

Jason M. Bruno, AZ #023125
Sherrets Bruno & Vogt LLC
260 Regency Parkway Drive, Suite 200
Omaha, NE 68114
(402) 390-1112- Telephone
(402) 390-1163- Facsimile
EMAIL: jbruno@sherrets.com
Attorneys for Plaintiffs Kewlmetal, Inc. and Joseph B. Gschweng

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

KEWLMETAL, Inc., an Arizona Corporation
and JOSEPH B. GSCHWENG, an individual,

Plaintiff,

vs.

BIKE BUILDERS BIBLE, INC., a California
Corporation

Defendant.

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Kewlmetal, Inc. (“Kewlmetal”) and Joseph B. Gschweng (“Gschweng”) allege the following for their Complaint against Bike Builders Bible, Inc. (“Bike Builders”):

PARTIES

1. Kewlmetal is an Arizona Corporation with its principal place of business in Phoenix, Arizona.
2. Gschweng is an individual residing in Arizona.
3. Defendant Bike Builders is a California Corporation with its principal place of business in Anaheim, California but is actively doing business in Arizona.

JURISDICTION AND VENUE

4. This civil action includes claims for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1-376. This civil action further includes claims for common law unfair competition under the laws of Arizona. Kewlmetal and Gschweng are citizens of Arizona.

1 idea is inexpensive, reliable, safe, guarantees correct trail numbers, and would not result in a
2 reduction in value or any difficulty in resale because it does not require the frame to be cut.

3 10. Gschweng's product is revolutionary in the motorcycle world and remains in
4 high demand, especially since the kits have become popular with Harley-Davidson Motorcycles.
5 Gschweng's products and inventions have received well known praise in the industry and have
6 been featured in publications such as V-Twin, American Bagger, American Iron, and Road Iron.
7 Gschweng's products have resulted in significant goodwill and recognition for Kewlmetal.

8 11. On October 21, 2008, the United States Patent and Trademark Office ("PTO")
9 issued Patent No. US 7,438,306 (hereinafter "the '306 Patent") titled "Motorcycle Rake and
10 Trail Adjuster" which relates to the modification of a motorcycle and covers bolt-on neck kits
11 that incorporate a false neck. A true and correct copy of the '306 Patent is attached hereto and
12 incorporated by reference as Exhibit A.

13 12. Kewlmetal is a small, family run, custom motorcycle shop owned by Gschweng
14 and his wife. Kewlmetal designs, manufactures, and sells the highest quality American made
15 motorcycle parts. Kewlmetal sells products worldwide through its Phoenix location, online, and
16 through various distributors. These products include specifically designed kits for various
17 motorcycle models and wheel sizes that are protected by the '306 Patent and listed on the
18 document attached hereto and incorporated by reference as Exhibit B ("the Kewlmetal
19 Products").



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23 13. Kewlmetal holds the exclusive license to the '306 Patent and has the right to sue
24 for any infringement thereof. Gschweng is an Inventor of and Licensor of the '306 Patent.

25 14. Without authority, Bike Builders has been actively advertising, marketing,
offering for sale, selling, and/or distributing in the United States, including in this judicial

1 district, Big Wheel and other Bolt-On Neck Kits under the American Suspension label that
2 directly infringe upon the ‘306 Patent (“the Infringing Products”).

3 15. Bike Builders’ Infringing Products violate the ‘306 Patent by infringing upon the
4 utility of the ‘306 Patent, copying functional aspects of Gschweng’s invention, incorporating a
5 false neck, and performing the exact same function as the ‘306 Patent, in substantially the same
6 way, to yield the exact same result.

7 16. Bike Builders advertises, markets, offers for sale, sells, and/or distributes the
8 Infringing Products in a variety of channels, including on Facebook, boltoncustoms.com,
9 artinmotionllc.net, americansuspension.com, catalog.zodiac.nl, vindictivewayz.com, and
10 additional websites, stores, and trade shows.

11 17. Bike Builders is selling its infringing products for as high as \$1,395.00 per unit.

12 18. Kewlmetal has made demands upon Bike Builders to cease and desist from
13 importing, manufacturing, selling, advertising, selling, distributing, marketing, offering to sell,
14 or using the Infringing Products.

15 19. Bike Builders has rejected Kewlmetal’s demands and continues, to date, to
16 advertise, market, offer for sale, sell, and/or distribute the Infringing Products.

17 20. Bike Builders was aware of the ‘306 Patent prior to advertising, marketing,
18 offering for sale, selling, and/or distributing the Infringing Products.

19 21. Bike Builders infringement is willful.

20 **COUNT ONE**

21 **(Infringement of the ‘306 Patent)**

22 22. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint.

23 23. Bike Builders had actual knowledge of the ‘306 Patent infringement prior to the
24 filing of this action.

25 24. Bike Builders’ Infringing Products infringe the ‘306 Patent.

1 25. Bike Builders has directly infringed on the ‘306 Patent, and continues to directly
2 infringe on the ‘306 Patent, by manufacturing, advertising, marketing, offering for sale, selling,
3 and/or distributing the Infringing Products in this District and elsewhere in the United States.

4 26. Bike Builders has contributed to the infringement of, and continues to
5 contributorily infringe on, the ‘306 Patent by manufacturing, advertising, marketing, offering for
6 sale, selling, and/or distributing the Infringing Products in this District and elsewhere in the
7 United States.

8 27. On information and belief, Bike Builders has induced the infringement of, and
9 continues to induce the infringement of, the ‘306 Patent by manufacturing, advertising, using,
10 offering for sale, selling, and/or distributing the Infringing Products in this District and
11 elsewhere in the United States.

12 28. Bike Builders’ actions constitute a direct infringement, contributory
13 infringement, and/or active inducement of infringement of the ‘306 Patent in violation of 35
14 U.S.C. § 271.

15 29. Plaintiffs have sustained damages, and continue to sustain damages, as a result of
16 Bike Builders’ infringement.

17 30. Plaintiffs are entitled to recover for the damages sustained as a result of Bike
18 Builders’ wrongful acts in an amount to be proven at trial.

19 31. Bike Builders’ infringement of Kewlmetal’s rights under the ‘306 Patent will
20 continue to damage Kewlmetal’s business, causing irreparable harm, for which there is no
21 adequate remedy at law, unless it is enjoined by the Court.

22 32. Bike Builders has infringed the ‘306 Patent directly, contributorily, and/or by
23 inducement with full knowledge of the ‘306 Patent’s issuance and with full knowledge that its
24 actions constitute an infringement. As such, Bike Builders has willfully infringed the ‘306
25 Patent, entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorney fees and
costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT TWO

(Common Law Unfair Competition)

33. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint.

34. Kewlmetal owns common law rights in distinctive, non-functional, and source-identifying aspects of the Kewlmetal Products in Arizona and throughout the United States.

35. Bike Builders has intentionally manufactured the Infringing Products in a way that they both appear and function in a substantially similar way as the Kewlmetal Products.

36. Bike Builders has sold and continues to sell nearly identical copies in function and utility to the Kewlmetal Products in Arizona and in the United States.

37. Bike Builders has acted and continues to act contrary to honest practice in commercial matters.

38. As a direct and proximate result of Bike Builders' actions, Kewlmetal has suffered and continues to suffer damage to its business, reputation, good will, along with loss of sale and profits Kewlmetal would have made, but for Bike Builders' actions.

39. As a direct and proximate result of Bike Builders' actions, Kewlmetal has suffered and continues to suffer irreparable harm. Unless Bike Builders is restrained, the damage and irreparable harm to Kewlmetal will increase. There is no adequate remedy at law. Kewlmetal is entitled to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. A judgment in favor of Plaintiffs against Bike Builders on the claims raised in this Complaint;

B. A finding that US Patent 7,438,306 is valid, enforceable, and infringed by Bike Builders;

C. Orders of this Court temporarily, preliminarily, and permanently enjoining Bike Builders, its officers, agents, servants, employees and any and all parties acting either in concert or in any business relationship with Bike Builders, from directly or indirectly infringing upon the '306 patent pursuant to 35 U.S.C. § 283, including specifically an order enjoining the sale,

1 offering for sale, the manufacture, the distribution, the advertisement of, the marketing of, or
2 importation of any infringing products;

3 D. A judgment against Bike Builders for the profits and damages resulting from
4 Bike Builders' past and present infringement of the '306 Patent;

5 E. A judgment that Bike Builders' infringement was willful, intentional, and/or in
6 bad faith;

7 F. An award of damages adequate to compensate Plaintiffs for Bike Builders'
8 infringement of the '306 Patent in an amount to be proven at trial;

9 G. For an increase of any damages by three times the amount found or assessed
10 pursuant to 35 U.S.C. § 284;

11 H. For a finding that the infringement was "exceptional" and an award of Plaintiffs'
12 reasonable attorney fees pursuant to 35 U.S.C. § 285;

13 I. For an order that all of Bike Builders' existing inventory of infringing products
14 be impounded and destroyed, or otherwise reasonably disposed of; and

15 J. Such other relief as the Court deems just and proper.

16 **Demand for Jury Trial**

17 Plaintiffs Kewlmetal and Gschweng hereby demand a jury trial Pursuant to Fed. R. Civ.
18 P. 38(b), on all issues of which a trial by jury is permitted.

19 KEWLMETAL, INC.,

20 By: /s/ Jason M. Bruno
21 Jason M. Bruno, AZ #023125
22 SHERRETS BRUNO & VOGT LLC
23 260 Regency Parkway Drive, Suite 200
24 Omaha, NE 68114
25 Tele: (402) 390-1112
Attorneys for Plaintiffs
Kewlmetal, Inc. and Joseph B Gschweng