

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

BRUNS DANIEL KIDD and  
YANKEE ENGINEERING, INC.,

Plaintiff,

v.

THE HOME DEPOT,

Defendant.

Case No.

**COMPLAINT FOR PATENT INFRINGEMENT AND UNFAIR COMPETITION  
(INJUNCTIVE RELIEF REQUESTED)  
(JURY TRIAL DEMANDED)**

Plaintiffs Bruns Daniel Kidd and Yankee Engineering, Inc., by their undersigned counsel, bring this action against defendant The Home Depot, Inc. (“Home Depot”) for patent infringement, unfair competition and other relief. In support of their complaint, plaintiffs allege as follows:

*Nature of this Action*

1. After struggling with cost effectively upgrading the plumbing equipment during a renovation project at his own house, Mr. Kidd turned to his engineering background to invent a crimping tool that accurately and reliably crimps fittings onto PEX plumbing tubing. Mr. Kidd’s patented product, dubbed the “PEX Pocket Crimper,” is sold through Yankee Engineering, Inc. and has enjoyed success in the marketplace as a high-quality, affordable alternative to the traditional, expensive crimping tools utilized to crimp fittings onto PEX tubing. Mr. Kidd now seeks to enforce his U.S. patents against defendant Home Depot, which markets and sells an

inferior, infringing crimp tool under the name “4-in-1 PEX Pocket Crimper,” and Yankee Engineering seeks to protect the valuable goodwill associated with the patented PEX POCKET CRIMPER.

*The Parties*

2. Plaintiff Bruns Daniel Kidd is an individual, residing in Limington, Maine.

3. Yankee Engineering, Inc. is a Maine corporation with a principal place of business located at 29 Kidd Road, Limington, Maine that manufactures the PEX POCKET CRIMPER and sells the PEX POCKET CRIMPER direct to consumers and to distributors for distribution throughout the United States.

4. Defendant The Home Depot, Inc. is a Delaware corporation with corporate offices located in Atlanta, Georgia and retail stores located throughout the United States, including more than ten retail stores located in Maine.

*Jurisdiction and Venue*

5. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United states, including 35 U.S.C. §§ 1 *et seq.*

6. This district is a proper venue for this action under 28 U.S.C. §§ 1391(b) and 1400(b) because Home Depot has done business in this district, has committed acts of infringement in this district by marketing and selling the infringing 4-in-1 PEX Pocket Crimper, and continues to commit acts of infringement in this district, entitling plaintiffs to relief.

COUNT I  
INFRINGEMENT OF U.S. PATENT NO. 7,878,790

7. Plaintiffs incorporate by reference and reallege paragraphs 1-6.

8. On February 1, 2011, United States Patent No. 7,878,790 (“the ‘790 patent”) was duly and legally issued for an invention entitled “Tool to Crimp Non-Metallic Tubing Onto Fittings.” A copy of the ‘790 patent is attached hereto as Exhibit A.

9. Defendant Home Depot has directly infringed and continues to infringe the ‘790 patent by its marketing, use, sale and/or offer for sale of certain products, including the 4-in-1 PEX Pocket Crimper.

10. Home Depot is liable for its infringement of the ‘790 patent pursuant to 35 U.S.C. §271.

11. Home Depot’s acts of infringement have caused damage to Mr. Kidd, and Mr. Kidd is entitled to recover from Home Depot the damages sustained as a result of Home Depot’s wrongful acts in an amount subject to proof at trial.

12. Home Depot’s infringement of Mr. Kidd’s exclusive rights under the ‘790 patent will continue to cause damage to Mr. Kidd, causing irreparable harm for which there is no adequate remedy at law, unless Home Depot is enjoined by this Court.

13. By letter dated December 21, 2011, Home Depot was notified in writing that it was infringing the ‘790 patent.

14. Upon information and belief, Home Depot’s infringement of the ‘790 patent is willful and deliberate, entitling Mr. Kidd to increased damages under 35 U.S.C. §284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

COUNT II  
INFRINGEMENT OF U.S. PATENT NO. D646,537

15. Plaintiffs incorporate by reference and reallege paragraphs 1-14.

16. On October 11, 2011, United States Patent No. D646,537 (“the ‘537 patent”) was duly and legally issued for an invention entitled “Tool to Crimp Non-Metallic Tubing Onto Fittings.” A copy of the ‘537 patent is attached hereto as Exhibit B.

17. Defendant Home Depot has directly infringed and continues to infringe the ‘537 patent by its marketing, use, sale and/or offer for sale of certain products, including the 4-in-1 PEX Pocket Crimper.

18. Home Depot is liable for its infringement of the ‘537 patent pursuant to 35 U.S.C. §271.

19. Home Depot’s acts of infringement have caused damage to Mr. Kidd, and Mr. Kidd is entitled to recover from Home Depot the damages sustained as a result of Home Depot’s wrongful acts in an amount subject to proof at trial.

20. Home Depot’s infringement of Mr. Kidd’s exclusive rights under the ‘537 patent will continue to cause damage to Mr. Kidd, causing irreparable harm for which there is no adequate remedy at law, unless Home Depot is enjoined by this Court.

21. By letter dated December 21, 2011, Home Depot was notified in writing that it was infringing the ‘537 patent.

22. Upon information and belief, Home Depot’s infringement of the ‘537 patent is willful and deliberate, entitling Mr. Kidd to increased damages under 35 U.S.C. §284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

COUNT III  
INFRINGEMENT OF U.S. PATENT NO. 8,241,029

23. Plaintiffs incorporate by reference and reallege paragraphs 1-22.

24. On August 14, 2012, United States Patent No. 8,241,029 (“the ‘029 patent”) was duly and legally issued for an invention entitled “Tool to Crimp Non-Metallic Tubing Onto Fittings.” A copy of the ‘029 patent is attached hereto as Exhibit C.

25. Defendant Home Depot has directly infringed and continues to infringe the ‘029 patent by its marketing, use, sale and/or offer for sale of certain products, including the 4-in-1 PEX Pocket Crimper.

26. Home Depot is liable for its infringement of the ‘029 patent pursuant to 35 U.S.C. §271.

27. Home Depot’s acts of infringement have caused damage to Mr. Kidd, and Mr. Kidd is entitled to recover from Home Depot the damages sustained as a result of Home Depot’s wrongful acts in an amount subject to proof at trial.

28. Home Depot’s infringement of Mr. Kidd’s exclusive rights under the ‘029 patent will continue to cause damage to Mr. Kidd, causing irreparable harm for which there is no adequate remedy at law, unless Home Depot is enjoined by this Court.

29. By letter dated February 27, 2012, Home Depot was notified in writing that it was infringing the claims present in U.S. Patent Publication No. US2011/0061221, which has matured into the ‘029 patent.

30. Upon information and belief, Home Depot’s infringement of the ‘029 patent is willful and deliberate, entitling Mr. Kidd to increased damages under 35 U.S.C. §284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

COUNT IV  
TRADEMARK INFRINGEMENT

31. Plaintiffs incorporate by reference and reallege paragraphs 1-30.

32. On or about October 2005 and continuing through to the present Yankee Engineering, Inc. (“Yankee Engineering”), has sold Mr. Kidd’s patented crimping tool in interstate commerce under the trademark PEX POCKET CRIMPER.

33. Yankee Engineering sells Mr. Kidd’s PEX POCKET CRIMPER direct to consumers and to distributors for resale to such well know home improvement retailers are Lowes, Sears, and Ace Hardware.

34. Beginning in approximately January 2009 and continuing through approximately August 2011, Yankee Engineering sold the PEX POCKET CRIMPER to Homewerks Worldwide, LLC, which in turn distributed the PEX POCKET CRIMPER to Home Depot for resale to consumers via the Home Depot website and Home Depot stores located throughout the United States.

35. On information and belief, Home Depot was and is aware that Mr. Kidd’s patented crimping tool is identified to consumers using the trademark PEX POCKET CRIMPER.

36. On information and belief, starting in approximately September 2011, Home Depot began replacing the patented PEX POCKET CRIMPER, in both its retail stores and online, with a competing crimp tool identified as the “4-in-1 PEX Pocket Crimper.”

37. On information and belief, for a substantial period of time, Home Depot displayed the patented PEX POCKET CRIMPER and the PEX 4-in-1 Pocket Crimper on the same displays within its retail stores and even assigned both crimping tools an identical SKU number.

38. On information and belief, Home Depot continues to market and sell a crimp tool identified as the “4-in-1 PEX Pocket Crimper.”

39. Home Depot's use of the PEX 4-in-1 Pocket Crimper brand name to promote, market, or sell crimp tools in direct competition with the patented PEX POCKET CRIMPER constitutes unfair competition pursuant to 15 U.S.C. § 1125(a).

40. Home Depot's use of the PEX 4-in-1 Pocket Crimper brand name is likely to cause confusion, to cause mistake and to deceive customers as to the identity and origin of the 4-in-1 PEX Pocket Crimper.

41. Upon information and belief Home Depot's conduct was undertaken in a willful and intentional attempt to misappropriate the goodwill associated with the patented PEX POCKET CRIMPER.

42. Home Depot's unfair competition has caused and will continue to cause damage to plaintiffs, and is causing irreparable harm to plaintiffs for which there is no adequate remedy at law.

COUNT V  
UNFAIR COMPETITION

43. Plaintiffs incorporate by reference and reallege paragraphs 1-42.

44. On information and belief, when Home Depot began carrying the 4-in-1 PEX Pocket Crimper, on or about September 2011, it had remaining stock of Mr. Kidd's patented PEX POCKET CRIMPER available for purchase in Home Depot retail stores and online via [www.homedepot.com](http://www.homedepot.com).

45. On information and belief, since approximately September 2011, Home Depot has used images of the patented PEX POCKET CRIMPER to sell the 4-in-1 PEX Pocket Crimper.

46. On information and belief, since approximately September 2011, Home Depot has used actual PEX POCKET CRIMPER tools as samples to promote sales of the 4-in-1 PEX Pocket Crimper.

47. On information and belief, Home Depot has used a single SKU to identify both the patented PEX POCKET CRIMPER and the 4-in-1 PEX Pocket Crimper.

48. On information and belief, Home Depot has displayed the patented PEX POCKET CRIMPER and the 4-in-1 PEX Pocket Crimper on a common hanging display rack and under a single sign that identified all of the tools on the rack as the PEX POCKET CRIMPER.

49. Home Depot was notified in writing, via letters dated December 21, 2010, and January 26, 2011, that its marketing and display practices were likely to confusion among customers.

50. Home Depot's marketing and display practices with respect to the patented PEX POCKET CRIMPER and the PEX 4-in-1 Pocket Crimper constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a).

51. Home Depot's marketing and display practices with respect to the patented PEX POCKET CRIMPER and the PEX 4-in-1 Pocket Crimper are likely to cause confusion, to cause mistake and to deceive customers as to the identity and origin of the goods.

52. Upon information and belief Home Depot's conduct was undertaken in a willful and intentional attempt to misappropriate the goodwill associated with the patented PEX POCKET CRIMPER.



53. Home Depot's unfair competition has caused and will continue to cause damage to plaintiffs, and is causing irreparable harm to plaintiffs for which there is no adequate remedy at law.

COUNT VI  
FALSE ADVERTISING

54. Plaintiffs incorporate by reference and reallege paragraphs 1-53.

55. On information and belief, Home Depot is utilizing images of the patented PEX POCKET CRIMPER to sell 4-in-1 PEX Pocket Crimper tools through the Home Depot website located at: [www.homedepot.com](http://www.homedepot.com).

56. On information and belief, on or about May 14, 2012, an individual ordered a PEX POCKET CRIMPER through the Home Depot website, for pickup at the Home Depot store located in Portland, Maine.

57. On information and belief, the Home Depot website displayed an image of the patented PEX POCKET CRIMPER on both the product information page and on the shopping cart page.

58. On information and belief, the patented PEX POCKET CRIMPER ordered on May 14, 2012, was identified with Store SKU# 707568.

59. On information and belief, on May 17, 2012, after receiving an In-Store Order Pickup Notification from Home Depot, the customer went to the Home Depot Store in Portland, Maine to pickup the ordered item.

60. On information and belief, when the customer arrived at the store, Home Depot provided a 4-in-1 PEX Pocket Crimper in fulfillment of the online order for the patented PEX POCKET CRIMPER.

61. On information and belief, the receipt provided by the Home Depot store located in Portland, Maine at the time of fulfillment identified the SKU of the crimp tool as 707568.

62. On information and belief, at no point during the time period between May 14 and May 17, 2012, did the Home Depot store located in Portland, Maine have any units of patented PEX POCKET CRIMPER tools in-stock and available for sale to customers.

63. Home Depot's use of photographs of the patented PEX POCKET CRIMPER to sell the 4-in-1 PEX Pocket Crimper is a false or misleading description or representation of fact regarding the products being sold by Home Depot.

64. Home Depot's use of photographs of the patented PEX POCKET CRIMPER to sell the 4-in-1 PEX Pocket Crimper has the capacity to deceive a substantial segment of potential consumers.

65. Home Depot's use of photographs of the patented PEX POCKET CRIMPER to sell the 4-in-1 PEX Pocket Crimper is likely to influence consumer's purchasing decisions.

66. On information and belief, Home Depot is using the photographs of the patented PEX POCKET CRIMPER to sell the 4-in-1 PEX Pocket Crimper in interstate commerce.

67. Upon information and belief, Home Depot's conduct was undertaken in a willful and intentional attempt to misappropriate the goodwill associated with the patented PEX POCKET CRIMPER.

68. By reason of the foregoing acts, Home Depot is liable to plaintiffs for false advertising under 15 U.S.C. § 1125(a)(1)(B).

69. As a direct and proximate result of Home Depot's violations of 15 U.S.C. § 1125(a), plaintiffs have been and will continue to be damaged irreparably.

70. Upon information and belief, Home Depot has realized substantial profits and other benefits, rightfully belonging to plaintiffs as a result of Home Depot's wrongful conduct.

71. Home Depot's conduct is causing and will continue to cause plaintiffs to suffer irreparable harm and, unless Home Depot is restrained, plaintiffs will continue to be so damaged because they have no adequate remedy at law.

*Prayer for Relief*

WHEREFORE, plaintiffs request entry of judgment in their favor and against defendant Home Depot as follows:

(a) A declaration that Home Depot has infringed, and is infringing, U.S. Patent No. 7,878,790;

(b) A permanent injunction enjoining Home Depot and its officers, agents, employees, subsidiaries, and those acting in privity or concert with them, including related individuals and entities, customers, representatives, dealers, distributors, from further infringement of U.S. Patent No. 7,878,790;

(c) An award of damages arising out of Home Depot's infringement of U.S. Patent No. 7,878,790, including enhanced damages pursuant to 35 U.S.C. §284, together with prejudgment and post-judgment interest, in an amount according to proof;

(d) A declaration that Home Depot has infringed, and is infringing, U.S. Patent No. D646,537;

(e) A permanent injunction enjoining Home Depot and its officers, agents, employees, subsidiaries, and those acting in privity or concert with them, including related individuals and entities, customers, representatives, dealers, distributors, from further infringement of U.S. Patent No. D646,537;

(f) An award of damages arising out of Home Depot's infringement of U.S. Patent No. D646,537, including enhanced damages pursuant to 35 U.S.C. §284, together with prejudgment and post-judgment interest, in an amount according to proof;

(g) A declaration that Home Depot has infringed, and is infringing, U.S. Patent No. 8,241,029;

(h) A permanent injunction enjoining Home Depot and its officers, agents, employees, subsidiaries, and those acting in privity or concert with them, including related individuals and entities, customers, representatives, dealers, distributors, from further infringement of U.S. Patent No. 8,241,029;

(i) An award of damages arising out of Home Depot's infringement of U.S. Patent No. 8,241,029, including enhanced damages pursuant to 35 U.S.C. §284, together with prejudgment and post-judgment interest, in an amount according to proof;

(j) An award of attorneys' fees pursuant to 35 U.S.C. §285 or as otherwise permitted by law; and

(k) A declaration that Home Depot has infringed, and is infringing, the PEX POCKET CRIMPER trademark;

(l) A declaration that Home Depot's infringement of the PEX POCKET CRIMPER trademark is willful;

(m) An award of damages arising out of Home Depot's infringement of the PEX POCKET CRIMPER trademark, including enhanced damages pursuant to 15 U.S.C. § 1117, together with prejudgment and post-judgment interest, in an amount according to proof;

(n) A declaration that Home Depot's marketing and display practices with regard to the PEX POCKET CRIMPER and the 4-in-1 PEX Pocket Crimper constitute unfair competition pursuant to 15 U.S.C. § 1125(a);

(o) A declaration that Home Depot's unfair marketing and display practices with regard to the PEX POCKET CRIMPER and the 4-in-1 PEX Pocket Crimper are willful;

(p) An award of damages arising out of Home Depot's unfair marketing and display practices with regard to the PEX POCKET CRIMPER and the 4-in-1 PEX Pocket Crimper, including enhanced damages pursuant to 15 U.S.C. § 1117, together with prejudgment and post-judgment interest, in an amount according to proof;

(q) A declaration that Home Depot's use of images of the patented PEX POCKET CRIMPER to sell the 4-in-1 PEX Pocket Crimper constitute false advertising pursuant to 15 U.S.C. § 1125(a);

(r) A declaration that Home Depot's false advertising is willful;

(s) A permanent injunction enjoining Home Depot and its officers, agents, employees, subsidiaries, and those acting in privity or concert with them, including related individuals and entities, customers, representatives, dealers, distributors, from using any word, term, name, symbol, or device, or any combination thereof, or false designation of origin, false or misleading description of fact, or false or misleading representation of fact, or performing any act, which can, or is likely to, lead members of the trade or public to believe that any product or service rendered, offered for sale, advertised or promoted by Home Depot is in any way produced, sponsored, licensed or approved by, or connected or affiliated or associated with plaintiffs;

(t) A declaration that this is an exceptional case, and an award of plaintiffs' full costs and attorneys' fees pursuant to 15 U.S.C. § 1117;

(u) Costs of suit and such other and further relief as the Court deems just and proper.

Dated: August 31, 2012

Respectfully Submitted,

/s/ Sean L. Sweeney

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**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury of all issues so triable.

/s/ Sean L. Sweeney

Sean L. Sweeney