.

52. As direct result of Defendants' infringement, Shield Exteriors suffered damages in an amount to be determined at trial.

53. Defendants' false designation of origin will continue unless enjoined by this Court.

54. Shield Exteriors is entitled to, among other relief, an order declaring that Defendants' actions infringe Shield Exteriors' marks; an injunction and an award of actual damages; Defendants' profits; enhanced damages; reasonable attorneys' fees and the costs of this action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117; together with prejudgment and post-judgment interest.

COUNT IV – TRADEMARK DILUTION

55. Shield Exteriors hereby alleges trademark dilution in violation of the Lanham Act, 15 U.S.C. § 1125. Shield Exteriors repeats and realleges the allegations of paragraphs 1-54, as though fully set forth herein.

56. Defendants' use and advertisement of its products under the mark have or are likely to injure Shield Exteriors' business reputation, and have or are likely to dilute the distinctive quality of Shield Exteriors' name, reputation, and customer service in violation of both Indiana law and Federal statutes.

57. Shield Exteriors has been, and will continue to be, irreparably harmed,

damaged, and injured as a result of Defendants' infringements and threatened infringements of Shield Exteriors trademark rights.

58. Defendants have unlawfully and wrongfully derived, and will continue to derive, income and profits from its infringing acts.

59. As direct result of Defendants' infringement, Shield Exteriors suffered damage in an amount to be determined at trial.

60. Shield Exteriors is entitled to, among other relief, an order declaring that Defendants' actions infringe Shield Exteriors' marks; and an award of actual damages; Defendants' profits; enhanced damages; reasonable attorneys' fees and the costs of this action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment interest.

COUNTY V - UNFAIR COMPETITION

61. Shield Exteriors hereby alleges unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125, along with associated claims under Indiana law. Shield Exteriors repeats and realleges the allegations of paragraphs 1-60, as though fully set forth herein.

62. Defendants, by their unauthorized appropriation and use of Shield Exteriors' photographs and marks, have engaged and are continuing to engage, in acts of wrongful deception of the purchasing public, wrongful designation as to the source and sponsorship of material, wrongful deprivation of Shield Exteriors' good name and reputation, and the wrongful deprivation of Shield Exteriors' right to public recognition and credit as owner of its photographs and marks.

63. Shield Exteriors' action concerning Defendants' unfair competition, deceptive advertising, and unfair trade practices is related to Shield Exteriors copyright infringement and trademark infringement actions, since all actions are based on the same operative facts.

64. Defendants have published Shield Exteriors' photographs and trademarks on Defendants' websites, Facebook pages, and YouTube channels, resulting in consumer confusion as to the source of the content. Such conduct constitutes an unfair trade practice and unfair competition under the Lanham Act and under Indiana law.

65. Defendants deliberately copied Shield Exteriors' photographs, and their actions were malicious and willful. Further, Defendants published the photographs and trademarks with the intent to confuse or deceive the public and Shield Exteriors' customers. Defendants have been unjustly enriched as a result of its actions.

66. As a direct result of Defendants' unfair competition and unfair trade practices against Shield Exteriors, Shield Exteriors suffered damages in an amount to be determined at trial.

67. Shield Exteriors is entitled to, among other relief, an injunction and an award of actual damages; Defendants' profits; enhanced damages; reasonable attorneys' fees and the costs of action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117; together with prejudgment and post-judgment interest.

RELIEF REQUESTED

WHEREFORE, Shield Exteriors prays that this Court enter the following judgment and order:

1. In favor of Shield Exteriors on all Counts of the Complaint;
2. That Defendants have infringed Shield Exteriors' rights under the Registration and have violated 17 U.S.C. § 501;
3. That, pursuant to 15 U.S.C. § 504(c), Defendants be ordered by this court to pay to Shield Exteriors statutory damages of not less than \$750.00 and up to \$150,000 for Defendants' willful infringement of Shield Exteriors' rights under the Registration.
4. That Defendants' have infringed Shield Exteriors' rights in Shield Exteriors' unregistered photographs;
5. That Defendants account for and pay to Shield Exteriors actual damages and Defendants' profits, adequate to compensate Shield Exteriors for copyright infringement of Shield Exteriors' photographs, to the extent permitted by applicable law, and an amount up to three times the amount of its actual damages for Defendants' trademark infringement, in accordance with Section 35(a) of the Lanham Act (15 U.S.C. § 1117(b)).
6. That Defendants have infringed Shield Exteriors' rights in the "SHIELD EXTERIORS" mark and have violated § 43(a) of the Lanham Act;
7. That Defendants, its officers, directors, agents, servants, employees, members, successors, distributors, assigns, and attorneys, and all those controlled by or in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:
 - a. Further infringement of Shield Exteriors' registered and unregistered photographs;

- b. Further infringement of the “SHIELD EXTERIORS” marks;
- c. Using the “SHIELD EXTERIORS” mark or other name or designation that comprises or includes the mark “SHIELD EXTERIORS” or any other mark, logo, name, or designation that gives rise to a likelihood of confusion, mistake, or deception with respect to Shield Exteriors’ “SHIELD EXTERIORS” marks; and
- d. Doing any other act or thing likely to induce the mistaken belief that Defendants are in any way affiliated with, associated with, or sponsored by Shield Exteriors.

8. That, pursuant to 15 U.S.C. § 1118, Defendants be ordered to deliver up to Shield Exteriors or destroy all products, labels, packages, brochures, wrappers, advertisements, promotions, displays, catalogs, Internet webpages, and all other matter, whether in paper or electronic form, in the custody or under the control of Defendants that constitute, bear, or depict the “SHIELD EXTERIORS” trademarks or any confusingly similar variations thereof as described herein;

9. That Defendants be ordered by this court to account for and pay to Shield Exteriors damages adequate to compensate Shield Exteriors for the infringement of the “SHIELD EXTERIORS” trademark and, to the extent permitted by applicable law, said damages to be increased up to three times the amount found or assessed in view of the willful nature of the continued infringement;

10. That Shield Exteriors be awarded additional monetary relief in an amount to be fixed by the Court in its discretion as just, including:

- a. All profits received by Defendants from sales or revenues of any kind made as a result of the acts of infringement and unfair competition, said amount to be trebled due to Defendants' willful actions in accordance with Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)) and/or the Copyright Act of 1976;
- b. All damages sustained by Shield Exteriors as a result of Defendants' actions, said damages to be trebled due to Defendants' willful actions; and
- c. Awarding Shield Exteriors punitive and exemplary damages as the court finds appropriate to deter any future willful infringement.

11. That Defendants be ordered to compensate Shield Exteriors for the advertising and other expenditures necessary to dispel any public confusion caused by Defendants' unlawful acts complained of herein;

12. That Defendant be directed to file with the Court and serve on Shield Exteriors within 30 days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the Injunction;

13. Granting such other and further relief as the Court may deem proper to prevent the public from deriving the false impression that any goods or services sold, distributed, licensed, marketed, advertised, promoted or otherwise offered or circulated by Defendants are in any way approved, endorsed, licensed, sponsored, authorized or franchised by or associated, affiliated or otherwise connected with Shield Exteriors.

14. Directing that Defendants take any and all corrective action necessary to abate any likelihood of confusion between its website and the websites owned by Shield Exteriors.

15. Declaring this an exceptional case and, because of the exceptional nature of this case resulting from Defendants' deliberate and willful actions, this Court award to Shield Exteriors all reasonable attorney's fees, costs, and disbursements incurred by it as a result of this action, pursuant to 15 U.S.C. § 1117;

16. Awarding Shield Exteriors its costs and reasonable attorneys' fees under 17 U.S.C. §§ 412, 505.

17. That Shield Exteriors be awarded interest (pre-judgment and post-judgment), costs, and expenses for this suit; and

18. That Shield Exteriors be afforded such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

CARSON LLP

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REQUEST FOR JURY TRIAL

Plaintiff requests that the Court empanel a jury to hear all claims herein so triable.

Respectfully submitted,

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