

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

03 1850
X GARAUFIS, J.
POLLAK, M.J.

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

Plaintiff,

Civil Action No.

-against-

BIG LOTS STORES, INC.,

COMPLAINT

Defendant.

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The Plaintiff, MR. BAR-B-Q-, INC., by its attorneys, Natter & Natter, for its complaint against the Defendants, 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.
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, United States 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 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. 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 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 B.

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 U.S. Patent No. Des. 400,358 or a colorable imitation thereof, to an article of manufacture (Exhibit B) 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 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, 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 B) 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. 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 against Defendant, BIG LOTS STORES, INC.

14. 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.

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 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 U.S. Patent No. Dcs. 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 U.S. Patent No. Des 400,358 including treble damages as appropriate;

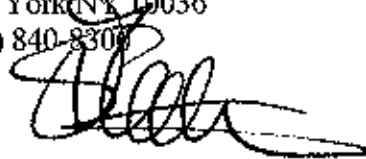
3. That pursuant to 35 U.S.C. §289, the Defendant, BIG LOTS STORES, INC., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Dcs. 400,358 including treble damages as appropriate;

4. That pursuant to 35 U.S.C. §285, the Defendant, BIG LOTS STORES, 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
April 16, 2003

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By 
Seth Natter (SN 4913)



US00D400358S

United States Patent [19]**Zemel**[11] **Patent Number:** **Des. 400,358**[45] **Date of Patent:** **#8 Nov. 3, 1998**[54] **BASTING BRUSH**[75] **Inventor:** **Marc Zemel, Old Bethpage, N.Y.**[73] **Assignee:** **Mn. 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****U.S. PATENT DOCUMENTS**

D. 376,479 12/1996 Bresler et al. .
 2,167,523 7/1939 Reichenbach .
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 2,892,204 6/1959 Wagner 15/248.1
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5,547,303 8/1996 Pyrozyk .

Primary Examiner—Alan P. Douglas*Assistant Examiner*—Lavonne 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;

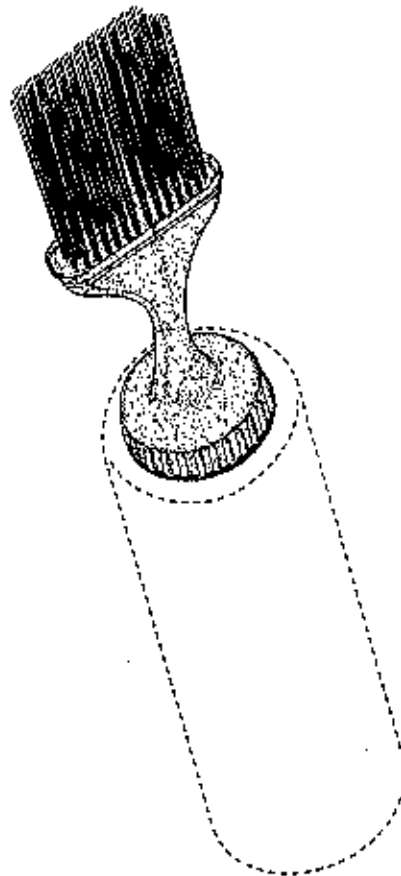
FIG. 2 is a front elevational view thereof;

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.

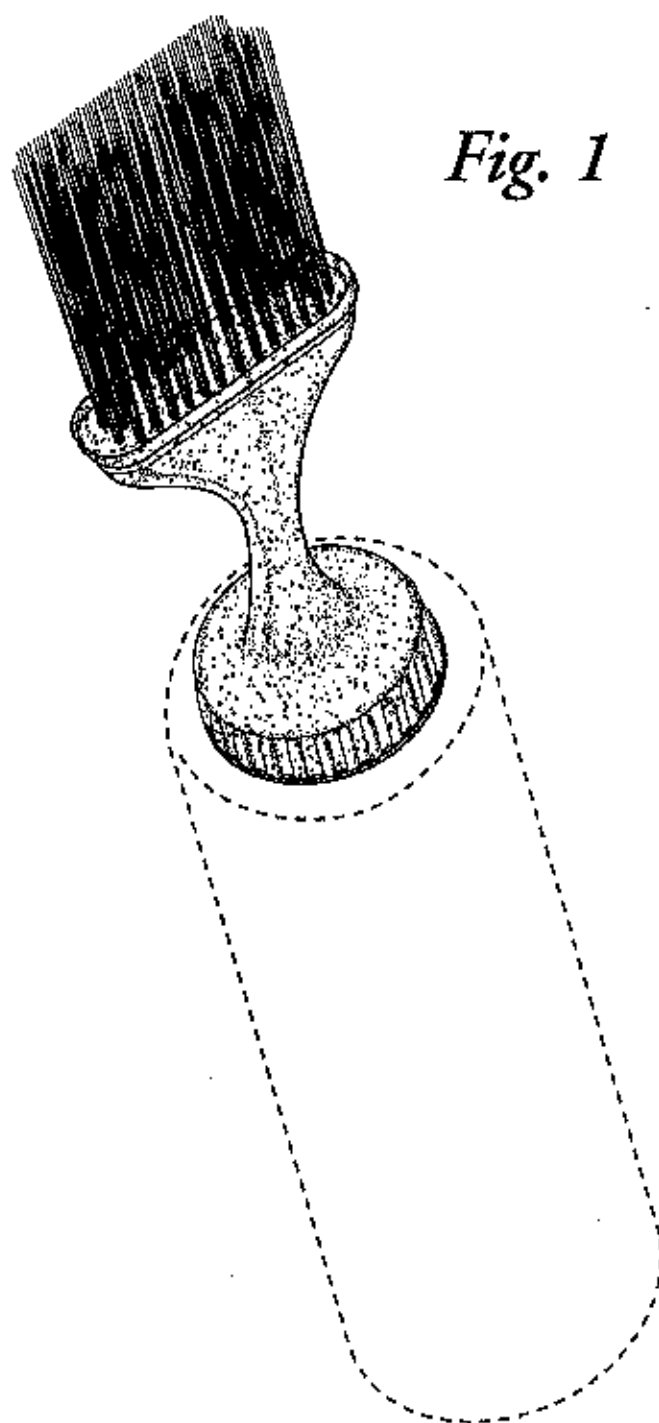
1 Claim, 2 Drawing Sheets

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Sheet 2 of 2

Des. 400,358

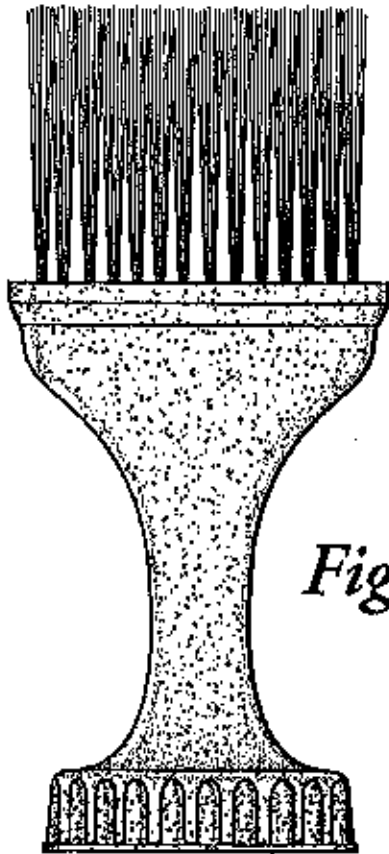


Fig. 2

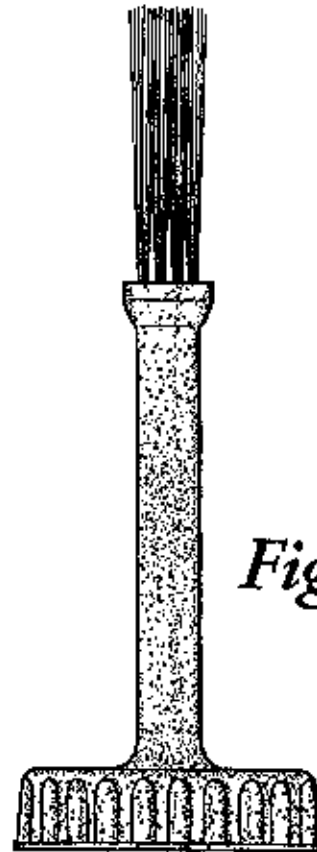


Fig. 3

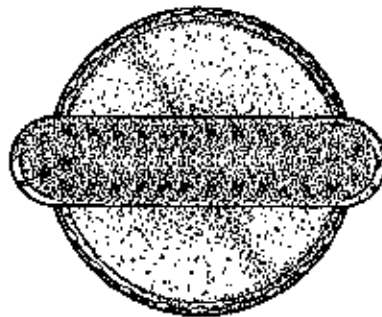


Fig. 4



EXHIBIT
B

