

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

THE WRENCH, INC.,  
a Florida corporation, and  
BRADLEY RUEL,

Plaintiffs,

vs.

Case No.: \_\_\_\_\_

BIG BEAR AMERICAN MADE  
CHOPPERS, INC, a California corporation  
and KEVIN R. ALSOP, individually

Defendants.

\_\_\_\_\_ /

**COMPLAINT**

**Nature of Action**

THE WRENCH, INC. and BRADLEY RUEL file this declaratory judgment complaint seeking a declaration that their products and designs do not infringe the claims of U.S. Design Patents D512,677S (“the ‘677S Patent” or “motorcycle oil tank”) and the D517,451S (“the ‘451S Patent” or “motorcycle frame”) and that all the claims of the ‘677S and ‘451S Patent are invalid and unenforceable. A copy of the ‘677S and ‘451S Patents are attached hereto as Exhibits “A” and “B” respectively (hereafter referred to collectively as “the Design Patents”).

**Subject Matter Jurisdiction and Venue**

1. This Court has subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. § 2201, § 2202, § 1338(a) and § 1332(a). The Plaintiffs’ claims arise under the Patent Laws of the United States, Title 35 of the United States Code, 35 U.S.C. § 101 *et seq.*

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) in that the acts complained of herein arose in this district.

### **The Parties**

3. THE WRENCH, INC (“WRENCH”) is a corporation organized and existing under the laws of Florida and is in the business of manufacturing and selling customized motorcycle frame kits.

4. BRADLEY RUEL (“RUEL”) is an individual who resides in Hillsborough County, Florida, is the President and owner of WRENCH and the designer of its custom frame packages.

5. RUEL is an award-winning and nationally recognized designer of custom motorcycle frames, whose designs include the “phat daddy” motorcycle frame and oil tank design, which have been featured in motorcycle magazines and trade shows since the year 2000 and 2001 respectively.

6. BIG BEAR AMERICAN MADE CHOPPERS, INC (“BIG BEAR”) is corporation organized and existing under the laws of California and upon information and belief owner of the Design Patents.

7. KEVIN R. ALSOP (“ALSOP”) is an individual who, upon information and belief, resides in Big Bear, California and at all times herein was the founder and chief executive officer of BIG BEAR and owner of the Design Patents.

8. This Court has personal jurisdiction over BIG BEAR and ALSOP because each is operating, conducting, engaging in, or carrying on a business or business venture in the State of Florida, and is engaged in substantial and not isolated activity within the State of Florida.

### **WRENCH’S Products and RUEL’S Designs Accused of Infringement**

9. WRENCH manufactures customized motorcycle frame packages to individuals and motorcycle dealers as the basic component for building a complete customized motorcycle.

10. WRENCH frame packages include a frame, gas tank, oil tank rear fender, seat pan and chain guard.

11. WRENCH specific frame types include a “stinger frame” and a “phat daddy frame.” These two frames feature a specifically designed oil tank.

12. There is an actual controversy in existence between the parties to this lawsuit created by direct written and verbal threats of litigation by ALSOP and BIG BEAR against WRENCH.

13. ALSOP, via telephone calls to Tampa, Florida, individually and on behalf of BIG BEAR, has made repeated threats to sue WRENCH alleging that WRENCH’s stinger frame and oil tank and its phat daddy frame and oil tank (hereafter “Products”) infringe the claims of the Design Patents.

14. ALSOP, via electronic mail, individually and on behalf of BIG BEAR, sent a message to WRENCH claiming that the Products infringe the claims of the Design Patents and that they will take legal action to protect the same. A copy of the correspondence is attached hereto as Exhibit “C.”

15. ALSOP, via electronic mail, individually and on behalf of BIG BEAR, sent an ultimatum stating that so long as the WRENCH or RUEL does not make or sell its Products, ALSOP and/or BIG BEAR “will not commence litigation against WRENCH and RUEL.” A copy of the ultimatum is attached hereto as Exhibit “D.”

16. ALSOP, individually and on behalf of BIG BEAR, contacted Plaintiffs’ customers informing them of Plaintiffs’ alleged infringements and his threats to bring suit against Plaintiffs.

17. ALSOP, individually and on behalf of BIG BEAR, contacted Fred Campagnolo, President of Ultra Cycles, a California company, threatening to sue him and the Company if they did not cease buying Plaintiffs’ Products because Plaintiffs’ Products allegedly infringe of Defendants’ Design Patents.

18. As a direct result of Defendants’ threats to Ultra Cycles, it cancelled its purchase order with Plaintiffs for 10 units a month to be used to build its 12<sup>th</sup> Anniversary motorcycle model. A

copy of the letter cancelling the order is attached as Exhibit “D.”

19. ALSOP’s allegations respecting Plaintiffs’ infringement of the Design Patents have also caused Marc Evans, a principal at Diablo Performance, LLC, located in Winter Park, Florida, to not purchase the Wrench’s stinger frame.

20. ALSOP’s allegations respecting Plaintiffs’ infringement of the Design Patents have also caused Jack Berentini of Exotic Cycle Works, located in Orlando, Florida to not purchase the Wrench’s stinger frame.

21. These repeated verbal assertions of design patent infringements, the E-mail message and the said ultimatum have placed WRENCH and RUEL in fear of imminent litigation against them relating to the design, manufacture, use and sale of the Products.

22. After performing its own investigation, WRENCH has concluded that the Design Patents are not infringed, under the doctrine of prior art, by any product designed, manufactured, used, sold, or offered for sale by WRENCH or RUEL. WRENCH has also concluded that the Design Patents are invalid under 35 U.S.C. §§ 103, 171, on the basis that the designs are substantially functional and lacking in ornamental features, making them improper for a design patent, and that ALSOP engaged in inequitable conduct before the United States Patent and Trademark Office (“USPTO”) during the prosecution of the application that matured into the Design Patents.

**ALSOP Failed to Disclose the State of the Art During the Prosecution of the Applications that Matured into the Design Patents**

23. ALSOP, as design patentee, is chargeable with comprehensive knowledge of the prior art in his field.

24. Upon information and belief ALSOP has been in the field of custom motorcycle design since 1994.

25. ALSOP failed to advise properly the patent examiner, who examined the Design Patent

applications, that the state of the art included the WRENCH'S "phat daddy" motorcycle frame and accompanying oil tank at the time that ALSOP and/or BIG BEAR patent applications were filed.

**COUNT I**

**Declaration of Non-Infringement of the Design Patents**

26. WRENCH and RUEL repeat and incorporate herein the allegations of Paragraph 1 through Paragraph 25, inclusive.

27. Plaintiffs have not infringed, and are not currently infringing, any valid claim of the Design Patents.

28. Due to ALSOP'S and BIG BEAR'S infringement charges, an actual controversy exists between the Plaintiffs and ALSOP and BIG BEAR as to whether WRENCH'S Products infringe ALSOP'S and BIG BEAR'S alleged rights under the Design Patents.

29. Plaintiffs deny any infringement and believe that their customers are entitled to use their Products without any interference from ALSOP and/or BIG BEAR.

30. As a result, Plaintiffs seek, and are entitled to, a judgment against ALSOP and BIG BEAR that none of WRENCH'S Products infringe any valid claim of the Design Patents.

**COUNT II**

**Declaration of Invalidity of the Design Patents**

31. WRENCH and RUEL repeat and incorporate herein the allegations of Paragraph 1 through Paragraph 25, inclusive.

32. Plaintiffs allege that the Design Patents, and each of their claims, are invalid for failing to meet the conditions for patentability set forth in 35 U.S.C. §§ 103, 171.

33. Due to ALSOP'S and BIG BEAR'S infringement charges, an actual controversy exists between Plaintiffs and ALSOP and BIG BEAR as to whether the Design Patents and each of their claims are valid.

34. ALSOP and BIG BEAR contend that the Design Patents and each of their claims are valid and that WRENCH and its customers infringe the Design Patents. Plaintiffs deny those contentions and allege that the Design Patents, and each of their claims, are invalid.

35. Specifically, Plaintiffs allege that the design is substantially functional and lacking in ornamental features, and thus improper for a design patent.

36. As a result, Plaintiffs seek, and are entitled to, a judgment against ALSOP and BIG BEAR that the Design Patents and each of their claims are invalid.

**COUNT III**  
**Unenforceability of the Design Patents Due to Inequitable Conduct**

37. WRENCH and RUEL repeat and incorporate herein the allegations of Paragraph 1 through Paragraph 25, inclusive.

38. The Design Patents are unenforceable because of the inequitable conduct of ALSOP and BIG BEAR during the prosecution in the USPTO of the application that matured into the Design Patents.

39. ALSOP and BIG BEAR had a duty to disclose material information relating to patentability of their motorcycle frame and oil tank designs in dealing with the USPTO in regard to the prosecution of the applications that matured into the Design Patents.

40. ALSOP and BIG BEAR had a duty of candor and good faith in dealing with the USPTO, which is broader than their duty to disclose material information in dealing with the USPTO in regard to the prosecution of the applications that matured into the Design Patents.

41. These obligations include a duty to (i) provide truthful, non-misleading information to the USPTO; (ii) disclose to the USPTO all information material to design patentability of any claim presented to the USPTO for examination; (iii) seek protection only for that subject matter to which the inventor is entitled under 35 U.S.C. § 103, 171., if any; and (iv) submit evidence that is relevant to the scope of protection being afforded by the claims at issue, and in turn,

assure that the scope of the claimed patent monopoly is consistent with any allowable and patentable subject matter.

42. ALSOP and BIG BEAR breached their duty of candor, good faith, the requirement to disclosure material information and the duty of honesty in dealing with the USPTO relating to the application that matured into the Design Patents.

43. Specifically, with the intent to deceive the USPTO and the examiner reviewing the applications, ALSOP and BIG BEAR (i) made untruthful and misleading statements to the USPTO; (ii) wrongfully withheld information material to the design patentability of the claims of the Design Patents from the USPTO, including omitting the presence of WRENCH'S phat daddy frames and its oil tank design as prior art being sold in commerce since 2001 (iii) sought protection for subject matter greater than that to which the inventor was entitled under 35 U.S.C. § 103, 171.

44. For the reasons set forth herein, the Design Patents, and each and every claim thereof, is unenforceable due to inequitable conduct which occurred during the prosecution of the application that matured into the Design Patents.

**COUNT IV**  
**Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq.**

45. WRENCH and RUEL repeat and incorporate herein the allegations of Paragraph 1 through Paragraph 25, inclusive.

46. Jurisdiction is appropriate under 28 U.S.C. § 1367.

47. The aforementioned activities of the Defendants constitute unfair methods of competition; unconscionable acts or practices; unfair or deceptive acts or practices; and/or violations of federal, state or local consumer protection provisions or standards in violation of section 501.204, Fla. Stat. (2006).

48. These violations by the Defendants will likely mislead consumers as to Plaintiffs'

allowable involvement in the manufacture and sale of the “phat daddy” and oil tank and the “stinger frame” and oil tank.

49. As a result of Defendants' actions, consumers have been harmed.

50. By reason of these violations of law, Plaintiffs are entitled to both a declaratory judgment against Defendants stating that Defendants' activities violate the Florida Deceptive and Unfair Trade Practice Act and an order enjoining such activities.

### **PRAYER FOR RELIEF**

**WHEREFORE**, WRENCH and RUEL pray for an Order and Judgment:

A. Declaring that the claims of the Design Patents are not infringed by WRENCH or RUEL by virtue of WRENCH'S or RUEL'S designing, making, causing to be made, offering to sell, selling, using, or importing the Products described in the Design Patents.

B. Declaring that the claims of the Design Patents are invalid, unenforceable, and void;

C. Permanently enjoining ALSOP and BIG BEAR, their agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice hereof, from initiating infringement litigation, and from threatening WRENCH and RUEL or any of its customers, dealers, distributors, agents, servants, or employees, or any prospective or present seller, dealer, distributor, or user of WRENCH'S or RUEL'S products or designs, with infringement litigation, or charging any of them either verbally or in writing with infringement of the Design Patents because of the manufacture, use, selling, offering for sale, or importing the WRENCH'S Products;

D. Declaring that Defendants' activities violate the Florida Deceptive and Unfair Trade Practice Act and an order enjoining such activities;

E. Finding that this case is an exceptional case under 35 U.S.C. § 285 and awarding WRENCH and RUEL their reasonable attorneys fees, costs and other expenses; and



F. Providing such other relief as this Court may deem proper and just.

DATED this May 8, 2007

Respectfully submitted,  
**RORY B. WEINER, P.A.**

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