

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Smokeware.net, LLC,

Plaintiffs,

v.

Premier Specialty Brands, LLC,

Defendant.

CIVIL ACTION NO:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Smokeware.net, LLC (“Smokeware”), by and through its undersigned attorneys, files this Complaint against Defendant Premier Specialty Brands, LLC d/b/a Kamado Joe (“Kamado Joe”), and in support thereof alleges as follows:

NATURE AND BASIS OF ACTION

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Smokeware seeks injunctive relief, damages, and recovery of its reasonable costs and attorneys’ fees.

THE PARTIES

2. Plaintiff Smokeware.net, LLC is a limited liability company organized and existing under the laws of the State of Florida, having its principal place of business at 233 6th Avenue, Jacksonville Beach, Florida 32250.

3. Defendant Premier Specialty Brands LLC d/b/a Kamado Joe is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place

of business at 3400 Rivergreen Court, Suite 600, Duluth, Georgia 30096. Upon information and belief, Kamado Joe may be served by serving its Registered Agent, Bobby Brennan, 3400 Rivergreen Court, Suite 600, Duluth, Georgia 30096.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this Complaint includes a cause of action for patent infringement under the patent laws of the United States, including but not limited to, 35 U.S.C. §§ 271, 281, 283-285, and 287.

5. This Court has personal jurisdiction over Kamado Joe by virtue of the fact that Kamado Joe resides in this District, has transacted business in this District, has derived substantial revenue from goods offered for sale and/or sold in this District, and/or has established sufficient minimum contacts with the State of Georgia such that it is subject to the personal jurisdiction of this Court. Personal jurisdiction in Georgia over Kamado Joe is also consistent with the requirements of due process.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Kamado Joe resides in this District, has a regular and established place of business in this District located at 3400 Rivergreen Court, Suite 600, Duluth, Georgia 30096, has committed acts of infringement in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

SMOKEWARE'S INNOVATIVE VENTED CHIMNEY CAP

7. Smokeware is an innovative designer and supplier of premium accessories and replacement parts that are designed for kamado style grills, such as the Big Green Egg®, Kamado Joe®, and Primo®.

8. One of Smokeware's earliest and most innovative accessory is a vented chimney cap, which provides a number of advantages over traditional daisy wheel style chimney caps that are often sold as standard equipment with kamado style grills.

9. Smokeware's founder, Matthew Merritt, designed and developed Smokeware's innovative vented chimney cap over a number of years after receiving a Big Green Egg® as a gift in the late 2000s.

10. At the time, Merritt was living in Florida and was looking for a way to eliminate a number of the problems related to use of the standard daisy wheel style cap that was sold as standard equipment with his Big Green Egg®. In particular, the daisy wheel style caps allow water to enter the grill when cooking in the rain, affecting dome temperatures. Also, the vents on the daisy wheel style caps often slide open when the dome is lifted on the grill or, in some instances, get stuck due to grease and other cooking debris sticking to the openings in the daisy wheel. Examples of standard daisy wheel style caps from a Big Green Egg® and Kamado Joe® are shown below:



11. In or around 2013, Merritt released his innovative vented chimney cap to the market under the trade name “Smokeware.” Since that time, Smokeware’s vented chimney cap has experienced much success, and Smokeware-branded products have become the industry leader for premium accessories and replacement parts for kamado style grills.

12. Smokeware’s vented chimney cap eliminated many of the problems associated with standard daisy wheel style caps, as it provides a cover to prevent water from entering the grill when cooking in the rain, allows more precise temperature control, and maintains vent settings when the dome is opened and closed. Smokeware’s vented chimney cap also provides a gasket between the cap and the chimney on kamado style grills to prevent the cap from accidentally falling off when the dome is opened and closed. Examples of Smokeware’s vented chimney caps mounted on a Big Green Egg® and as a stand-alone are shown below:





13. Smokeware’s vented chimney cap is at the core of Smokeware’s business, and Smokeware has spent a substantial amount of time and resources designing, developing, and bringing this innovative product to the market. As a result of these efforts, Merritt was granted a number of U.S. patents on his innovative vented chimney cap designs, including U.S. Patent No. 9,615,693 (“the ’693 Patent”).

14. The ’693 Patent, entitled “Vented Chimney Cap System and Method Thereof” was filed on May 19, 2015, and after a full and fair examination, was duly and legally issued by the United States Patent and Trademark Office (“PTO”) on April 11, 2017. A true and correct copy of the ’693 Patent is attached hereto as Exhibit A.

15. Smokeware is the owner of all right, title, and interest in and to the ’693 Patent by assignment from Merritt, including the right to make, use, offer for sale, sell, import, and enforce the ’693 Patent.

DEFENDANT'S INFRINGING AND UNLAWFUL CONDUCT

16. Upon information and belief, Kamado Joe was originally founded in or around 2009 in Atlanta, Georgia by Bobby Brennan and Kerry Coker.

17. Kamado Joe is a designer, marketer, and distributor of premium kamado style ceramic grills, charcoal, and accessories based in Duluth, Georgia.

18. Kamado Joe offers a number of different sizes and shapes kamado style ceramic grills, such as the Classic, Big Joe®, and Joe Jr.® grills.

19. The Classic and Big Joe® models were originally offered with a standard daisy wheel style chimney cap, such as the cap shown in Paragraph 10 above. In fact, for years following their introduction, Kamado Joe only offered its kamado style ceramic grills with a standard daisy wheel style chimney cap.

20. During this time, a representative of Smokeware, Richard Newton, met with Bobby Brennan of Kamado Joe in May, 2013 to discuss Smokeware's innovative chimney cap and the possibility of selling it directly to Kamado Joe for use on Kamado Joe's grills.

21. During that meeting, Mr. Newton provided Mr. Brennan a sample of Smokeware's chimney cap for testing on Kamado Joe's grills. A true and correct copy of an email dated May 23, 2013 from Mr. Newton to Mr. Brennan discussing that meeting and the testing of Smokeware's chimney cap on Kamado Joe's grills is attached hereto as Exhibit B.

22. During that meeting, Mr. Newton and Mr. Brennan also discussed whether Smokeware had patent protection on Smokeware's chimney cap. Mr. Newton provided Mr. Brennan with notice that Smokeware had a number of pending patent applications for Smokeware's chimney cap.

23. Kamado Joe ultimately declined to purchase Smokeware's innovative chimney cap from Smokeware, and continued to offer its grills with a standard daisy wheel style chimney cap for approximately the next four years.

24. However, in or around 2017, Kamado Joe released a redesigned chimney cap to replace the standard daisy wheel style chimney cap, known as the Kontrol Tower top vent cap (hereinafter, the "Kontrol Tower" or "Accused Product").

25. As discussed in more detail below, the Kontrol Tower has a cover that prevents water from entering the grill when cooking in the rain, purports to provide more precise temperature control, and maintains vent settings when the dome is opened and closed. The Kontrol Tower also includes a gasket between the cap and the chimney to prevent the cap from accidentally falling off when the dome is opened and closed. A photograph of a Kontrol Tower (Model No. KJ-KT) is shown below:



26. Upon information and belief, the Kontrol Tower is now offered as standard equipment on all Classic, Big Joe®, ProJoe model grills. The Kontrol Tower is also offered as a replacement part for older model Kamado Joe grills that were originally offered with a daisy wheel style chimney cap.

27. Kamado Joe's ongoing manufacture, use, offer for sale, and sale of the Kontrol Tower, either as a replacement part for older model Kamado Joe grills or as standard equipment on newer model Kamado Joe grills, infringes one or more claims of the '693 Patent.

28. Kamado Joe directly infringes, literally or under the doctrine of equivalents, at least Claim 1 of the '693 Patent by, without authority, making, using, importing, selling, or offering to sell the Kontrol Tower within the United States in violation of 35 U.S.C. § 271(a).

29. Kamado Joe indirectly infringes at least Claim 1 of the '693 Patent within the United States by inducement under 35 U.S.C. § 271(b). For example, Kamado Joe has knowingly and intentionally induced users of the Kontrol Tower to directly infringe at least claim 1 of the '693 Patent, *inter alia*, by i) providing instructions on how to install and use the Accused Products in an infringing manner, and ii) directing and encouraging the actions of employees, distributors, and customers to directly infringe.

30. Kamado Joe also indirectly infringes at least claim 1 of the '693 Patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Kontrol Tower, which is especially made for Kamado Joe grills and used in a manner that infringes at least Claim 1 the '693 Patent, and that has no substantial non-infringing use.

COUNT I
Direct Infringement of the '693 Patent, 35 U.S.C. § 271(a)

31. Smokeware incorporates by reference the allegations contained in paragraphs 1-30 of this Complaint, as if fully set forth herein.

32. Kamado Joe directly infringes, literally or under the doctrine of equivalents, at least Claim 1 of the '693 Patent by, without authority, making, using, importing, selling, or offering to sell the Kontrol Tower within the United States in violation of 35 U.S.C. § 271(a).

33. A preliminary claim chart showing Kamado Joe's infringement of Claim 1 of the '693 Patent is attached hereto as Exhibit B.

34. For example, a summary of Kamado Joe's infringement of Claim 1 of the '693 Patent is provided as follows:

- i) Limitation 1: The Kontrol Tower includes a base that has an open top, open bottom, and a vent with a first geometry;
- ii) Limitation 2: The Kontrol Tower includes a cap that has a cover, and a vent positioned in the cap with a second geometry that is different from the geometry of the base vent;
- iii) Limitation 3: The Kontrol Tower's cap is slidingly engaged with the base and rotates relative to the base, and the alignment of the cap vents and base vents regulate smoke and hot gasses flowing through the vents;
- iv) Limitation 4: The Kontrol Tower has an annular gasket within the base that frictionally resists the removal of the base when the base is installed on a Kamado Joe grill.

35. As a result of Kamado Joe's infringement of the '693 Patent, Smokeware has been damaged and will continue to be damaged by Kamado Joe's unlawful conduct. Smokeware is entitled to recover damages pursuant to 28 U.S.C. § 284 adequate to compensate it for Kamado

Joe's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

36. Kamado Joe's infringement of the '693 Patent has injured and continues to injure Smokeware and will continue to cause irreparable harm to Smokeware unless Kamado Joe is enjoined from infringing one or more claims of the '693 Patent. Smokeware is entitled to preliminary and/or permanent injunctive relief against Kamado Joe from further infringement pursuant to 28 U.S.C. § 283.

37. Upon information and belief, Kamado Joe's past and continued infringement of the '693 Patent has been deliberate and willful, which warrants an award of treble damages and attorneys' fees to Smokeware pursuant to 28 U.S.C. §§ 284 & 285.

COUNT II
Induced Infringement of the '693 Patent, 35 U.S.C. § 271(b)

38. Smokeware incorporates by reference the allegations contained in paragraphs 1-37 of this Complaint, as if fully set forth herein.

39. Kamado Joe has had knowledge of the '693 Patent since at least as early as the filing of this Complaint, if not earlier.

40. Kamado Joe instructs its customers on how to install and use the Kontrol Tower in an infringing manner.

41. Kamado Joe directs and encourages its employees, distributors, and customers to install and use the Kontrol Tower in an infringing manner.

42. When the Kontrol Tower is used by Kamado Joe's employees, distributors, and customers in the manner instructed and directed by Kamado Joe, Kamado Joe's employees, distributors, and customers directly infringe at least Claim 1 of the '693 Patent, as set forth above.

43. Accordingly, Kamado Joe indirectly infringes the '693 Patent by inducing infringement of the '693 Patent, pursuant to 35 U.S.C. § 271(b).

44. As a result of Kamado Joe's infringement of the '693 Patent, Smokeware has been damaged and will continue to be damaged by Kamado Joe's unlawful conduct. Smokeware is entitled to recover damages pursuant to 28 U.S.C. § 284 adequate to compensate it for Kamado Joe's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

45. Kamado Joe's infringement of the '693 Patent has injured and continues to injure Smokeware and will continue to cause irreparable harm to Smokeware unless Kamado Joe is enjoined from infringing one or more claims of the '693 Patent. Smokeware is entitled to preliminary and/or permanent injunctive relief against Kamado Joe from further infringement pursuant to 28 U.S.C. § 283.

46. Upon information and belief, Kamado Joe's past and continued infringement of the '693 Patent has been deliberate and willful, which warrants an award of treble damages and attorneys' fees to Smokeware pursuant to 28 U.S.C. §§ 284 & 285.

COUNT III
Contributory Infringement of the '693 Patent, 35 U.S.C. § 271(c)

47. Smokeware incorporates by reference the allegations contained in paragraphs 1-46 of this Complaint, as if fully set forth herein.

48. Kamado Joe has had knowledge of the '693 Patent since at least as early as the filing of this Complaint, if not earlier.

49. Kamado Joe provides its customers with the Kontrol Tower, which is essential to practice the invention of the '693 Patent.

50. Kamado Joe is aware that the Kontrol Tower is especially made for and used in a manner that infringes at least Claim 1 of the '693 Patent.

51. The Kontrol Tower has no substantial non-infringing use, in that the Kontrol Tower can only be used in a manner that infringes the '693 Patent.

52. When the Kontrol Tower is used by Kamado Joe's customers, the Kontrol Tower directly infringes at least Claim 1 of the '693 Patent, as set forth above.

53. Accordingly, Kamado Joe indirectly infringes the '693 patent by contributing to infringement of the '693 Patent, pursuant to 35 U.S.C. § 271(c).

54. As a result of Kamado Joe's infringement of the '693 Patent, Smokeware has been damaged and will continue to be damaged by Kamado Joe's unlawful conduct. Smokeware is entitled to recover damages pursuant to 28 U.S.C. § 284 adequate to compensate it for Kamado Joe's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

55. Kamado Joe's infringement of the '693 Patent has injured and continues to injure Smokeware and will continue to cause irreparable harm to Smokeware unless Kamado Joe is enjoined from infringing one or more claims of the '693 Patent. Smokeware is entitled to preliminary and/or permanent injunctive relief against Kamado Joe from further infringement pursuant to 28 U.S.C. § 283.

56. Upon information and belief, Kamado Joe's past and continued infringement of the '693 Patent has been deliberate and willful, which warrants an award of treble damages and attorneys' fees to Smokeware pursuant to 28 U.S.C. §§ 284 & 285.

JURY DEMAND

Smokeware hereby respectfully requests a trial by jury of all issues raised in this Complaint, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Smokeware.net, LLC prays that this Court enter judgment in favor of Smokeware and against Premier Specialty Brands, LLC d/b/a Kamado Joe as follows:

- A. Entry of judgment that Kamado Joe has directly and indirectly infringed the '693 Patent pursuant to 35 U.S.C. § 271 (a), (b), and (c);
- B. An order preliminarily and permanently enjoining Kamado Joe, and its respective agents, servants, officers, directors, employees, attorneys, affiliated companies, successors-in-interest, and all those in active concert or participation with it, and all other parties properly enjoined by law, from infringing directly or indirectly, inducing others to directly infringe, and/or contributing to the infringement of the claims of the '693 Patent;
- C. An order that Kamado Joe be ordered to file with this Court, and to promptly serve on counsel for Smokeware, within twenty (20) days after entry of any injunction issued by the Court in this action, a sworn statement setting forth in detail the manner and form in which Kamado Joe has complied with the injunction;
- D. An order that Kamado Joe provide an accounting and pay to Smokeware damages in an amount adequate to compensate Smokeware for Kamado Joe's infringement of the '693 Patent, including damages for lost profits, but in no event less than a reasonable royalty, including up to treble damages for Kamado Joe's willful infringement pursuant to 35 U.S.C. § 284;

- E. An order that this is an exceptional case under 35 U.S.C. § 285 meriting that Smokeware be awarded its costs, including its reasonable attorneys' fees and other expenses incurred in connection with this action;
- F. Any other relief that the Court finds legal, just and equitable, as may be available under law or equity, and which the Court finds proper.

This 7th day of November, 2019.

Respectfully submitted,

/s/ Scott P. Amy
Scott P. Amy (Ga. Bar No. 141416)
Joseph W. Staley (Ga. Bar No. 142571)
Wesley A Roberts (Ga. Bar No. 867277)
THOMAS | HORSTEMEYER LLP
3200 Windy Hill Road SE, Suite 1600E
Atlanta, Georgia 30339
Telephone: (770) 933-9500
Facsimile: (770) 951-0933
scott.amy@thomashorstemeyer.com
joe.staley@thomashorstemeyer.com
wesley.roberts@thomashorstemeyer.com

Counsel for Smokeware.net, LLC