

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

TIMOTHY O. GREEN,

Plaintiff,

v.

WM MOTORCYCLE MEMORIALS, INC.,  
JAMES G. MORITZ, RONALD D.  
WINKLER and GENERAL PLASTICS,  
INC.,

Defendants.

Civil Action No. 3:08cv3064-RM-BGC

Judge Scott  
Magistrate-Judge Cudmore

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Timothy O. Green complain of defendants WM Motorcycle Memorials Inc, James G. Moritz, Ronald D. Winkler and General Plastics as follows:

1. Plaintiff, Timothy O. Green is an Illinois resident whose principle place of business and residence is 2147 S. 15<sup>th</sup> Street, Springfield, Illinois 62703.
2. Upon information and belief, defendant WM Motorcycle Memorials Inc. is and has been a corporation organized under the laws of the State of Nevada having its principle place of business at address 812 South Sixth Street, Las Vegas , Nevada 89101, James G. Moritz –COO; Ronald D. Winkler –CEO.
3. Upon information and belief, defendant James G. Moritz is a Wisconsin resident whose address is 4216 South 91<sup>st</sup> Place, Greenfield, WI, 53228.
4. Upon information and belief, defendant Ronald G. Winkler is a Nevada resident whose address is # 10 Lockhaven Court, Henderson, Nevada 89074.
5. Upon information and belief, defendant General Plastics Inc. is and has been a corporation organized under the laws of Wisconsin with a principal place of business at 2609 W. Mill Road, Milwaukee, WI. 53209.
6. Upon information and belief defendant WM Motorcycle Memorials Inc., James G. Moritz, as COO of WM Motorcycle Memorials Inc., James G. Moritz individually, along with Ronald D. Winkler as CEO, of Motorcycle Memorials Inc.; Ronald D. Winkler, individually, and General Plastics Inc. . . . .will be referred to collectively as “defendants.”

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**Jurisdiction and Venue**

7. This is an action for patent infringement arising under the patent laws of the United States, Title 35 U.S.C. section 1, et seq. This Court has jurisdiction over this action pursuant to 28 U.S.C. sections 1331 and 1338(a).
8. The Court has personal jurisdiction over defendants because defendants conduct business in this judicial district and in the State of Illinois and have committed acts of patent infringement and / or have contributed to or induced acts of patent infringement by others in this judicial district (and elsewhere in Illinois and in the United States).
9. Venue is proper in this judicial district pursuant to 28 U.S.C. sections 1391(b), 1391(c) and 1400(b) because defendants are subject to personal jurisdiction in this judicial district, have regularly conducted business in this judicial district, and certain of the acts complained of herein occurred in this judicial district.

**PATENT IN SUIT**

10. On November 16, 1999, the United States Patent and Trademark office duly and legally issued U.S. Patent No. Des. 416,422, (the “422 patent”) entitled “HIDDEN STORAGE CASE”. A true and correct copy of the ‘ 422 patent is attached hereto as Exhibit A.
11. Timothy O. Green is the owner of all right, title, and interest in and to the 422 patent with full and exclusive rights to bring suit to enforce it, including the right to recover for past infringement.

**COUNT ONE**

**INFRINGEMENT OF THE ‘422PATENT**

12. Timothy Green realleges and incorporates herein the allegations of paragraphs 1 through 10 as if fully set forth herein.
13. The 422 patent is valid and enforceable.
14. Upon information and belief, in violation of 35 U.S.C section 271(a), defendants make, use, offer to sell, and sell within the United States,
15. Upon information and belief, in violation of 35 U.S.C. sections 271(b) and (c), defendants also contribute to/ and / or induce infringement of the 422 patent.
15. Upon information and belief, defendants have willfully infringed the 422 patent.
16. Upon information and belief, defendants’ acts of infringement of the 422 patent will continue after service of this complaint unless enjoined by the Court.
17. As a result of defendants’ infringement Timothy Green has suffered and will suffer damages.

18. Timothy Green is entitled to recover from defendants the damages sustained by Timothy Green as a result of defendants wrongful acts in an amount subject to proof at trial.
19. Unless defendants are enjoined by this Court from continuing their infringement of the 422 Patent, Timothy Green will suffer additional irreparable harm and impairment of the value of its patent rights. Thus, Timothy Green is entitled to an injunction against further infringement.

**COUNT TWO**

**DECLARATORY JUDGEMENT RE: PATENT NO. US D511,604 S**

20. The allegations of paragraphs 1-19 are incorporated here by reference;
21. Upon information and belief, WM MOTORCYCLE MEMORIALS INC., Moritz et al, James G. Moritz, and Ronald D. Winkler were issued U.S. Patent D511,604, Nov. 15, 2005. A true and correct copy of the 604 S patent is attached to this complaint as Exhibit B.
22. Upon information and belief, one or more claims of the 604 S patent is invalid for failure to meet the conditions of patentability of U.S.C. section 101 et seq., including without limitation of sections 102,103, and 112.
23. Upon information and belief, the 604 S patent is unenforceable under the doctrine of inequitable conduct. Prior to the issuance of the 604 patent, the named inventors and/or others substantively involved in prosecuting the applications leading to the 604 S patent were aware of information material to the patentability of the claims of the 604 S patent, but withheld that information from the U. S. Patent and Trademark Office. The withheld information includes but is not limited to:
  - a. The substantial similarity between the claims sought in the application leading to the 604 S patent and those sought in the application leading to U.S. Patent No. D416,422 issued Nov. 16, 1999 ( Hidden Storage Case) which name Timothy O. Green as inventor.
  - b. The substantial similarity between the FIG 1-7 sought in the application leading to the 604 S patent and FIG 1-7 sought in the application leading to U.S. Patent No. D416,422 issued Nov. 16, 1999 which name Timothy O. Green as inventor.
  - c. The application (D/100,946) that led to U.S. Patent No. D416,422 ("the 422 patent") which lists Timothy O. Green as the inventor.

24. Upon information and belief, approximately November 7, 2007 the Plaintiff, Timothy O. Green after being informed by a friend that worked in a local funeral parlor discovered the Defendants offer to sell the alleged infringing product at a local funeral home- Butler Funeral Home, 900 S. 6<sup>th</sup> Street, Springfield, Illinois.

25. Upon information and belief, Plaintiff Timothy O. Green on or about November 12, 2007 Plaintiff contacted his patent attorney-Philip Bateman, 555 S. Seigel, Decatur, Illinois. Patent Attorney Phillip Bateman immediately sent a certified letter to Motorcycle Memorials Inc in care of James G. Moritz including a copy of the '422 patent.

26. Upon information and belief, after waiting approximately 3 months and no reply from Motorcycle Memorials Inc. or Defendants Moritz and Winkler, Plaintiff -Timothy O. Green called defendant Ronald Winkler and again brought to his attention that they (Motorcycle Memorials Inc.) were marketing a product based upon the Plaintiffs U.S. Patent D416,422- Hidden Storage Case (Nov. 16,1999) in the shape of a motorcycle gas tank. Defendant Ronald Winkler indicated that they knew who Timothy O. Green was and about his line of products. Defendant Ronald Winkler stated that "if you change a product 10%-it is not the same product. People steal my paint ideals all the time and nothing could be done about it. As far as we are concerned, we have the patent and have it all locked up."

27. Upon information and belief, Plaintiff Timothy O. Green offered to come to some sort of licensing deal or arrangement that would be agreeable to each of the parties in order to save legal and attorney fees. Defendant Ronald Winkler declined and stated "we have the patent and our attorneys-so do whatever you have to do."

28. Upon information and belief, Plaintiff- Timothy O. Green then contacted the U.S Patent and Trademark Office and the USPTO indicated that a re-examination of the Defendants patent was possible if "there was a substantial question of patentability based upon prior patents and /or publications."

29. Upon information and belief, Plaintiff -Timothy O. Green requested the U.S. Patent and Trademark to re-exam the Defendants D511,604 patent on July 12, 2008. The U.S Patent Office indicated that the initial re-exam request (Exhibit B) was incomplete. On August 20, 2008 a completed reexamination request (Exhibit C) was accepted by the USPTO.

30. Upon information and belief, on September 29, 2008 the U. S. Patent Office stated that a substantial new question of patentability affecting the claim U.S. Patent D511,604 (Cremation Urn with Motorcycle Gas Tank Shape issued Nov 15, 2005) is raised by the request and ordered a reexamination. Defendants have a 60 day time period to respond. (Exhibit D).

31. This case is exceptional and pursuant to 35 U.S.C. section 285, and plaintiff is entitled to an award of attorneys' fees and other relief the Court deems proper.

PRAYER FOR RELIEF

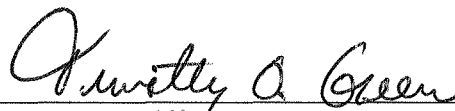
WHEREFORE, Timothy O. Green prays for judgment and relief as follows:

- (a) That defendants have infringed the 422 patent in violation of 35 U.S.C sections 271(a), (b), and (c);
- (b) That defendant's infringement of the 422 patent has been willful.
- (c) That defendants' be ordered to pay damages adequate to compensate Timothy O. Green for the defendants infringement of the 422 patent pursuant to 35 U.S.C. section 284, including an accounting;
- (d) That defendants be ordered to pay treble damages pursuant to U.S.C. section 284;
- (e) That this case is exceptional and pursuant to 35 U.S.C. section 285; defendants be ordered to pay Timothy Green's attorney fees ;
- (f) Preliminary and permanent injunction, pursuant to 35 U.S.C. section 283 enjoining the defendants, their officers, agents, and employees, and those persons acting in active concert or in participation with them, and their successors and assigns, be enjoined from further infringement of the 422 patent.
- (g) That defendants be ordered to pay prejudgment interest on the damages and its costs incurred in this action;
- (h) That defendants patent issued Nov.15, 2005- Patent No. D511,604 S - Cremation Urn with Motorcycle Gas Tank Shape be deemed invalid;
- (i) That Timothy O. Green be granted such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Timothy O. Green demands a trial by jury on all issues so triable under Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: \_\_\_\_\_, 2008 By'

  
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Plaintiff

Timothy O. Green  
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