

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

KOHLER CO.)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No. CaseNumber
BELLAGIO INTERNATIONAL GROUP, INC.)	
)	
Defendant.)	

COMPLAINT

Kohler Co. (“Kohler”), by and for its Complaint against Defendant Bellagio International Group, Inc. (“Bellagio”), alleges to the Court as follows:

PARTIES

1. Kohler is a company organized and existing under the laws of the State of Wisconsin, with a principal place of business located at 444 Highland Drive, Kohler, Wisconsin, 53044.

2. Kohler is informed and believes that Defendant Bellagio is a corporation organized and existing under the laws of the State of Florida, with a principal place of business located at 8333 NW 53rd Street, Suite 450, Doral, Florida, 33166. Upon information and belief, Doral, Florida is the location of the U.S. Headquarters for Bellagio.

JURISDICTION

3. This is an action for design patent infringement arising out of Bellagio’s unauthorized importing, manufacturing, offering for sale, and/or selling shower heads in

violation of Kohler's patent rights. Because this is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Bellagio, in that, upon information and belief, Bellagio is incorporated in and has its principal place of business in this District, and therefore is fairly regarded as at home in this District. Upon information and belief, Bellagio transacts business within this District by at least offering to sell and selling certain shower heads in this District that are the subject of this action.

VENUE

5. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1400(b) because Bellagio's state of incorporation is Florida, and because Bellagio resides in this District.

BACKGROUND

KOHLER HAS A HISTORY OF INNOVATION

6. Kohler, founded in 1873, is a family-owned business. It is one of America's oldest and largest privately held companies, and it began by manufacturing and selling plows and farm implements in Sheboygan, Wisconsin.

7. In 1883, Kohler took the company beyond its farming roots and created a new business line by coating an iron hog scalding water trough with enamel and calling it a "bathtub." This bathtub innovation was an immediate hit and marked the first of many plumbing products manufactured by Kohler.

8. Today, in that same spirit of innovation and invention, Kohler has grown worldwide to be synonymous with quality and originality.

**KOHLER IS A MARKET LEADER
FOR THE KITCHEN AND BATH INDUSTRY**

9. Kohler is likely best known for its distinctive and often iconic kitchen and bath products. Kohler markets across six continents a highly regarded array of sinks, faucets, toilets, and other kitchen and bath accessories. Kohler's diversity of products and powerful portfolio of brands continually set new standards in design, craftsmanship, and innovation.

10. Kohler is a recognized leader in kitchen and bath design, and its products are well-known around the world by its global customer base in part because of Kohler's extensive advertising and promotional efforts, which total millions of dollars each year.

11. Kohler markets across many channels including, among others, the Internet, television, magazines, and newspapers.

12. Always an innovator, Kohler continuously invests in the engineering, design, and development of new kitchen and bath products, positioning itself as an industry and market leader.

13. Kohler currently owns thousands of patents worldwide on innovations in the kitchen and bath industry. Kohler values its intellectual property rights, and enforces its patents accordingly.

**KOHLER'S NOVEL AND DISTINCTIVE SHOWER HEAD DESIGN IS PROTECTED
BY THE PATENT-IN-SUIT**

14. Kohler is the assignee and owner of United States Patent No. D500,121 ("the '121 patent"). The '121 patent, entitled "Shower Head," was duly and legally issued by the United States Patent and Trademark Office on December 21, 2004, from Application Serial No. 29/192,543, filed on October 24, 2003, which is a division of Application Serial No. 29/174,552, filed on January 20, 2003. A true and correct copy of the '121 patent is attached hereto as

Exhibit A.

15. After significant engineering and development expense, Kohler introduced shower heads having the novel and distinctive designs embodied in the Patent-in-Suit. At least Kohler's Forté[®] line of shower heads are embodiments of the '121 patent.

16. Kohler has extensively promoted the Forté[®] line of shower heads, and as a result of their unique and distinctive designs, these particular shower heads have become successful commercial products for Kohler.

COUNT 1

INFRINGEMENT OF U.S. DESIGN PATENT NO. D500,121

17. Kohler repeats and realleges each and every allegation contained in paragraphs 1-16, inclusive, as though fully set forth herein.

18. The '121 patent is valid and enforceable.

19. Kohler is the owner of all right, title, and interest in and to the design claimed in the '121 patent. Kohler is entitled to receive all damages and the benefits of all other remedies for Bellagio's infringement.

20. Without permission or authorization from Kohler, Bellagio is importing, manufacturing, selling, offering for sale, and/or using in this District and elsewhere in the United States, certain shower heads, including the Treviso Series shower head, BDS-3405A (the "Infringing Product"), that infringe the '121 patent.

21. The following is a graphic from the Bellagio International website, bellagio-international.com, advertising the Infringing Product for sale:



This graphic is representative of the Infringing Product’s design.

22. Figure 1 from the '121 patent illustrates the claimed ornamental design for Kohler’s shower head:

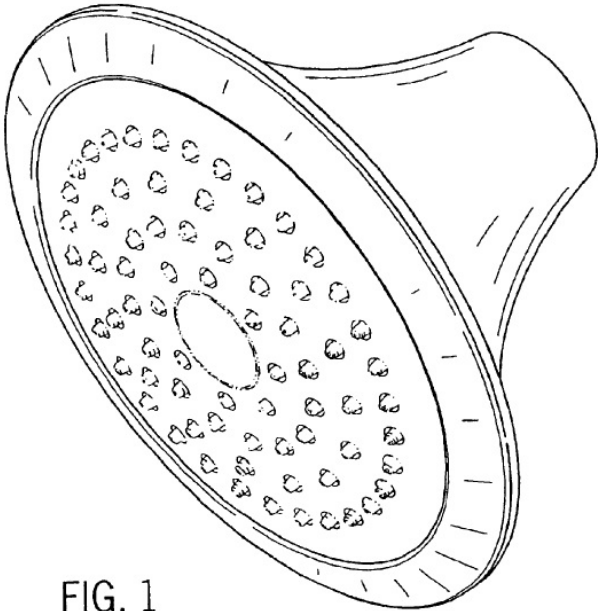


FIG. 1

23. Bellagio's Infringing Product contains each and every aspect of the claimed design in the '121 patent.

24. Bellagio's Infringing Product has an overall appearance that is confusingly similar to the claimed design in the '121 patent.

25. Bellagio's Infringing Product has an overall appearance that is substantially the same as the claimed design in the '121 patent.

26. To the extent that any marking or notice was required by 35 U.S.C. § 287, Kohler has complied with the requirements of that statute by providing actual and/or constructive notice to Bellagio of its infringement of the '121 patent.

27. Bellagio's infringement of the '121 patent has been and continues to be willful and deliberate.

28. Bellagio's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Bellagio is enjoined from infringing the '121 patent.

PRAYER FOR RELIEF

Wherefore, Kohler respectfully prays for entry for a judgment and relief as follows:

- A. For a judgment that Bellagio has infringed the '121 patent;
- B. For a preliminary and permanent injunction enjoining Bellagio and its agents, officers, directors, employees, and all persons in privity or active concert or participation with them, directly or indirectly, from infringing, inducing others to infringe, or contributing to the infringement of the '121 patent;

C. For a judgment and award that Bellagio account for and pay to Kohler damages adequate to compensate for Bellagio's infringement of the '121 patent, including lost profits but in no event less than a reasonable royalty;

D. For a judgment and award of Bellagio's total profits in an amount subject to proof at trial, pursuant to 35 U.S.C. § 289;

E. For a judgment and award of any supplemental damages sustained by Kohler for any continuing post-verdict infringement of the '121 patents until entry of final judgment with an accounting as needed;

F. For a finding that Bellagio's infringement is willful and an award of increased damages for willful infringement pursuant to 35 U.S.C. § 284;

G. For an order finding that this case is an exceptional case under 35 U.S.C. § 285 and awarding Kohler its costs, expenses, and disbursements incurred in this action, including reasonable attorneys' fees as available by law to be paid by Bellagio;

H. For an award for pre-judgment interest, post-judgment interest, and costs in this action; and

I. For an award of such other relief to Kohler as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Kohler demands a trial by jury on all issues so triable.

Dated: September 6, 2017

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Exhibit “A”



(12) **United States Design Patent** (10) **Patent No.:** **US D500,121 S**
Blomstrom (45) **Date of Patent:** **** Dec. 21, 2004**

(54) **SHOWER HEAD**

(75) Inventor: **John K. Blomstrom**, Sheboygan Falls, WI (US)
 (73) Assignee: **Kohler Co.**, Kohler, WI (US)
 (**) Term: **14 Years**
 (21) Appl. No.: **29/192,543**
 (22) Filed: **Oct. 24, 2003**

Related U.S. Application Data

(62) Division of application No. 29/174,552, filed on Jan. 20, 2003, now Pat. No. Des. 487,498.
 (51) **LOC (7) Cl.** **23-01**
 (52) **U.S. Cl.** **D23/213**
 (58) **Field of Search** D23/213, 229, D23/230; 239/548, 282, 283

(56) **References Cited**

U.S. PATENT DOCUMENTS

D418,904 S	1/2000	Milrud	D23/229
D430,267 S	8/2000	Milrud et al.	D23/229
D440,278 S	4/2001	Slothower	D23/213
D454,621 S	* 3/2002	Lord	D23/229
D454,938 S	* 3/2002	Lord	D23/229
D465,553 S	11/2002	Singtoroj	D23/229
D467,638 S	* 12/2002	Lord	D23/229
D468,394 S	* 1/2003	Cummings	D23/213
D472,301 S	3/2003	Mueller et al.	D23/213
D472,305 S	3/2003	Colligan et al.	D23/229
D476,059 S	6/2003	Huang	D23/213
D476,062 S	* 6/2003	Singtoroj et al.	D23/229

OTHER PUBLICATIONS

1999 Kallista catalog ad, p. 21, showing shower heads.
 Undated Kallista catalog ad showing shower heads.
 2000 Kohler catalog ad, p. 2.88, showing a "K-16134/K-16133" shower head.
 Undated Harden catalog ad, p. 74, showing an "Old Style" shower head.
 Undated Bathroom Faucets catalog ad, p. 20, showing a "38.10055" shower head.
 * cited by examiner

Primary Examiner—Robin V. Taylor
 (74) *Attorney, Agent, or Firm*—Quarles & Brady LLP

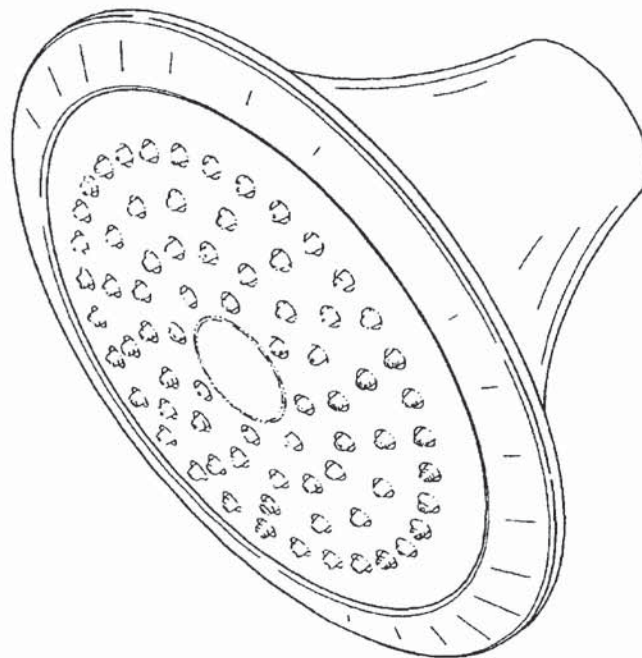
(57) **CLAIM**

The ornamental design for a shower head, as shown and described.

DESCRIPTION

In a preferred embodiment, the nature of this product is as a shower head primarily useful for enabling a water spray from a plumbing fitting.
 FIG. 1 is a right, top, front perspective view of a shower head embodying my new design;
 FIG. 2 is a front elevational view thereof;
 FIG. 3 is a right side elevational view thereof, the left side elevational view being a mirror image of the right side shown and the top plan view being identical to the right side shown; and,
 FIG. 4 is a rear elevational view thereof.
 The broken line representations of a face plate and nozzles in FIGS. 1, 2, and 3, and of mounting structure in FIG. 4, are for the purpose of illustration only, and form no part of the claimed design.

1 Claim, 3 Drawing Sheets



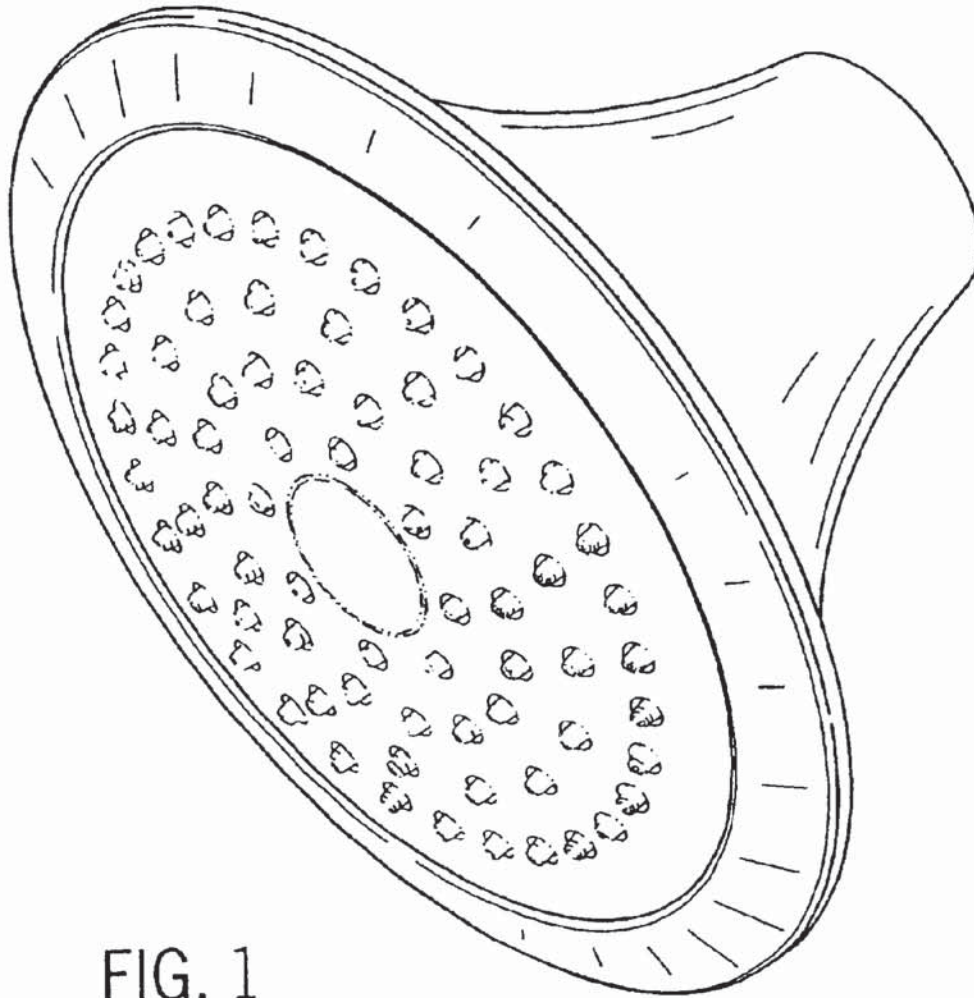


FIG. 1

FIG. 2

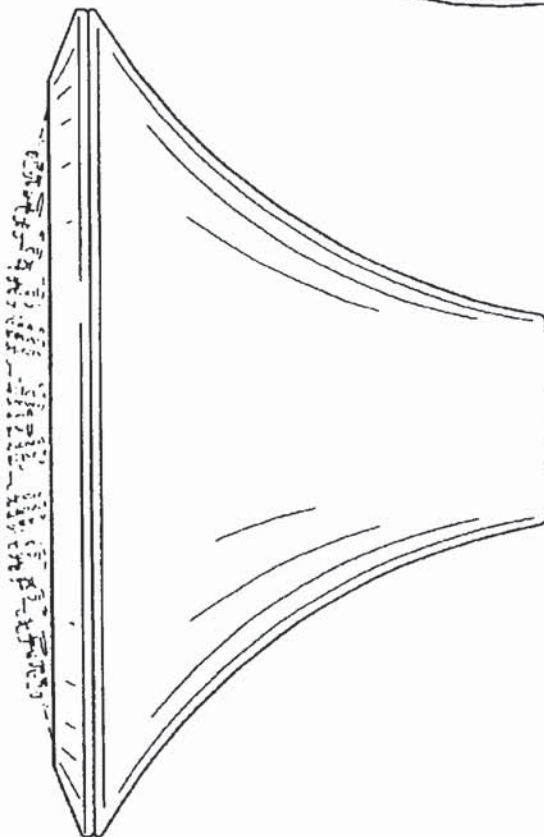
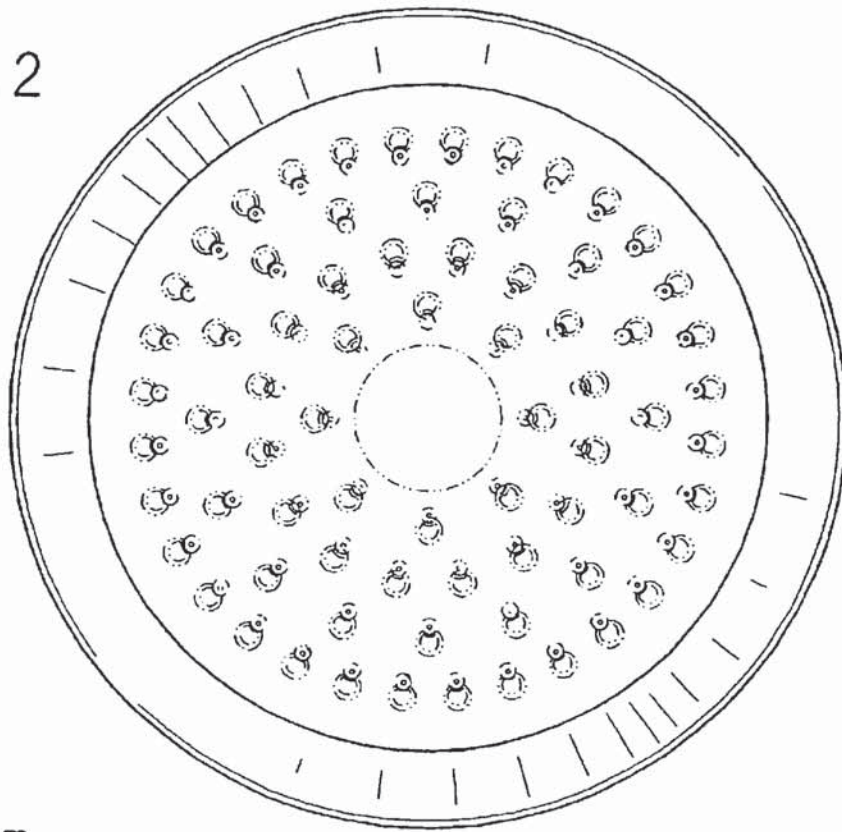


FIG. 3

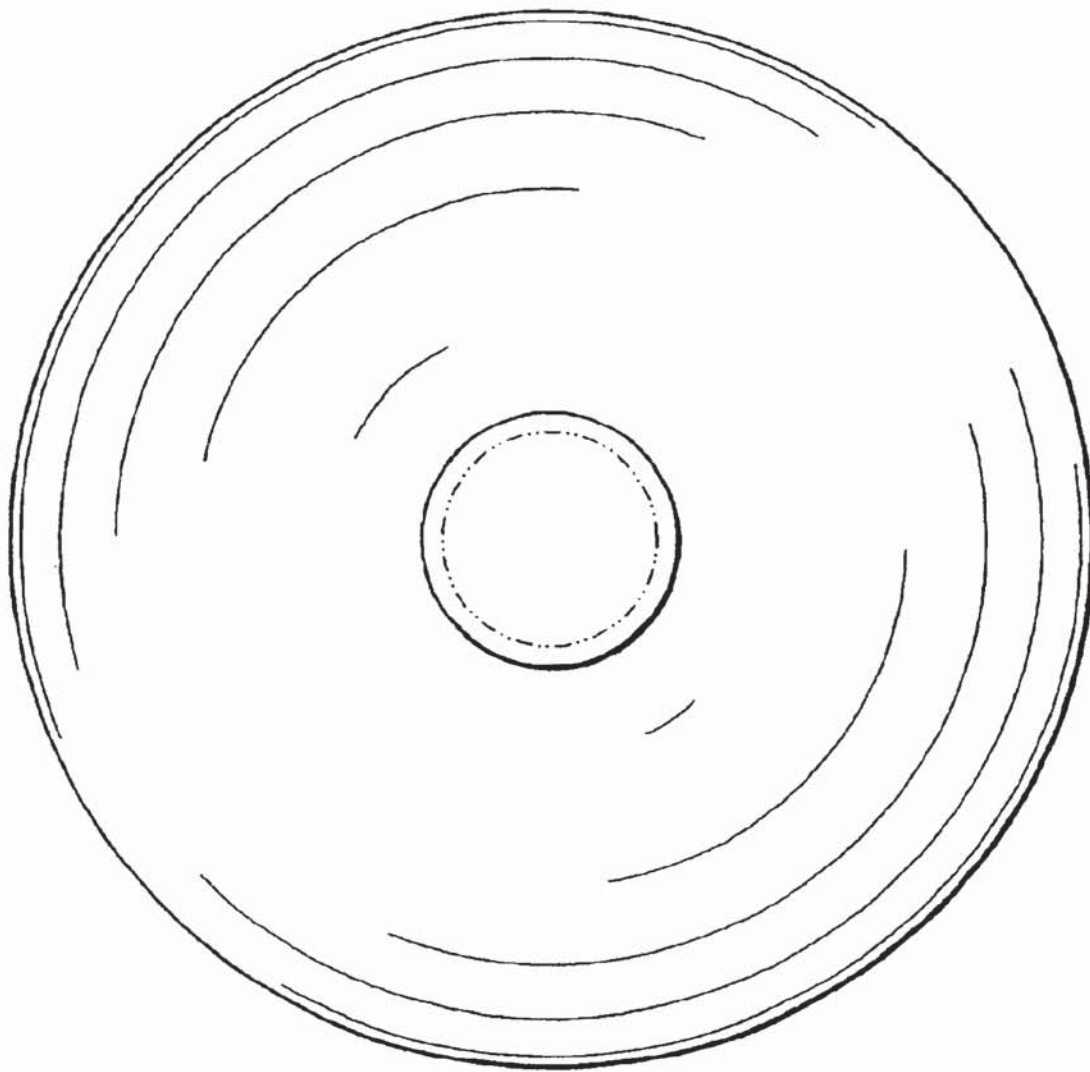


FIG. 4