

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

TUSCAN LEVELING, INC.,

Plaintiff,

V.

ROYNETTE, INC.,

Defendant.

3:10CV00618 VLB
CIVIL ACTION NO.

3:10CV618VLB

APRIL 21, 2010

COMPLAINT

Plaintiff Tuscan Leveling, Inc., for its Complaint against defendant Roynette, Inc., states:

JURISDICTION AND VENUE

1. This action arises under the trademark and unfair competition laws of the United States pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c), Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1), and 28 U.S.C. §1338(a).

2. Venue over this action is proper pursuant to the provisions of 28 USC §1391 on the grounds that the defendant resides in this judicial district and a substantial part of the events giving rise to the claims occurred in this judicial district.

U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT

APR 21 2010

CLERK

PARTIES

3. Plaintiff Tuscan Leveling, Inc. ("Tuscan") is an Iowa corporation with its principal place of business in Jefferson County, Iowa, located at 100 West Burlington Avenue, Fairfield, Iowa 52556. Tuscan is in the business of providing a unique tile installation method and products to tile installation contractors and others throughout the world.

4. Defendant Roynette, Inc. ("Roynette") is a corporation organized and existing under the laws of the state of Connecticut with its principal place of business located at 143 Furniture Row, Milford, CT 06469.

5. Roynette, doing business as Contractors Direct and/or Contractor's Direct, is engaged in the sale of numerous tools, equipment and construction products to contractors and others throughout the United States.

6. Roynette engages in business through multiple commercial means. One such means by which it solicits and obtains orders from customers is an interactive website, www.contractorsdirect.com. The website functions within every state of the United States and is designed to receive orders and payment via the internet with products thereafter shipped to the location of the ordering party.

GENERAL ALLEGATIONS

7. Since on or before September 30, 2007, Tuscan has been using the mark, "TUSCAN LEVELING SYSTEM," in conjunction with a unique type of goods that it has commercially offered, both in intrastate commerce and in interstate commerce.

8. The TUSCAN LEVELING SYSTEM is a series of products designed to facilitate the installation of tile allowing for precise dimensional orientation while reducing the hours required by the contractor to complete the installation job.

9. The TUSCAN LEVELING SYSTEM products, and their method of use, are the subject of patent applications pending before the United States Patent and Trademark Office and one issued United States Patent (U.S. Pat. No. 7,621,100). Further, patent applications have issued or are pending before the patent offices in the European Union, Mexico, Indonesia, Philippines, Ukraine, Australia, India, China, New Zealand, Norway, South Africa, Brazil, Russian Federation, Canada, and Japan.

10. Tuscan has identified TUSCAN LEVELING SYSTEM as its protected trademark and has expended substantial sums of money and effort in marketing, publicizing, promoting and advertising its TUSCAN LEVELING SYSTEM tile alignment devices.

11. TUSCAN LEVELING SYSTEM tile alignment devices are identified with Tuscan and are further identified with the high level of quality and unique products and method offered by Tuscan.

12. As a part of its commercialization of the TUSCAN LEVELING SYSTEM, Tuscan has established a number of distributors throughout the world.

13. In conjunction with establishing this distribution network, Tuscan approached a company in Spain, Germans Boada, s.a. ("Germans Boada"). Germans Boada manufactures and sells many different types of tools under the RUBI trademark. Tuscan engaged in substantial discussions and made disclosures to Germans Boada, but before the distribution arrangement was finalized, Germans Boada discontinued discussions. Shortly thereafter, Germans Boada introduced the "Rubi Tile Leveling System." In its design of the Rubi Tile Leveling System, Germans Boada relied upon the disclosures and unique products and method disclosed to it by Tuscan and copied those product materials and method to create the Rubi Tile Leveling System. This act of copying by Germans Boada was done without license or other permission of Tuscan.

14. Roynette is a distributor for Germans Boada's RUBI line of products and specifically is identified as a distributor of the Rubi Tile Leveling System.

15. In conjunction with its internet advertising, Roynette caused an advertisement to be placed through the site know as YouTube (www.youtube.com). A copy of the advertisement is

appended as Attachment A. In this advertisement for the sale of the Rubi Tile Leveling System by Roynette, Roynette offers goods and an installation method identical or substantially identical to certain goods and installation method offered by Tuscan.

16. As indicated by the screen print of the YouTube.com site dated April 19, 2010, there have been at least 330 separate viewings of this advertisement placed in interstate commerce.

17. As a part of this advertising of the Rubi Tile Leveling System, Roynette utilizes the mark TUSCAN LEVELING SYSTEM. In its internet advertising, Roynette utilizes the mark TUSCAN LEVELING SYSTEM in metadata and in human readable form. The metadata use elicits electronic search engines to identify and publish Roynette's advertisement to those prospective consumers who are looking for the TUSCAN LEVELING SYSTEM. Then, after the advertisement is located by the search engine, the words "tuscan leveling system" appear in human readable form near a Contractor's Direct hyperlink that says "Buy Rubi Tile Leveling System here."

18. Roynette is not related to Tuscan, nor does Roynette have any authority, license, or other permission to use Tuscan's mark, TUSCAN LEVELING SYSTEM.

19. In addition to utilizing the TM designation in commerce when using the mark, TUSCAN LEVELING SYSTEM, Tuscan filed an application to register the mark, TUSCAN LEVELING SYSTEM, with the United States Patent and Trademark Office on or about February 2, 2009, under the provisions of 15 U.S.C. § 1051(b). This application, Serial No. 77661583, is a

matter of public record available to Roynette and all others. Evidence of Tuscan's trademark application is appended as Attachment B. On August 25, 2009 the United States Patent and Trademark Office issued a Notice of Allowance for Tuscan's TUSCAN LEVELING SYSTEM trademark application. The Notice of Allowance is appended as Attachment C.

20. Roynette has intentionally, willfully and wantonly violated and infringed the rights held by Tuscan in its mark, TUSCAN LEVELING SYSTEM, which use constitutes unfair and deceptive competition with Tuscan.

FIRST CLAIM FOR RELIEF
(Federal Trademark Infringement and Unfair Competition)

21. Tuscan incorporates by reference herein all allegations set forth above in ¶¶1-20 of this Complaint.

22. Roynette has used marks, symbols, devices or logos identical to, similar to, or confusingly similar with Tuscan's mark, TUSCAN LEVELING SYSTEM, without Tuscan's authorization and in connection with Roynette's marketing or sale of goods and services in interstate commerce.

23. Such use constitutes false designation of origin and false descriptions and representations of Roynette's business, goods and services, and falsely portrays Roynette and its business, goods and services as being associated with, sponsored or approved by, or related to Tuscan.

24. Roynette's acts are likely to confuse, mislead or deceive customers, purchasers and potential customers of Tuscan and of Roynette, as well as to confuse, mislead or deceive other members of the public, as to the origin, sponsorship, or affiliation of Roynette's business, goods and services, to the extent that it may cause such persons to believe in error that Roynette's use of marks, symbols, devices or logos identical to, similar to or confusingly similar with Tuscan's mark, TUSCAN LEVELING SYSTEM, has been authorized, sponsored or approved by Tuscan and its business, goods and services are connected with, affiliated with or authorized by Tuscan.

25. Roynette's acts are infringing Tuscan's mark and, further, constitute misleading or false descriptions and false designations or origin of Roynette's business, goods and services. Said acts have affected interstate commerce in violation of §43(a) of the Lanham Act, 15 U.S.C. §§1125(a), and have resulted in damage and harm to Tuscan.

26. Tuscan is further entitled to recover attorney's fees based upon the willful acts and conduct of Roynette in conjunction with the use of its marks, symbols, devices or logos identical to, similar to, or confusingly similar with Tuscan's mark, TUSCAN LEVELING SYSTEM.

SECOND CLAIM FOR RELIEF
(Federal Trademark Dilution)

27. Tuscan incorporates by reference herein all allegations set forth above in ¶¶1-26 of this Complaint.

28. On information and belief, Roynette has knowingly and willfully used marks, symbols, devices or logos identical to, similar to or confusingly similar with Tuscan's mark, TUSCAN LEVELING SYSTEM. Such use has caused and continues to cause dilution of the famous and distinctive quality and value of Tuscan's mark, TUSCAN LEVELING SYSTEM, in violation of §43(c) of the Lanham Act, 28 U.S.C. §1125(c).

29. By reason of Roynette's acts causing dilution of the famous and distinctive quality and value of Tuscan's mark, TUSCAN LEVELING SYSTEM, Tuscan has suffered monetary damages and is further entitled to recover all Roynette's profits earned in connection with its wrongful use of confusingly similar marks, symbols, devices or logos and to recover the costs of this action.

30. Tuscan is further entitled to recover attorney's fees based upon the willful acts and conduct of Roynette in conjunction with the use of its marks, symbols, devices or logos identical to, similar to, or confusingly similar with Tuscan's mark, TUSCAN LEVELING SYSTEM.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Tuscan Leveling, Inc. requests the following relief:

A. A grant of permanent injunctive relief enjoining and restraining Roynette, Inc., its officers, directors, agents, servants, employees, members, successors, assigns, and all those in privity with or in active concert or participation with them from:

- 1) Using the mark, TUSCAN LEVELING SYSTEM, or any confusingly similar mark, symbol, device, logo, word, term or name, or any combination thereof, in connection with their business or the sale of any goods and services in any manner or context whatsoever without prior written authorization from Tuscan;
- 2) Making any statement or representation and/or performing any acts likely to lead the public, or individual members of the public, to incorrectly believe that Roynette is directly or indirectly associated or connected with, or sponsored or approved by Tuscan in its sale of the Rubi Tile Leveling System;
- 3) Engaging in any acts or activities calculated to trade upon Tuscan's mark, TUSCAN LEVELING SYSTEM, or the reputation or goodwill of Tuscan, or in any manner to falsely designate Roynette's goods and/or services

as originating with, being associated with, sponsored or approved by Tuscan;
and

4) Committing any other act which infringes or dilutes the quality or value of Tuscan's mark, TUSCAN LEVELING SYSTEM, or constitutes an unfair trade practice, unfair competition, or false advertising; and

B. An Order requiring Roynette, Inc. to deliver up to Tuscan or its counsel for destruction:

1) Any books, printed materials, CD-roms, diskettes, publications, promotional materials, video or audio materials, packages, labels, cartons, boxes, signs, prints, wrappers, receptacles, advertising, or documents or images stored or transmitted by any electronic means of any type bearing or otherwise referencing the mark, TUSCAN LEVELING SYSTEM, or any confusingly similar word, term, mark, symbol, device or logo, or combination thereof; and

2) All stationery, business cards, invoices, catalogs, advertising materials, or any other material of any type bearing the mark, TUSCAN LEVELING SYSTEM, or any confusingly similar word, term, mark, symbol, device or logo, or combination thereof; and

C. An Order requiring Roynette to file with the Court within thirty (30) days after issuance of any permanent injunction in this action, or within such other reasonable time as the Court may direct, a report in writing under oath setting forth in detail the manner and form in which it has complied with the provisions of said injunction and order to destroy all material having the same or confusingly similar mark to Tuscan's mark, TUSCAN LEVELING SYSTEM; and

D. An Order requiring Roynette to file with the Court and serve upon counsel for Tuscan an accounting of any and all sales of goods or services and any and all profits received by Roynette, Inc. from the distribution or sale of their goods or services in any way connected with, marketed with, or otherwise advertised or sold in conjunction with its use of any words, terms, marks, devices, symbols, or logos identical to, similar to, or confusingly similar with Tuscan's mark, TUSCAN LEVELING SYSTEM; and


E. Recovery by Tuscan from Roynette of all Roynette's profits earned as a consequence of the foregoing acts, and an accounting of such profits, and that such award be trebled; and

F. Recovery by Tuscan from Roynette of its compensatory damages arising out of and relating to the foregoing acts, and that such award be trebled; and

G. Recovery by Tuscan from Roynette of such reasonable attorney's fees and costs incurred in connection with this action; and

H. Recovery by Tuscan from Roynette of interest, taxable costs and disbursements of this action, and such other relief as provided in law or equity.

PLAINTIFF,
TUSCAN LEVELING, INC.

By: 
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ATTACHMENT A

Screen Print - Defendant's YouTube video and advertisement

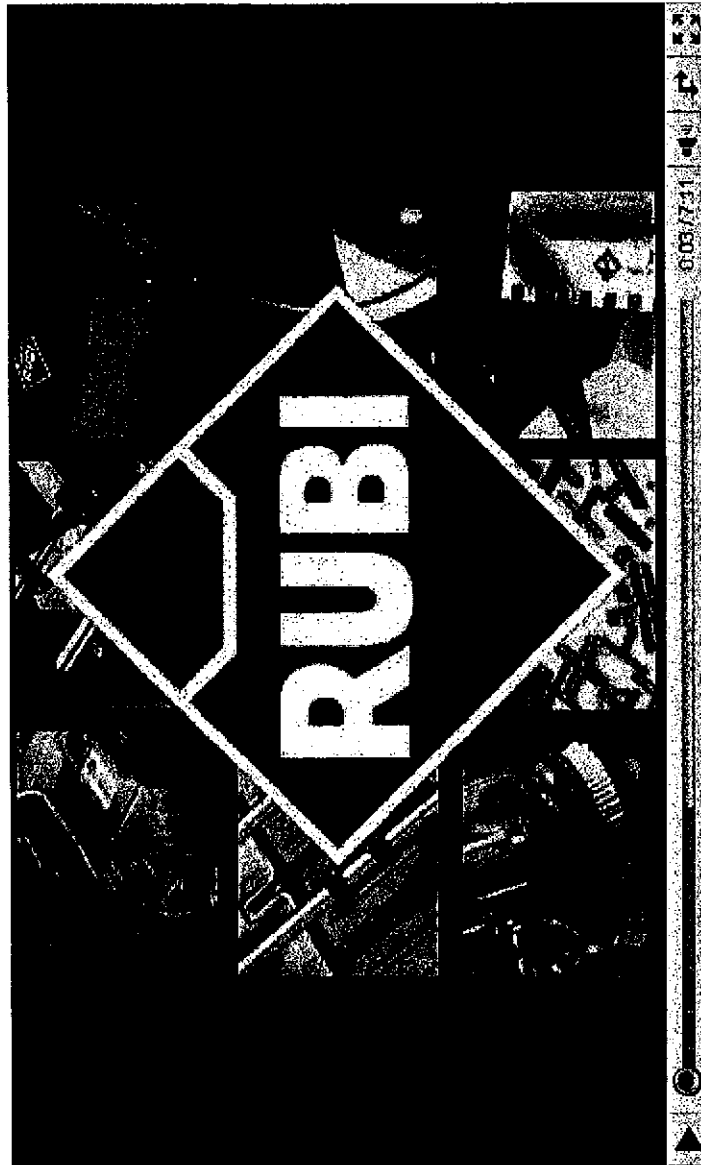
Rubi Tile Leveling System

ContractorsDirect 173 videos

Subscribe

tuscan leveling system Search Browse Upload

Create Account Sign In



330 views

ContractorsDirect — February 22, 2010 — <http://www.contractorsdirect.com/Rubi...> - Buy Rubi Tile Leveling System here

Designed to obtain a fast and level granite and marble tile installation without the need of subsequent adjustments.

- *Virtually eliminateslippage during the hardening of the adhesive.
- *Recommended for gauged tiles 12" or larger.
- *For tiles of uniform thickness only (gauged tile).
- *Greatly reduces installation time therefore improving cost-effectiveness.
- *Caps can be reused up to 25 times.
- *Ideal for laying tile that are over 12" or that require the use of an adhesive mix.

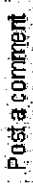
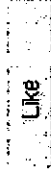
	Surelevelsaudia Demo Part 4 - Tile Adhesive and... 129 views surelevelsaudia
	Rubi T1-S & T1-T Tile Cutters 136 views ContractorsDirect
	How to Tile Large & Natural Stone Tiles pt2 @ S... 20,954 views quickinmedia
	LASH™ 3,388 views geppocinc
	Tuscan Tile Leveling System 718 views TileToolscom
	Flat sitall mirror polishing by ATM group in Mo... 2,465 views dymakrus
	USTSTFLS 475 views randyhoj
	Rubi TR Series Tile Cutters 12,359 views ContractorsDirect
	How To Tile A Wall 153,867 views VideoJug

YouTube - Rubi Tile Leveling System










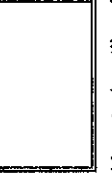
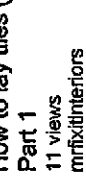
*Significantly improves the evenness of the final tiled surface.
*Virtually lippage free mirror flat surface drastically reduces the need for grinding and polishing.

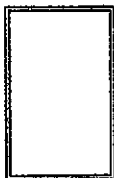
Category:
Howto & Style

Tags:
tuscan leveling system



mase4163 lets see that work when there is a hump in the floor plus it dosent mean you have a good bond when you lift the tile like that nice try just use more thinset

-  Tuscan Leveling System Short
584 views
ContractorsDirect
-  Installing Handi-Kirb with Thin Bed Method usin...
347 views
ContractorsDirect
-  How To Tile a Bathroom Floor - The Home Depot
208,997 views
homedepot
-  How to Install a Storm Door : How to Install a ...
2,051 views
expertvillage
-  Tuscan Leveling System
4,286 views
ContractorsDirect
-  POLISHED CONCRETE with LEVIGHETOR MAX by ROBERTOBIBIANO
5,945 views
-  Tile Setting Guide
1,296 views
homedigitalproducts
-  My Zeiss grinding and polishing machine
1,048 views
RICCARDOSPADA
-  Rubi Spomatic 250 Electric Sponge
88 views
ContractorsDirect
-  Bathr tub Installed Wrong
19,763 views
jeromegipson
-  How to lay tiles (Indian Style) Part 1
11 views
mfixinteriors



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ATTACHMENT B

United States Patent and Trademark Office information relating to Plaintiff's
TUSCAN LEVELING SYSTEM trademark application

**United States Patent and Trademark Office**

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Sat Apr 17 04:02:18 EDT 2010

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[TARR Status](#) [ASSIGH Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet
 Browser to return to TESS)

Tuscan Leveling System

Word Mark	TUSCAN LEVELING SYSTEM
Goods and Services	IC 008. US 023 028 044. G & S: hand tools, namely, a flattening device with a top and bottom plate connected by a shaft, for leveling tile, marble, ceramic, onyx and granite. FIRST USE: 20070930. FIRST USE IN COMMERCE: 20070930
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77661583
Filing Date	February 2, 2009
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	June 2, 2009
Owner	(APPLICANT) Tuscan Leveling, Inc. CORPORATION IOWA 100 W. Burlington Fairfield IOWA 52556
Attorney of Record	Ryan N. Carter
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LEVELING SYSTEM" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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[Next List](#) [First Doc](#) [Prev Doc](#) [NEXT DOC](#) [LAST DOC](#)

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ATTACHMENT C

Copy of the Notice of Allowance for Plaintiffs TUSCAN LEVELING SYSTEM
trademark application

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Aug 25, 2009

RYAN N. CARTER
NYEMASTER GOODE P.C.
PO BOX 8870
CEDAR RAPIDS, IA 52408-8870

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of Use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION. Please note that both the "Statement of Use" and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRB-registration form"), to avoid the possible omission of important information. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

**** Registration Subject to Cancellation for Fraudulent Statements ****

Ensure that statements made in filings to the USPTO are accurate, as inaccuracies may result in the cancellation of your trademark registration. The lack of a bona fide intention to use the mark with all goods and/or services included in an application or the lack of use on all goods and/or services for which you claimed use could jeopardize the validity of your registration, possibly resulting in its cancellation.

The following information should be reviewed for accuracy:

SERIAL NUMBER: 77/661583
MARK: TUSCAN LEVELING SYSTEM (STANDARD CHARACTER MARK)
OWNER: Tuscan Leveling, Inc.
100 W. Burlington

ATTACHMENT C

Fairfield , IOWA 52566

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

008 - hand tools, namely, a flattening device with a top and bottom plate connected by a shaft, for leveling tile, marble, ceramic, onyx and granite -- FIRST USE DATE: NONE; -- USE IN COMMERCE DATE: NONE

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS