

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MR. BAR-B-Q, INC.,

Plaintiff,

Civil Action No. 06 CV 2117(KMK)  
ECF CASE

-against-

B & F SYSTEM, INC.,

COMPLAINT

Defendant.

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The Plaintiff, MR. BAR-B-Q, INC., by its attorneys, Natter & Natter, for its complaint against the Defendant, B & F SYSTEM, INC., alleges as follows:

1. The Plaintiff, MR. BAR-B-Q, INC., is a New York corporation having an office and principal place of business at 445 Winding Road, Old Bethpage, New York.
2. The Defendant, B & F SYSTEM, INC., is a Texas corporation having an office and principal place of business at 3920 S. Walton Walker Blvd., Dallas TX 75236.
3. This action is for infringement under the patent laws of the United States, Title 35, United States Code, and under the Lanham Act, Title 15 United States Code, §1051 *et seq.*
4. Subject matter jurisdiction of this Court is based upon Title 28, United States Code §1331 and §1338(a) and upon Title 15 United States Code §1121.

5. Upon information and belief, the Defendant, B & F SYSTEM, INC., is subject to personal jurisdiction of the courts of the State of New York for the reasons that it transacts business within the State of New York and contracted to supply infringing goods in the State of New York and committed acts of infringement within the State of New York and committed tortious acts without the State of New York causing injury within the State of New York and regularly solicits business and engages in other persistent courses of conduct and derives substantial revenue from goods used or consumed or services rendered in the State of New York or expects or should reasonably expect its tortious acts to have consequences in the State of New York and derives substantial revenue from interstate or international commerce and is otherwise subject to the personal jurisdiction of the courts within the State of New York as provided under CPLR §302.

6. Venue is proper in this district pursuant to Title 28 United States Code §1391 and §1400.

**AS AND FOR A FIRST COUNT – PATENT INFRINGEMENT**

7. On August 10, 2004, United States Letters Patent No. Des. 494,006 was duly and legally issued to the Plaintiff, MR. BAR-B-Q, INC., as assignee of Marc Zemel, for an invention pertaining to the ornamental design of an article of manufacture comprising a handle for a barbecue tool. A copy of said Letters Patent No. Des. 494,006 is attached hereto as Exhibit 1

8. The Plaintiff, MR. BAR-B-Q, INC., remains the owner of the entire right, title and interest in and to said Letters Patent No. Des. 494,006.

9. In violation of Title 35 United States Code §271, the Defendant, B & F SYSTEM, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. Des. 494,006 by making, using, selling, offering to sell, importing into the United States or causing others to make, use, sell, offer to sell or import into the United States articles of manufacture which embody the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 494,006. Photographs of the Defendant's infringing articles of manufacture (Item # KTBQ52) are attached hereto as Exhibit 2.

10. In violation of Title 35 United States Code §271, the Defendant, B & F SYSTEM, INC., within this judicial district and throughout the United States, without license of the Plaintiff, applied the patented design of U.S. Patent No. Des. 494,006 or a colorable imitation thereof, to articles of manufacture (Exhibit 2) for the purpose of sale.

11. In violation of Title 35 United States Code §271, the Defendant, B & F SYSTEM, INC., within this judicial district and throughout the United States, without license of the Plaintiff, sold, offered for sale or exposed for sale articles of manufacture (Exhibit 2) to which the patented design or a colorable imitation thereof has been applied.

12. In violation of Title 35 United States Code §271, the Defendant, B & F SYSTEM, INC., within this judicial district and throughout the United States, without license of the Plaintiff,

caused others to sell, offer for sale or expose for sale article of manufacture (Exhibit 2) to which the patented design or a colorable imitation thereof has been applied.

13. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 494,006, upon information and belief, is willful, intentional and deliberate.

14. Upon information and belief, this is an exceptional case within the provisions of 35 United States Code §285 and the Plaintiff, MR. BAR-B-Q, INC., is therefore entitled to the recovery of attorneys' fees.

15. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 494,006 has caused the Plaintiff, MR. BAR-B-Q, INC. to suffer monetary damages, the full extent of which are as yet undetermined.

16. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

17. The Plaintiff repeats and realleges the allegations of complaint paragraphs 1 – 16 as is fully set forth herein.

#### **AS AND FOR A SECOND COUNT – TRADEMARK INFRINGEMENT**

18. Since at least as early as 1991, the Plaintiff commenced use of the distinctive trademark "CHEF MASTER By Mr. Bar-B-Q" in connection with food serving products, namely

portable gas stoves. The Plaintiff has continuously used the distinctive trademark CHEF MASTER By Mr. Bar-B-Q in connection with food serving products in commerce since at least as early as 1991.

19. On June 15, 1999, trademark Registration No. 2,252,308 for the trademark CHEF MASTER By Mr. Bar-B-Q issued on the Principal Register of the United States Patent and Trademark Office to Plaintiff. A copy of the certificate of registration is attached hereto as Exhibit 3.

20. Trademark Registration No. 2,252,308 is valid, subsistent, and grants to the Plaintiff exclusive right to use the trademark CHEF MASTER By Mr. Bar-B-Q pursuant to Title 15 United States Code, §1115.

21. Plaintiff's exclusive right to use the trademark CHEF MASTER By Mr. Bar-B-Q is incontestable as provided under Title 15, United States Code, Section 1065.

22. The Defendant has infringed the Plaintiff's registered trademark CHEF MASTER By Mr. Bar-B-Q by applying the mark CHEF MASTER to food serving products, namely, barbecue tools in interstate commerce without consent or authorization of the Plaintiff. A photograph of the Defendant's packaging showing the infringing mark is attached as Exhibit 4.

23. The Defendant's use of the infringing trademark CHEF MASTER is likely to cause confusion, mistake or to deceive purchasers of the Defendant's goods, purchasers of the Plaintiff's goods and the general public.

24. The Defendant's infringing acts aforementioned are willful, wanton and in utter disregard of the Plaintiff's rights.

25. By reason of the Defendant's wrongful acts aforementioned, the Plaintiff has suffered and will continue to suffer monetary damages, the full extent of which are as yet undetermined.

26. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage to its business reputation and good will if such infringement is allowed to continue.

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

**ON THE FIRST COUNT**

1. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions issue enjoining the Defendant, B & F SYSTEM, INC., its officers agents, servants, employees, assigns, attorneys and all those in active concert or participation therewith said Defendant from further infringement of U.S. Patent No. Des. 494,006.

2. That pursuant to 35 U.S.C. §284, the Defendant, B & F SYSTEM, INC., account to the Plaintiff for damages for all past infringement of said U.S. Patent No. Des 494,006 including treble damages as appropriate;

3. That pursuant to 35 U.S.C. §289, the Defendant, B & F SYSTEM, INC., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Des. 494,006 including treble damages as appropriate;

4. That pursuant to 35 U.S.C. §285, the Defendant, B & F SYSTEM, INC., pay the Plaintiff's costs and attorneys' fees; and

5. For such other and further relief as this Court deems just and proper.

**ON THE SECOND COUNT**

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

6. That preliminary and permanent injunctions issue enjoining and restraining the Defendant, B & F SYSTEM, INC., its officers, agents, servants, employees, assigns, attorneys and those in active concert or participation therewith, during the pendency of this action and permanently, from infringing, in any manner, the Plaintiff's registered trademark CHEF MASTER by Mr. Bar-B-Q, trademark Registration No. 2,252,308, by utilizing the mark CHEF MASTER by Mr. Bar-B-Q or any other mark which is a colorable imitation of or confusingly similar to the Plaintiff's registered CHEF MASTER by Mr. Bar-B-Q trademark;

7. Requiring the Defendant, B & F SYSTEM, INC., to account to the Plaintiff for all sales, receipts, assets, profits or other gains derived directly or indirectly through use of the infringing trademark;

8. Requiring the Defendant, B & F SYSTEM, INC., to pay the Plaintiff such actual damages as the Plaintiff has sustained by reason of the Defendant's infringement;

9. Requiring the Defendant, B & F SYSTEM, INC., to account for damages resulting from the Defendant's infringement;

10. Requiring the Defendant, B & F SYSTEM, INC., to pay Plaintiff punitive and exemplary damages in an amount to be determined;

11. That the award of damages be trebled pursuant to 15 United States Code §1117;

12. Requiring the Defendant to pay the Plaintiff the costs of this action and reasonable attorney's fees pursuant to Title 15 United States Code §1117; and

13. For such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York  
March 17, 2006

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By /Seth Natter/  
Seth Natter (SN 4913)