

ORIGINAL

**-07 1496**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MR. BAR-B-Q-, INC., **IRIZARRY, J.**

Plaintiff,

Civil Action No.

-against-

BIG LOTS STORES, INC.,

COMPLAINT

Defendant.

**J. ORENSTEIN, M.J.**  
-----X

The Plaintiff, MR. BAR-B-Q-, INC., by its attorneys, Natter & Natter, for its complaint against the Defendant, BIG LOTS STORES, 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, Old Bethpage, New York.
2. The Defendant, BIG LOTS STORES, INC. is an Ohio corporation duly licensed to transact business in the State of New York having a principal place of business at 300 Phillipi Road, Columbus, Ohio 43228.

AS AND FOR A FIRST COUNT  
PATENT INFRINGEMENT

3. This action is for infringement under the patent laws of the United States, Title 35, United States Code.

4. Subject matter jurisdiction of this Court is based upon Title 28, United States Code §1331 and §1338(a).

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

6. On November 3, 1998, Letters Patent No. Des. 400,358 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 basting brush. A copy of said Letters Patent No. Des. 400,358 is attached hereto as Exhibit 1.

7. 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. 400,358.

8. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC. has infringed, induced others to infringe and contributorily infringed said Letters Patent No. Des. 400,358 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 an article of manufacture (Item No. BQT-BT01) which embodies the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 400,358. Photographs of such infringing article of manufacture are attached as Exhibit 2.

9. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC., without license of the Plaintiff, applied the patented design of Letters Patent No.

Des. 400,358 or a colorable imitation thereof, to an article of manufacture (Exhibit 2) for the purpose of sale.

10. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC., within this judicial district and throughout the United States, without license of the Plaintiff, sold, offered for sale or exposed for sale an article of manufacture (Exhibit 2) to which the patented design or a colorable imitation thereof has been applied.

11. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC., without license of the Plaintiff, caused others to sell, offer for sale or expose for sale an article of manufacture (Exhibit 2) to which the patented design or a colorable imitation thereof has been applied.

12. The infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 400,358, by the Defendant, BIG LOTS STORES, INC. upon information and belief, is willful, intentional and deliberate.

13. On or about April 16, 2003, the Plaintiff instituted action against the Defendant in the Letters Patent District Court, Eastern District of New York, for infringement of said Letters Patent No. Des. 400,358, said action entitled MR. BAR-B-Q-, INC. v. BIG LOTS STORES, INC., CV 03-1850 (NGG).

14. In settlement of said prior action, Plaintiff and Defendant entered into a Settlement Agreement pursuant to which

a) the Defendant acknowledged the validity and enforceability of Letters Patent No. Des. 400,358 and agreed that it will not challenge such validity and enforceability or assist others in challenging the validity or enforceability of said patent and

b) the Defendant agreed that for the duration of the term of Letters Patent No. Des. 400,358, it would not import, manufacture, advertise, order, obtain, sell or offer for sale the basting brush which was the subject of said prior action or any other basting brush that infringes Letters Patent No. Des. 400,358.

15. The Defendant's infringement aforesaid constitutes a breach of the Defendant's obligation under the Settlement Agreement.

16. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 400,358 has caused the Plaintiff, MR. BAR-B-Q-, INC. to suffer monetary damages, the full extent of which are as yet undetermined.

17. 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.

AS AND FOR A SECOND CAUSE  
OF ACTION PATENT INFRINGEMENT

18. The Plaintiff repeats and realleges paragraphs 1 through 5 as if set forth fully herein.

19. On April 30, 2002 Letters Patent No. Des. 456,207 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 barbecue tool handle. A copy of said Letters Patent No. Des. 456,207 is attached hereto as Exhibit 3.

20. The Plaintiff MR. BAR-B-Q-, INC. remains the owner and holder of the entire right, title and interest and introduce to Letters Patent No. Des 456,207.

21. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC. has infringed, induced others to infringe and contributory infringed said Letters Patent No. Des. 456,207 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 comprising a spatula (Item No. BQT-5085), a fork (Item No. BQT-508F), a basting brush (Item No. BQBR-154) and tongs (Item No. BQT-508T) which embody the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 456,207. A photograph of such infringing articles of manufacture are attached as Exhibit 4.

22. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC., without license of the Plaintiff, applied the patented design of Letters Patent No. Des. 456,207 or a colorable imitation thereof, to articles of manufacture (Exhibit 4) for the purpose of sale.

23. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, 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 4) to which the patented design or a colorable imitation thereof has been applied.

24. In violation of Title 35 United States Code §271, the Defendant, BIG LOTS STORES, INC., without license of the Plaintiff, caused others to sell, offer for sale or expose for sale articles of manufacture (Exhibit 4) to which the patented design or a colorable imitation thereof has been applied.

25. The infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 456,207, by the Defendant, BIG LOTS STORES, INC. upon information and belief, is willful, intentional and deliberate.

26. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 456,207 has caused the Plaintiff, MR. BAR-B-Q-, INC. to suffer monetary damages, the full extent of which are as yet undetermined.

27. 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.

WHEREFORE, the Plaintiff requests judgment against the Defendant BIG LOTS STORES, INC. as follows:

1. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendant, BIG LOTS STORES, INC., its officers agents, servants, employees and all those persons in active concert or participation with said Defendant from further infringement of Letters Patent No. Des. 400,358.

2. That pursuant to 35 U.S.C. §284, the Defendant, BIG LOTS STORES, INC., account to the Plaintiff for damages for all past infringement of said Letters Patent No. Des 400,358 including treble damages as appropriate;

3. That pursuant to 35 U.S.C. §289, the Defendant, BIG LOTS STORES, INC., account to Plaintiff to the extent of its total profit for all past infringement of said Letters Patent No. Des. 400,358 including treble damages as appropriate;

4. That preliminary and permanent injunctions be issued enjoining the Defendant, BIG LOTS STORES, INC., it officer, agents, servants, employees and all those persons in active concert or participation with said Defendant to comply with the terms of the Settlement Agreement.

5. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendant, BIG LOTS STORES, INC., its officers agents, servants, employees and all those persons in active concert or participation with said Defendant from further infringement of Letters Patent No. Des. 456,207.

6. That pursuant to 35 U.S.C. §284, the Defendant, BIG LOTS STORES, INC., account to the Plaintiff for damages for all past infringement of said Letters Patent No. Des 456,207 including treble damages as appropriate;

7. That the Defendant, BIG LOTS STORES, INC. be directed to pay to Plaintiff such damages it has sustained as a result of Defendant's breach of the Settlement Agreement.

8. That pursuant to 35 U.S.C. §289, the Defendant, BIG LOTS STORES, INC., account to Plaintiff to the extent of its total profit for all past infringement of said Letters Patent No. Des. 456,207 including treble damages as appropriate;

9 That pursuant to 35 U.S.C. §285, the Defendant, BIG LOTS STORES, INC., pay the Plaintiff's costs and attorneys' fees; and

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

Dated: New York, New York  
April 10, 2007

NATTER & NATTER  
Attorneys for Plaintiff  
501 Fifth Avenue  
New York NY 10036  
(212) 840-8300

By 

Seth Natter (SN 4913)



**United States Patent** [19]

[11] **Patent Number:** **Des. 400,358**

**Zemel**

[45] **Date of Patent:** **\*\*Nov. 3, 1998**

[54] **BASTING BRUSH**

[75] **Inventor:** **Marc Zemel, Old Bethpage, N.Y.**

[73] **Assignee:** **Mr. Bar-B-Q, Inc., Old Bethpage, N.Y.**

[\*\*] **Term:** **14 Years**

[21] **Appl. No.:** **79,671**

[22] **Filed:** **Nov. 20, 1997**

[51] **LOC (6) Cl.** ..... **09-07**

[52] **U.S. Cl.** ..... **D4/114; D4/135; D9/436**

[58] **Field of Search** ..... **D14/114, 116, D14/132, 135; 15/191.1, 192, 193, 205.2, 248.1; 401/126, 127, 129, 183-185, 207, 268, 270, 286-288, 291; D9/436**

[56] **References Cited**

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*Primary Examiner*—Alan P. Douglas

*Assistant Examiner*—Lavone D. Tabor

*Attorney, Agent, or Firm*—Natter & Natter

[57] **CLAIM**

The ornamental design for a basting brush, as shown and described.

**DESCRIPTION**

FIG. 1 is a perspective view of a basting brush showing my new design;

FIG. 2 is a front elevational view thereof;

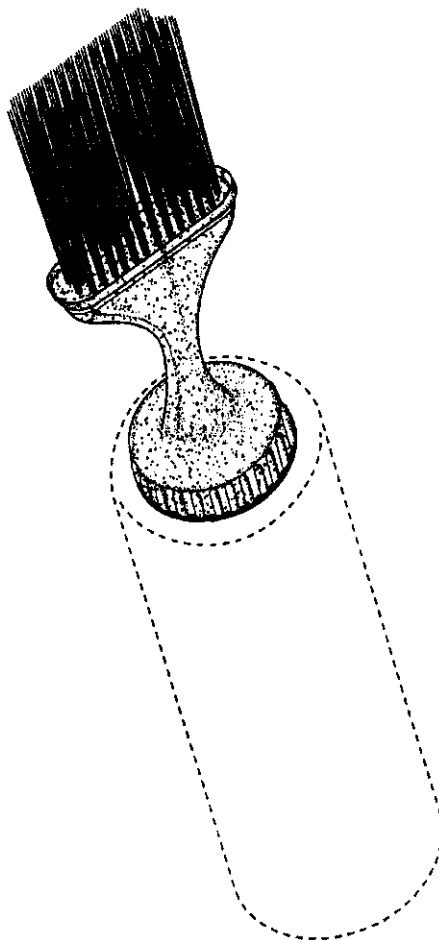
FIG. 3 is a side elevational view thereof; and,

FIG. 4 is a top plan view thereof.

The rear elevational view is identical to the front elevational view and side not illustrated is identical to the side illustrated. The bottom is plain and unornamented.

The broken line showing of a bottle in FIG. 1 is for illustrative purposes only and forms no part of the claimed design.

**1 Claim, 2 Drawing Sheets**



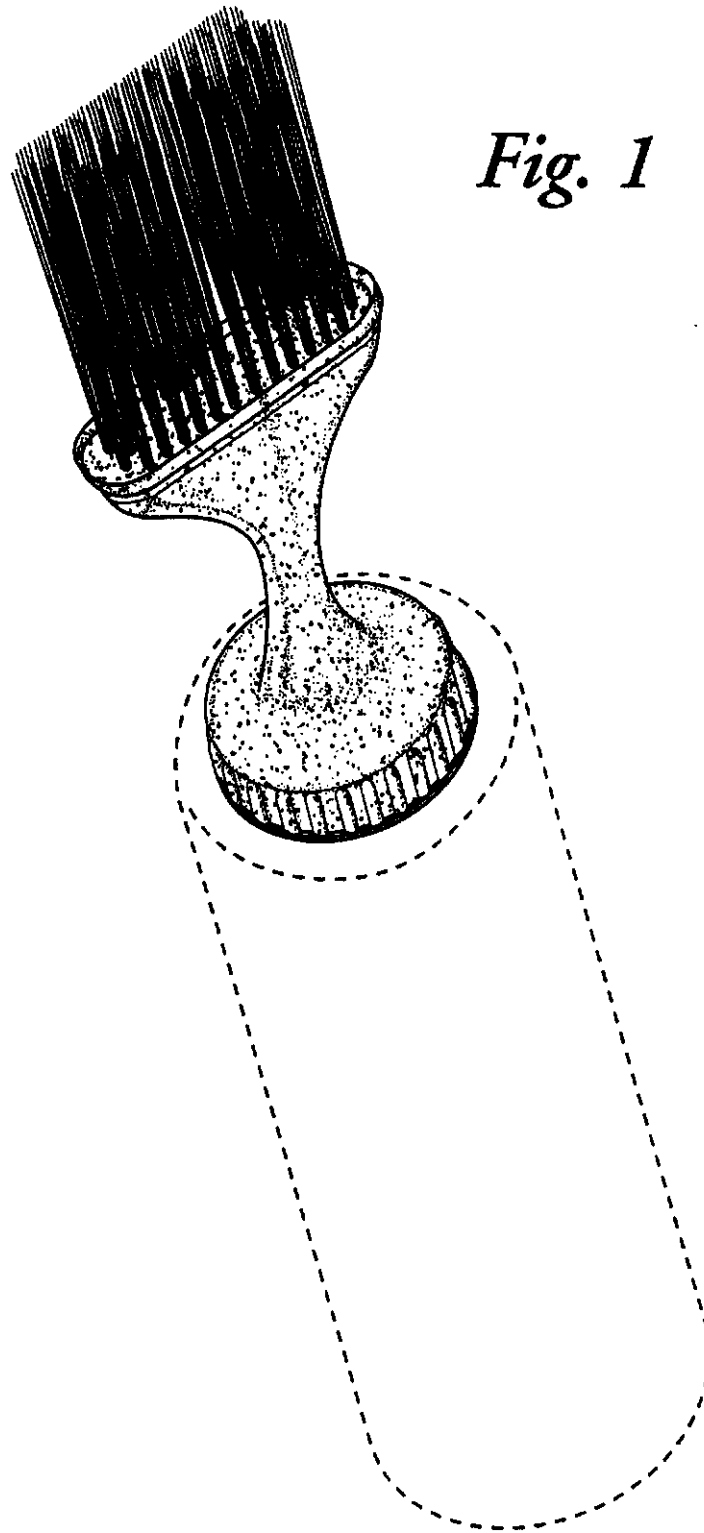
**EXHIBIT 1**

**U.S. Patent**

Nov. 3, 1998

Sheet 1 of 2

**Des. 400,358**

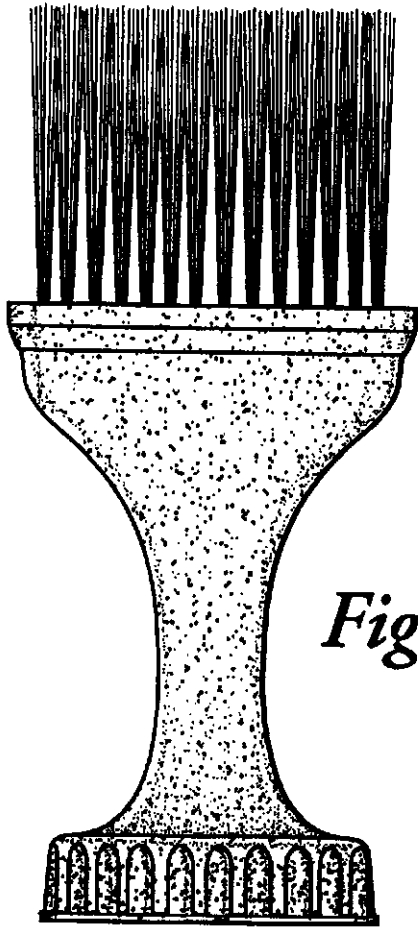


**U.S. Patent**

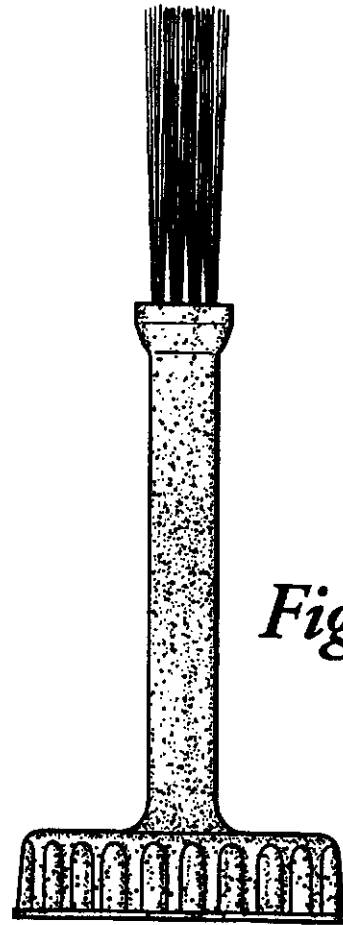
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Sheet 2 of 2

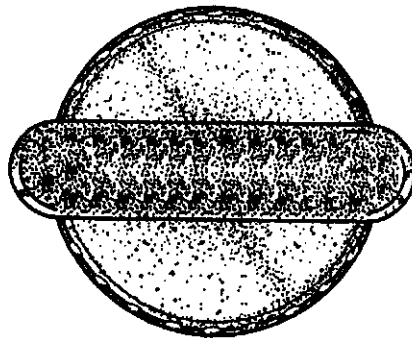
**Des. 400,358**



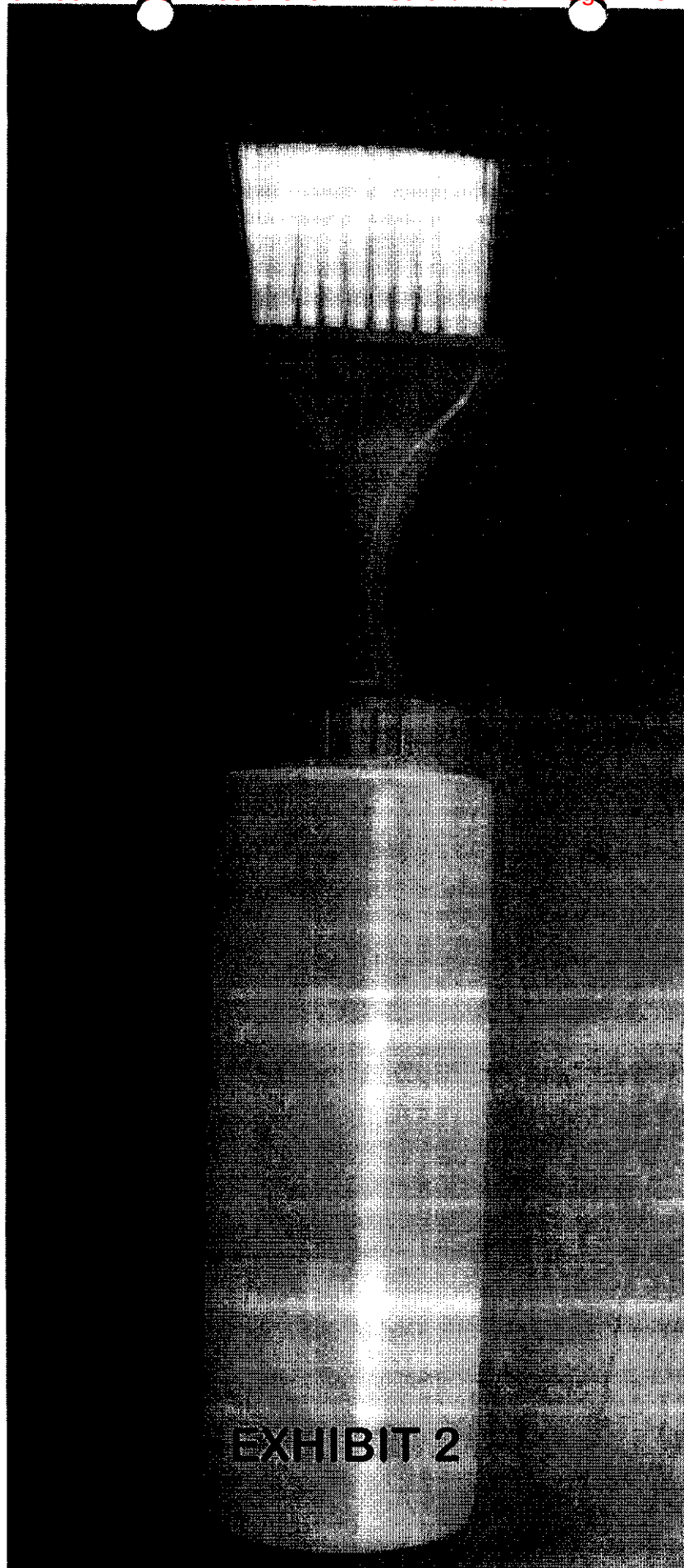
*Fig. 2*



*Fig. 3*



*Fig. 4*



(12) **United States Design Patent**  
**Zemel**

(10) Patent No.: **US D456,207 S**

(45) Date of Patent: **\*\* Apr. 30, 2002**

(54) **HANDLE FOR BARBECUE TOOL**

(75) Inventor: **Marc Zemel**, Old Bethpage, NY (US)

(73) Assignee: **Mr. Bar-B-Q-, Inc.**, Old Bethpage, NY (US)

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/142,160**

(22) Filed: **May 21, 2001**

(51) LOC (7) Cl. .... **04-01**

(52) U.S. Cl. .... **D7/395; D4/138**

(58) Field of Search ..... **D4/118, 132-134, D4/138; D32/42, 49; D7/393, 395, 401.2; 15/111, 143.1, 159.1, 160, 186, 187; 16/110.1, 430, 431, DIG. 12, DIG. 19; D8/107**

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\* cited by examiner

*Primary Examiner*—Alan P. Douglas

*Assistant Examiner*—Lavone Tabor

(74) *Attorney, Agent, or Firm*—Natter & Natter

(57) **CLAIM**

The ornamental design for a handle for barbecue tool, as shown and described.

**DESCRIPTION**

FIG. 1 is a front elevational view of a handle for barbecue tool showing my new design;

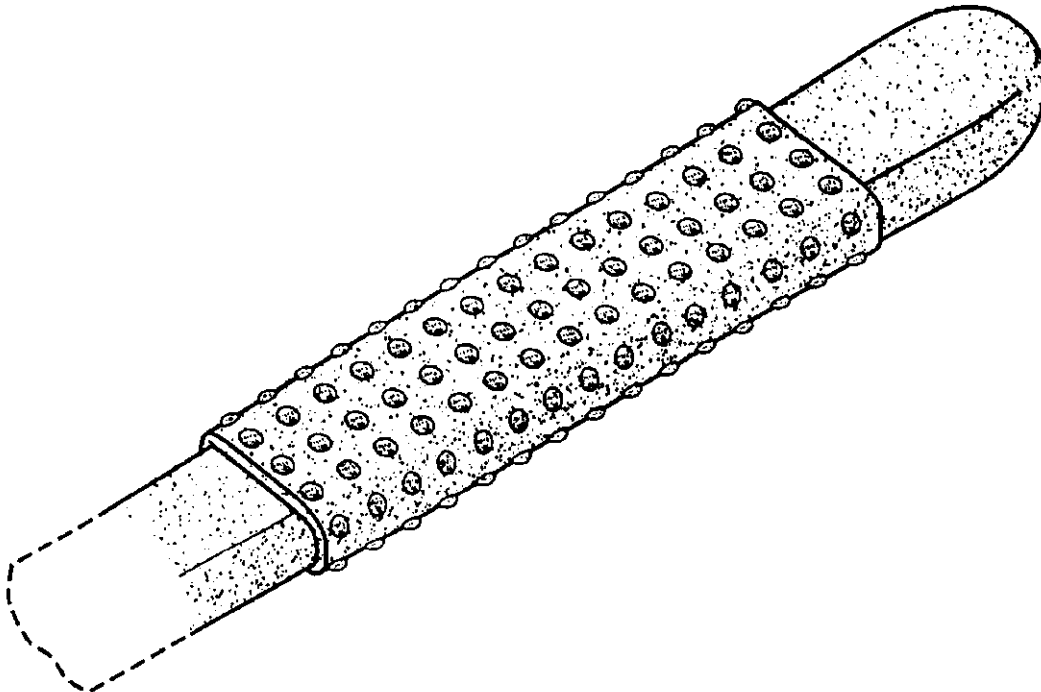
FIG. 2 is a side elevational view thereof;

FIG. 3 is a top view thereof; and,

FIG. 4 is a perspective view thereof.

The rear and the side not illustrated are mirror images of the front and side illustrated in FIG. 1 and FIG. 2 respectively, and the portion of the handle shown in dashed lines does not form part of the claimed design.

**1 Claim, 1 Drawing Sheet**



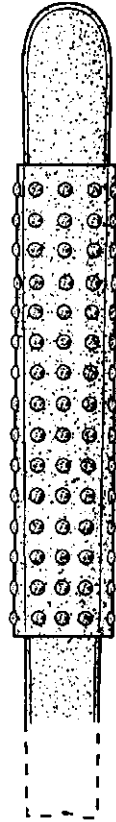
**EXHIBIT 3**

U.S. Patent

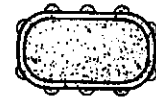
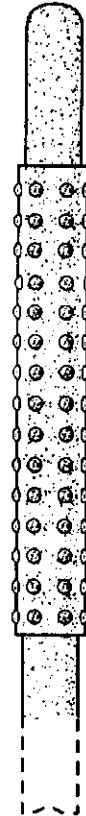
Apr. 30, 2002

US D456,207 S

*Fig. 1*

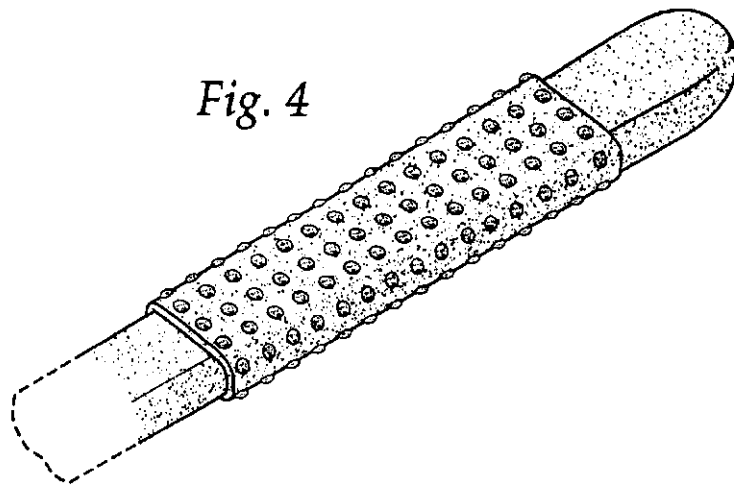


*Fig. 2*

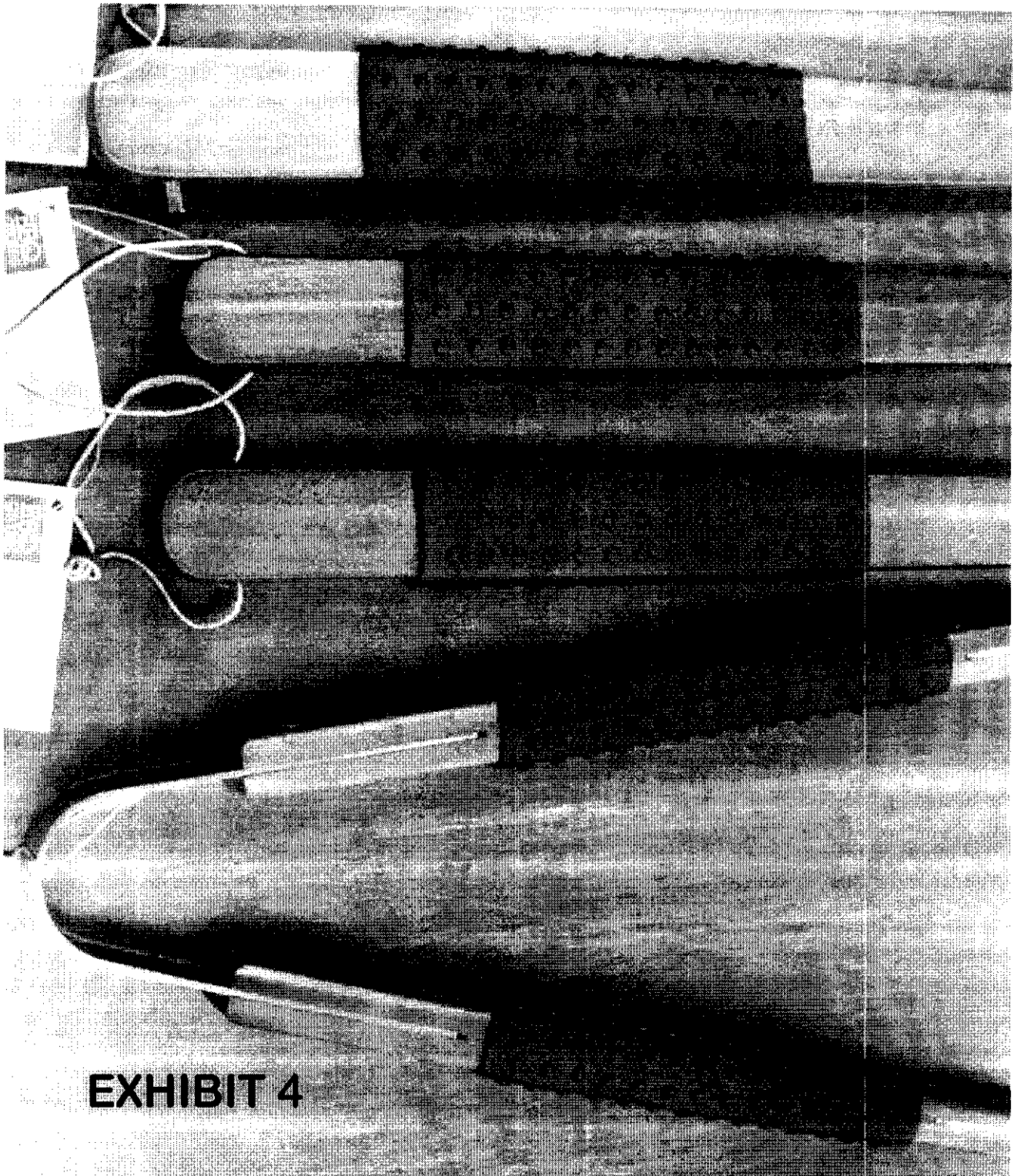


*Fig. 3*

*Fig. 4*







**EXHIBIT 4**