

UNITED STATES DISTRICT COURT

for the District of New Hampshire

T-Peg, Inc. and
Timberpeg East, Inc.

SUMMONS IN A CIVIL CASE

V.

Stanley J. Isbitski, and
Vermont Timber Works, Inc.

CASE NUMBER: C.03-462-M

TO: (Name and address of Defendant)

Vermont Timber Works, Inc.
120 Bridge Street
P.O. Box 856
Springfield, VT 05156

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Daniel E. Will, Esquire
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105

Stephen S. Woods, Esquire
Traditional Management Company
68 Lyme Road
Hanover, NH 03755

an answer to the complaint which is served on you with this summons, within 20 days days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.



JAMES R. STARR
CLERK
[Signature]

10/24/03
DATE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC. and TIMBERPEG EAST, INC.)	CIVIL ACTION NO.
)	
Plaintiffs)	
)	
V.)	
)	
STANLEY J. ISBITSKI, and)	
VERMONT TIMBER WORKS, INC.)	
)	
Defendants)	

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COME the plaintiffs T-Peg, Inc. and Timberpeg East, Inc., by and through their attorneys, Devine, Millimet & Branch, Professional Association, and complain against defendants Stanley J. Isbitski and Vermont Timber Works, Inc. as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff T-Peg, Inc. is a New Hampshire corporation with a principal place of business in Hanover, New Hampshire. T-Peg, Inc. is the parent corporation of co-plaintiff Timberpeg East, Inc.

2. Timberpeg East, Inc. is a New Hampshire corporation with a principal place of business in Claremont, New Hampshire. T-Peg, Inc. and Timberpeg East, Inc. shall hereafter collectively and individually be referred to as "Timberpeg."

3. Defendant Stanley J. Isbitski ("Isbitski"), upon information and belief, is a resident of New Jersey at 2 East Main Street, Mendon, New Jersey, 07945-1505, and owns

property with improvements at 289 New Road, Salisbury, New Hampshire, 03268, which is the subject of this dispute, with a mailing address of P.O. Box 244, Salisbury, New Hampshire, 03268.

4. Defendant Vermont Timber Works, Inc. ("Vermont Timber") is a Vermont corporation with a principal place of business in, upon information and belief, Springfield, Vermont.

5. This action arises out of violations of the copyright laws of the United States, 17 U.S.C. §§ 101 et seq. and 501 et seq. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

6. Additionally, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 on the grounds that the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different States.

7. This Court has supplemental jurisdiction over the State causes of action.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and/or 1400 (a), as a substantial part of the events or omissions giving rise to these claims occurred in this District.

FACTS COMMON TO ALL COUNTS

9. Timberpeg manufactures and sells TIMBERPEG® brand packages of post and beam (heavy timber) materials used for the construction of a home's timber frame and exterior building envelope. Timberpeg designs homes to facilitate the sale of TIMBERPEG® packages. A timber frame consists of vertical posts and horizontal beams (e.g., girders, joists, purlins) that together create the structural skeleton of the home and define the home's size, shape, look, and architectural spaces. A typical TIMBERPEG® package includes the timber frame, windows,

exterior doors, insulation, siding, exterior trim, and cedar roof shakes. A purchaser of a TIMBERPEG® package hires a builder/general contractor to assemble the package and complete construction of the home.

10. On or about November 1, 1999, Isbitski entered into a "Deposit Agreement for TIMBERPEG® Preliminary Plans and Drawings" ("Design Agreement"). A true and correct copy of the Design Agreement Isbitski executed is attached hereto as Exhibit A. Under the Design Agreement, Isbitski paid a \$2,500 initial deposit for preliminary plans and drawings to be furnished by Timberpeg relating to a TIMBERPEG® brand package of materials for a house Isbitski intended to construct at 289 New Road, Salisbury, New Hampshire.

11. The Design Agreement provided that the deposit monies would be credited against the price of the TIMBERPEG® package if Isbitski decided to purchase a TIMBERPEG® package after reviewing the preliminary plans.

12. The Design Agreement further provided that if Isbitski decided not to purchase a TIMBERPEG® package, Timberpeg would, at Isbitski's request, return the deposit monies, less the cost of design time. In fact, Isbitski owes Timberpeg \$1,003.75 for unreimbursed services rendered pursuant to the Design Agreement.

13. The Design Agreement further provided:

Company and/or its assigns owns and will continue to own the copyright in the Plans. The Plans may be used by Customer solely in connection with the evaluation and construction of one (1) Package purchased from Company. Any other use of the Plans, including, but not limited to, the following, is an unauthorized appropriation of copyright by Customer and a breach of this Agreement: a) the copying of all or any part of the Plans; b) the utilization or partial utilization of the Plans for the construction of a similar building or structure; c) any transfer or delivery of the Plans to another person without written authorization from Company.

14. In accordance with the Design Agreement, Timberpeg created an original set of architectural plans and provided the Timberpeg plans to Isbitski. The Timberpeg plans contained a copyright notice, which confirmed that Timberpeg held the copyright in the plans.

15. After reviewing the Timberpeg plans, Isbitski requested design changes, which Timberpeg accommodated in revised plans (the "Plans"), which also contained a copyright notice.

16. On May 18, 2001, Timberpeg registered the Plans with the United States Copyright Office as an architectural work. Certificate of Registration No. VAu 510-781. A true and correct copy of the Certificate of Registration is attached hereto as Exhibit B.

17. Over the course of the summer of 2001 and through to the summer of 2002, Isbitski continued to negotiate with Timberpeg for the purchase of a TIMBERPEG® package, and, based on Isbitski's conduct, Timberpeg anticipated selling a TIMBERPEG® package to him.

18. During this same timeframe, Isbitski had a copy of the Plans placed on file with the Town of Salisbury's Building Department. On or about September 5, 2001, the Town of Salisbury issued a building permit based upon the Plans (Permit No. 01-37). The Plans on file with the Salisbury Building Department are a true and correct copy of the same Plans protected by Copyright Registration VAu 510-781.

19. Upon information and belief, sometime after May 18, 2001, Isbitski delivered the Plans to Vermont Timber with the intention of contracting with Vermont Timber instead of Timberpeg for construction materials that the Design Agreement required Isbitski to purchase from Timberpeg. Upon information and belief, the Plans Isbitski provided to Vermont Timber contained a copyright notice.

20. Upon information and belief, Isbitski asked Vermont Timber to use the Plans to create a timber frame that would "fit" the Plans and follow and define the architectural spaces embodied in the Plans.

21. Upon information and belief, Vermont Timber used the Plans for the purpose of designing and manufacturing a timber frame pursuant to the Plan's "requirements and parameters."

22. Upon information and belief, Vermont Timber traveled to Salisbury, New Hampshire, and constructed the Vermont Timber timber frame on Isbitski's property at 289 New Road, Salisbury, New Hampshire.

23. The Vermont Timber timber frame as manufactured and constructed by Vermont Timber physically embodies the size, shape, architectural spaces, floor plan, and overall design of the Plans in a manner that is substantially similar to, if not virtually identical to, the architectural work embodied in the Plans.

24. At no time did Timberpeg authorize Isbitski to copy or use the Plans other than in a manner consistent with the terms of the Design Agreement.

25. At no time did Timberpeg authorize Vermont Timber to copy or use the Plans in any manner.

COUNT I

COPYRIGHT INFRINGEMENT AGAINST ISBITSKI

26. Paragraphs 1-25 are hereby repeated and realleged as if stated in full herein.

27. The Plans are an "architectural work" as defined in 17 U.S.C. § 101.

28. The Plans were original works of authorship and were fixed in a tangible medium of expression.

29. By virtue of its registration of the Plans with the United States Copyright Office, Timberpeg is the owner of the copyright for the Plans and has the exclusive rights to reproduce the Plans and to prepare derivative works based on the Plans.

30. Isbitski had access to the Plans based upon Timberpeg's delivery of the Plans to Isbitski pursuant to the Design Agreement.

31. Isbitski improperly copied the Plans, caused the Plans to be copied, or used the Plans without Timberpeg's authorization and, in fact, in violation of Timberpeg's express prohibitions.

32. Isbitski improperly utilized the Plans or caused them to be utilized in the construction of a house at 289 New Road, Salisbury, New Hampshire, (the "Isbitski House") without Timberpeg's authorization and, in fact, in violation of Timberpeg's express prohibitions.

33. The Isbitski House is substantially similar to the architectural work embodied in the Plans.

34. Such actions by Isbitski constitute an infringement of Timberpeg's copyright of the Plans under 17 U.S.C. §§ 501 et seq.

35. By virtue of the notice of copyright on the Plans, the terms of the Design Agreement, and the copyright registration of the Plans predating the infringement, Isbitski was not an innocent infringer of the copyright. Isbitski's infringement was knowing and willful.

36. Timberpeg has been damaged and continues to incur damage by Isbitski's actions.

COUNT II

COPYRIGHT INFRINGEMENT AGAINST VERMONT TIMBER

37. Paragraphs 1-36 are hereby repeated and realleged as if stated in full herein.

38. Isbitski gave Vermont Timber a copy or copies of the Plans. The Plans were on file with the Salisbury, New Hampshire Building Department. As a result, Vermont Timber had access to the Plans.

39. Vermont Timber improperly copied the Plans or caused them to be copied without Timberpeg's authorization and, in fact, in violation of Timberpeg's express prohibitions.

40. Vermont Timber improperly utilized the Plans or caused the Plans to be utilized in the manufacture of a timber frame and the assembly of that timber frame for the Isbitski House without Timberpeg's authorization and, in fact, in violation of Timberpeg's express prohibitions.

41. The Isbitski House, which incorporates Vermont Timber's timber frame, which timber frame is aesthetically and structurally integral to the Isbitski House, is substantially similar to the architectural work embodied in the Plans.

42. Such actions by Vermont Timber constitute infringement of Timberpeg's copyright of the Plans under 17 U.S.C. § 501 et seq. By virtue of the notice of copyright on the Plans and the copyright registration of the Plans predating any infringement, Vermont Timber was not an innocent infringer of the copyright. Vermont Timber's infringement was knowing and willful.

43. Timberpeg has been damaged and continues to incur damage by Vermont Timber's actions.

COUNT III

BREACH OF CONTRACT AGAINST ISBITSKI

44. Paragraphs 1-43 are hereby repeated and realleged as if stated in full herein.

45. Isbitski breached the Design Agreement by failing to pay Timberpeg for all services rendered pursuant to the Design Agreement, copying the Plans or causing them to be copied without Timberpeg's authorization, utilizing the Plans or causing them to be utilized in the construction of the Isbitski House without Timberpeg's authorization, and delivering the Plans to Vermont Timber without Timberpeg's authorization.

46. Timberpeg has been damaged and continues to incur damage by Isbitski's actions.

COUNT IV

UNJUST ENRICHMENT AGAINST ISBITSKI

47. Paragraphs 1-46 are hereby repeated and realleged as if stated in full herein.

48. By terminating the Design Agreement, Isbitski relinquished any conditional rights to the Plans that Isbitski may have had.

49. Timberpeg's product is the TIMBERPEG® brand package of materials Timberpeg sells for the construction of its customers' homes. The price Timberpeg charges prospective customers for time spent creating and modifying plans is substantially below the market value for such work. Timberpeg offers the option of creating plans for prospective customers in the expectation customers will purchase the TIMBERPEG® brand package of materials.

50. By utilizing the Plans for the construction of the Isbitski House from other than a TIMBERPEG® brand package of materials, Isbitski enjoyed the benefit of Plans in which he had no rights and for which he paid substantially less than the fair market value.

51. Isbitski failed to compensate Timberpeg for all services rendered pursuant to the Design Agreement.

52. Isbitski was unjustly enriched to the detriment of Timberpeg.

COUNT V

**UNJUST ENRICHMENT
AGAINST VERMONT TIMBER**

53. Paragraphs 1-52 are hereby repeated and realleged as if stated in full herein.

54. By tracing, digitizing, copying, and/or otherwise utilizing the Plans, Vermont Timber saved considerable cost in its manufacture of construction materials for the Isbitski House. As a result, on information and belief, Vermont Timber was able to offer Isbitski a lower price for the materials than Timberpeg could.

55. NR Isbitski had no rights in the Plans that Isbitski conveyed to Vermont Timber. At no time did Timberpeg authorize Vermont Timber to copy or use the Plans.

56. The copying or utilization of the Plans provided a benefit to Vermont Timber to which Vermont Timber was not entitled.

57. Vermont Timber was unjustly enriched to the detriment of Timberpeg.

COUNT VI

**UNFAIR COMPETITION
AGAINST VERMONT TIMBER**

58. Paragraphs 1-57 are hereby repeated and realleged as if stated in full herein.

59. Timberpeg spent time, labor, and money creating and developing the Plans, which Timberpeg owns and for which Timberpeg has exclusive rights.

60. Timberpeg intended to sell Isbitski a TIMBERPEG® brand timber frame for the Isbitski House.

61. Vermont Timber is a competitor of Timberpeg's.

62. Without Timberpeg's consent or approval, Vermont Timber used the Plans to manufacture, sell, and construct a timber frame for the Isbitski House.

63. Vermont Timber engaged in such conduct even though the Plans bear Timberpeg's name and copyright reservation.

64. As a result of Vermont Timber's unauthorized use of the Plans, Vermont Timber competed unfairly with Timberpeg and caused Timberpeg to suffer damage.

COUNT VII

NEW HAMPSHIRE CONSUMER PROTECTION ACT AGAINST VERMONT TIMBER

65. Paragraphs 1-64 are hereby repeated and realleged as if stated in full herein.

66. Through its willful, unlawful copying and use of Timberpeg's Plans, Vermont Timber has engaged in unfair or deceptive conduct toward Timberpeg.

67. Timberpeg is entitled to damages, trebled to reflect Vermont Timber's conduct, as well as to an award of attorneys' fees pursuant to RSA 358-A.

PRAYER FOR RELIEF

WHEREFORE, Timberpeg prays for the following relief:

1. Judgment in its favor on all counts;
2. Actual and compensatory damages;
3. Disgorgement of the profits of the defendants that are attributable to their infringement of the copyright under 17 U.S.C. § 504 (c);
4. Judgment as a conclusion of law that the defendants' infringement of plaintiffs' registered copyright was a willful violation, under U.S.C. § 504 (c);
5. Statutory damages under 17 U.S.C. § 504 (c);
6. Attorneys' fees under 17 U.S.C. § 505, RSA 358-A or the common law;
7. Disgorgement and payment for the benefits unjustly enjoyed by the defendants;

8. A preliminary and permanent injunction prohibiting defendants and anyone acting in concert with them from copying or utilizing in any manner the Plans or any Timberpeg plans and compelling the return to plaintiffs of all Plans and all derivative works in any way based upon the Plans, under 17 U.S.C. § 502;

9. Costs under 17 U.S.C. § 505;

10. Interest;

11. Such other and further relief that the Court deems just and fair; and

12. Timberpeg demands a trial by jury.

Respectfully submitted,

T-PEG, INC. AND TIMBERPEG EAST, INC.
By their attorneys,

DEVINE, MILLEMET & BRANCH,
PROFESSIONAL ASSOCIATION

Date: October 23, 2003

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