

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MR. BAR-B-Q-, INC.,

Plaintiff,

Civil Action No.06-6305
ECF CASE

-against-

SUR LA TABLE, 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, SUR LA TABLE, 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 11804.
2. The Defendant, SUR LA TABLE, INC. is a corporation having an office and principal place of business at 5701 Sixth Avenue South, Seattle WA 98108 and transacts business within this judicial district.
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 August 10, 2004, United States Letters Patent No. Des. 494,006 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. 494,006 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. 494,006.

8. In violation of Title 35 United States Code §271, the Defendant, SUR LA TABLE, INC., within this judicial district and throughout the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. Des. 494,006 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 which embody the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 494,006. Photographs of said infringing articles of manufacture are attached hereto as Exhibit B.

9. In violation of Title 35 United States Code §271, the Defendant, SUR LA TABLE, 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. 494,006 or a colorable imitation thereof, to articles of manufacture (Exhibit B) for the purpose of sale.

10. In violation of Title 35 United States Code §271, the Defendant, SUR LA TABLE, 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 B) 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, SUR LA TABLE, 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 article of manufacture (Exhibit B) 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. 494,006, 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. 494,006 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.

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

1. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendant, SUR LA TABLE, 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. 494,006.

2. That pursuant to 35 U.S.C. §284, the Defendant, SUR LA TABLE, INC., account to the Plaintiff for damages for all past infringement of said U.S. Patent No. Des 494,006 including treble damages as appropriate;

3. That pursuant to 35 U.S.C. §289, the Defendant, SUR LA TABLE, INC., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Des. 494,006 including treble damages as appropriate;

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

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

Dated: New York, New York
August 18, 2006

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By /Seth Natter/
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