

1 Eric A. Kelly (California SBN 292241)
2 eric.kelly@kellytechlaw.com
3 5535 Westlawn Ave., No. 180
4 Los Angeles, CA 90066
5 310-486-2698 phone or text msg
6 310-943-1432 fax

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8 *Attorney for Plaintiff Razer Auto, Inc.*

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

RAZER AUTO, INC.,
Plaintiff,

v.

OMIX-ADA, INC.,
Defendant.

Civil Action No. 5:16-CV-00300

**COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT AND INVALIDITY OF
U.S. DESIGN PATENT D712,324**

DEMAND FOR JURY TRIAL

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Razer Auto, Inc. (“Razer”) alleges, through its undersigned counsel, as follows for this Complaint for Declaratory Judgment of Patent Non-Infringement and Invalidity or Unenforceability (“Complaint”) against Defendant Omix-ADA, Inc. (“Omix”):

NATURE OF ACTION

1. Razer seeks in this action a declaratory judgment that Razer is not liable for infringement of a properly construed, valid, and enforceable claim of U.S. Design Patent D712,324 (the “324 Patent”) and that the properly construed claim of the ‘324 Patent is invalid or unenforceable.

JURISDICTION AND VENUE

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2 7. This action arise under the laws of the United States (“U.S.”), including the
3 U.S. patent laws as codified in Title 35 of the United States Code (“U.S.C.”) §§ 1 *et seq.*; and
4 with specific remedies sought under the Federal Declaratory Judgment Act, Title 28 U.S.C.
5 §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists
6 between Razer and Omix that requires a declaration of rights by this Court.
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8 8. This Court has subject matter jurisdiction over this action pursuant to Title 28
9 U.S.C. § 1331 and pursuant to Title 28 U.S.C. § 1338(a).
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11 9. This Court has personal jurisdiction over Omix by virtue of Omix’s purposeful
12 and presently ongoing contacts with the State of California, including but not limited to,
13 selling and offering to sell to California residents various Omix products, including products,
14 such as fender flares, for use on various makes and models of Jeeps.
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16 10. This Court has personal jurisdiction over Omix by virtue of Omix’s purposeful
17 and presently ongoing contacts with the State of California, including but not limited to,
18 Omix supporting numerous dealers of Omix products, wherein such numerous dealers have
19 retail physical addresses within California. For example, Omix’s website [www.omix-](http://www.omix-ada.com)
20 [ada.com](http://www.omix-ada.com) includes a “Find A Dealer” function, wherein that function returns the following
21 dealers located in the Central District of California: a 4Wheel Parts located in Redondo
22 Beach, CA; a 4Wheel Parts located in Compton, CA; a Jeep Solutions, Inc. located in Long
23 Beach, CA; a 4Wheels Parts located in Van Nuys, CA; a 4Wheel Parts located in Thousand
24 Oaks, CA; a 4Wheel Parts located in Azusa, CA; a Rack N Road located in Costa Mesa, CA;
25 a 4Wheel Parts located in Santa Ana, CA; and a Brothers 4X4 located in Montclair, CA.
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1 Thus, Omix is specifically servicing consumer retail locations within the Central District of
2 California, as well as California in general.

3 11. This Court has personal jurisdiction over Omix, at least with respect to the
4 specific subject matter of this action, by virtue of Omix's purposeful contacts with the Central
5 District of California, including, without limitation, Omix's Cease and Desist Letter, dated,
6 February 4, 2016, directed into the Central District of California, at Razer, as exemplified in
7 **Exhibit C**, such that Omix should and could reasonably be expected to be haled into Court in
8 the Central District of California.
9

10 12. Venue is proper in this judicial district pursuant to Title 28 U.S.C. §§ 1391 and
11 1400(b) because substantial parts of events giving rise to the claims presented in this
12 Complaint occurred in the Central District of California, including, without limitation,
13 Omix's attempts to enforce the '324 Patent against Razer, wherein Razer resides in the
14 Central District of California, *see e.g.*, **Exhibit C**. Further, substantial parts of events giving
15 rise to the claims presented in this Complaint occur in the Central District of California,
16 including, without limitation, Razer's warehousing of inventory of products in Ontario, CA,
17 that Omix alleges infringes the '324 Patent; as well as Razer selling and offering to sell such
18 products from Ontario, CA; wherein Ontario, CA, is in the Central District of California.
19 Note, Upland, CA, the city of Razer's principal place of business, where some sales and
20 marketing efforts are directed from is also within the Central District of California. Further,
21 substantially all of the property that is the subject of this action is situated in the Central
22 District of California, in that Razer carries inventory of the alleged infringing products at
23 Razer's Ontario, CA, warehouse location.
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1 (annotation of “allegedly” added). These introduced Omix fender flares products embodies
2 the designs of the ‘624 Patent.

3 20. Omix has sold, offers to sell, and currently sells fender flare products in the
4 U.S. Omix and Razer are direct competitors in that both companies sell particular types of
5 fender flare products for attachment to some Jeep vehicles. Omix and Razer have adverse
6 interests.
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8 21. Omix’s Cease and Desist Letter, as shown in **Exhibit C**, alleges that “Razer’s
9 marketing of its fender flares constitutes infringement of the ‘324 Patent.” Further, in this
10 Cease and Desist Letter, Omix demands that Razer cease manufacturing, using, selling,
11 offering to sell, and/or importing into the U.S. Razer’s stubby fender flares. Omix in this
12 Cease and Desist Letter also demands that Razer destroy all existing inventory of the stubby
13 fender flares. And Omix further demands in this Cease and Desist Letter that Razer provide
14 stubby fender flares sales information for a purpose of ascertaining money damages. *See*
15 *generally*, **Exhibit C**.
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18 22. Additionally, on Friday, December 11, 2015, Razer received an email from
19 Amazon’s counsel, that a “Rugged Ridge” had filed a complaint with Amazon, which stated,
20 “[w]e have received notice alleging that one or more products sold by you on Amazon.com
21 infringe patents purportedly owned by Rugged Ridge.” RUGGED RIDGE is a trademark
22 owned by Omix. Omix offers some of their products for sale on Amazon under the trademark
23 of RUGGED RIDGE. Omix has initiated steps with Amazon to prevent or hamper Razer’s
24 ability to market and sell Razer’s stubby fender flares via Amazon.
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26 23. However, Razer contends that is has not infringed and is not infringing any
27 properly construed, valid, and enforceable claim of the ‘324 Patent.
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1 24. Razer further contends that the properly construed claim of the ‘324 Patent is
2 invalid for failure to comply with the requirements for patentability of, *inter alia*, Title 35
3 U.S.C. §§ 101, 102, 103, and/or 112. Razer further contends that the properly construed
4 claim of the ‘324 Patent is unenforceable for inequitable conduct of Omix.
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6 25. A U.S. design patent application that issued into the ‘324 Patent was filed on
7 August 7, 2013, with the United States Patent and Trademark Office (“USPTO”). Both
8 before filing this U.S. design patent application, including more than a year before the filing
9 of this U.S. design patent application, as well as while this U.S. design patent application was
10 pending before the USPTO, Omix was aware of or should have been aware of various fender
11 flare products available in at least U.S. markets, including Omix supplied fender flare
12 products and competitor supplied fender flare products. Omix should have been aware of
13 various fender flare products, particularly those for Jeeps, because Omix has been
14 incorporated since 1992 and asserts that they are the “World's Largest Jeep Parts &
15 Accessories Manufacturer!” per their www.omix-ada.com website. With respect to Omix’s
16 website of www.omix-ada.com, Razer last visited this website on February 18, 2016. Yet
17 Omix failed to notify the USPTO, as required to do so under Title 37 Code of Federal
18 Regulations (“CFR”) § 1.56 of such information that is material to patentability. For
19 example, based on information and belief, Omix was providing fender flare products for
20 Jeeps under the “Rugged Ridge” brand at least as early as February 2011.
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24 26. By virtue of Omix’s actions and statements directed at or against Razer,
25 including, without limitation, the SEMA Tradeshow Complaint Form attached as **Exhibit B**
26 and the Cease and Desist Letter attached as **Exhibit C**, as well as the email notice from
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1 Amazon, there is an actual and substantial controversy between Razer and Omix regarding
2 Razer’s liability for patent infringement, validity, and enforceability of the ‘324 Patent.

3
4 **FIRST CAUSE OF ACTION**

5 (Declaratory Judgment of Non-Infringement of U.S. Design Patent D712,324)

6 27. Razer restates and incorporates by reference as if fully set forth herein the
7 allegations of the foregoing Paragraphs 1 – 26.

8 28. Omix has asserted and continues to assert that “Razer’s marketing of its fender
9 flares constitutes infringement of the ‘324 Patent”; that Razer must cease manufacturing,
10 using, selling, offering to sell, and/or importing into the U.S. Razer’s stubby fender flares;
11 that Razer must destroy all existing inventory of the stubby fender flares; and that Razer
12 provide stubby fender flares sales information to Omix for a purpose of ascertaining money
13 damages. *See generally*, **Exhibit C**.

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15 29. Razer disputes that Razer has infringed any properly construed, valid, and
16 enforceable claim of the ‘324 Patent.

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18 30. An ordinary observer would not consider the design of Razer’s Stubby fender
19 flares and the designs embodied in the ‘624 Patent to be substantially similar. In fact, there
20 are numerous differences between Razer’s Stubby fender flares and the claimed designs in the
21 ‘624 Patent.

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23 31. An actual and substantial controversy exists between Razer and Omix, the
24 parties having adverse interests, of sufficient immediacy and reality to warrant the issuance of
25 a declaratory judgment that Razer has not infringed and does not infringe any properly
26 construed, valid, and enforceable claim of the ‘624 Patent.

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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b) and L.R. 38-1, Razer hereby demands a trial by jury on all issues so triable.

Dated: February 19, 2016

Respectfully submitted,

/s/ Eric Kelly

Eric A. Kelly (California SBN 292241)
eric.kelly@kellytechlaw.com
5535 Westlawn Ave., No. 180
Los Angeles, CA 90066
310-486-2698 phone or text msg
310-943-1432 fax
Attorney for Plaintiff, Razer Auto, Inc.

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VERIFICATION

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I, Samuel Chi, declare as follows:

1. I am a citizen of the United States of America and I am over the age of eighteen.

2. I currently hold the position of Chief Executive Office of Plaintiff Razer Auto, Inc. and I have held that position at all pertinent times herein.

3. I have read the foregoing Complaint and I declare that the facts alleged therein are true and correct to best of my knowledge and belief. I understand that a false statement in this Verification will subject me to penalties of perjury.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed on: February 19, 2016



Samuel Chi