

UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

J.H. Smith Company, Inc.
Plaintiff,

v.

Bit Barbecue LLC,
Defendant.

Civil Action No. : _____

COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiff, J.H. Smith Company, Inc., for its complaint against the defendant, Bit Barbecue LLC, alleges as follows:

1. Plaintiff, J.H. Smith Company, Inc., is a Massachusetts corporation having a principal place of business at 330 Chapman Street, Greenfield, MA 01301.
2. On information and belief, Bit Barbecue LLC is a District of Columbia limited liability company having a principal place of business at 5149 Tilden Street, N.W., Washington, DC 20036.
3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* In addition, this court has subject matter jurisdiction over the action pursuant to 35 U.S.C. §§271 and 282 and 28 U.S.C. 1338(a), as well as 28 U.S.C. §2201 (the Declaratory Judgment Act).
4. This Court has personal jurisdiction over defendant based upon its contacts with this forum, including sending an e-mail to plaintiff alleging patent infringement within the Commonwealth of Massachusetts.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and 1400(b).
6. On October 19, 2010, Marvin Fabrikant sent an e-mail to JH Smith alleging that it was selling a grill basket that infringed U.S. Patent Nos. 5,740,724 and 5,970,856.
7. On information and belief, Marvin Fabrikant is an officer and/or owner of defendant.
8. On information and belief, defendant is the owner of U.S. Patent Nos. 5,740,724 and 5,970,856.
9. On information and belief, defendant has filed at least one other recent civil action against for infringement of U.S. Patent Nos. 5,740,724 and 5,970,856.
10. By reason of the e-mail from Mr. Fabrikant; his delays in executing a settlement agreement over a small number of sales; and the prior filed court action, JH Smith is under a reasonable fear and apprehension that Defendants might commence a lawsuit against JH Smith for infringement of U.S. Patent Nos. 5,740,724 and 5,970,856.

RELIEF REQUESTED

WHEREFORE, plaintiff requests this Court to grant it the following relief:

1. A declaratory judgment that the grill baskets sold by plaintiff do not infringe U.S. Patent Nos. 5,740,724 and 5,970,856;
2. In the event that infringement of U.S. Patent Nos. 5,740,724 and 5,970,856 is adjudicated, a declaratory judgment as to the amount of damages owed to defendant, if any; and
3. Such other relief as this Court deems equitable and just.

Respectfully submitted,

J.H. Smith Company, Inc.,
By its attorney,

Dated: November 3, 2010

/s/ Steven N. Fox
Steven N. Fox, Esq. (BBO# 554692)
62 South Main Street
Sharon, MA 02067
Voice: 781-821-8920
E-Mail: foxpatent@yahoo.com