

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
\* SEP 20 2002  
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BROOKLYN OFFICE

GLEESON, J.  
LEVY, M.J.

MR. BAR-B-Q, INC.,

**CV 02 5122**

Plaintiff,

Civil Action No.

-against-

WORLD KITCHEN, 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, WORLD KITCHEN, 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, WORLD KITCHEN, INC. is a Delaware corporation having an office and principal place of business at 1 Pyrex Place, Elmira, New York.

**AS AND FOR A FIRST COUNT**

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 April 30, 2002, United States 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 handle for a barbecue tool. A copy of said Letters Patent No. Des. 456,207 is attached hereto as Exhibit A.

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. 456,207.

8. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily 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 an article of manufacture which embodies the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 456,207.

9. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, 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. 456,207 or a colorable imitation thereof, to an article of manufacture for the purpose of sale.

10. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, 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 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, WORLD KITCHEN, 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 an article of manufacture to which the patented design or a colorable imitation thereof has been applied.

12. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 456,207, upon information and belief, is willful, intentional and deliberate.

13. 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.

14. 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.

15. 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 COUNT**

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

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

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

19. On May 7, 2002, United States Letters Patent No. Des. 456,614 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 grill brush. A copy of said Letter Patent No. Des. 456,614 is attached hereto as Exhibit B.

20. 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. 456,614.

21. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. Des. 456,614 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 which embodies the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 456,614.

21. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, 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. 456,614 or a colorable imitation thereof, to an article of manufacture for the purpose of sale.

22. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, 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 to which the patented design or a colorable imitation thereof has been applied.

23. In violation of Title 35 United States Code §271, the Defendant, WORLD KITCHEN, 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 an article of manufacture to which the patented design or a colorable imitation thereof has been applied.

24. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 456,614, upon information and belief, is willful, intentional and deliberate.

25. 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.

26. The Defendant's infringement, contributory infringement and active inducement of

infringement of Letters Patent No. Des. 456,614 has caused the Plaintiff, MR. BAR-B-Q, INC. 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 if such infringement is allowed to continue.

**AS AND FOR A THIRD COUNT**

27. This action is for a declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28, United States Code §2201, and the patent laws of the United States, Title 35, United States Code §100 *etseq.*

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

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

30. On or about June 20, 2002 Defendant's attorney wrote to the Plaintiff, accusing the Plaintiff of infringing United States Patent Des. 456,667. A copy of such letter is attached hereto as Exhibit C.

31. The Defendant claims to be the owner of Patent Des. 456,667 which issued May 7, 2002. A copy of such patent is attached hereto as Exhibit D.

32. The Plaintiff does not infringe Patent Des. 456,667 under Title 35 United States Code §271.

33. There is believed to be a likelihood of evidentiary support for a finding that United States Patent Des. 456,667 is, invalid, for failure to comply with one or more of the requirements under Title 35, United States Code §102, §103 and/or §112.

34. By vulture of the foregoing, there is a substantial actual controversy between the Plaintiff and the Defendant as to whether the Plaintiff has infringed United States Patent Des. 456,667 and whether United States Patent Des. 456,667 is invalid.

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

**ON THE FIRST COUNT**

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

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

3. That pursuant to 35 U.S.C. §289, the Defendant, WORLD KITCHEN, INC., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Des. 456,204 including treble damages as appropriate;

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

**ON THE SECOND COUNT**

5. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendant, WORLD KITCHEN, INC., its officers agents, servants, employees and all those persons in active concert or participation with said Defendant from further infringement of U.S. Patent No. Des. 456,614.

6. That pursuant to 35 U.S.C. §284, the Defendant, WORLD KITCHEN, INC., account to the Plaintiff for damages for all past infringement of said U.S. Patent No. Des 456,614 including treble damages as appropriate;

7. That pursuant to 35 U.S.C. §289, the Defendant, WORLD KITCHEN, INC., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Des. 456,614 including treble damages as appropriate;

8. That pursuant to 35 U.S.C. §285, the Defendant, WORLD KITCHEN, INC., pay the Plaintiff's costs and attorneys' fees; and

**ON THE THIRD COUNT**

9. Declaring that the Plaintiff's products do not infringe U.S. Patent Des. 456,667;

10. Declaring that U.S. Patent Des. 456,667 is invalid;


11. That pursuant to 35 U.S.C. §285 the Defendant pay the Plaintiff's cost and attorneys' fees; and



12. For such other and further relief as this Court deem just and proper.

Dated: New York, New York  
September 20, 2002

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By   
Seth Natter (SN 4913)