

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JOHN P. NEHMAN
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Kimber Cakeware, LLC
PO Box 997
Hilliard, Ohio 43026

Plaintiff,

vs.

Bradshaw International, Inc.
9409 Buffalo Avenue
Rancho Cucamonga, California 91730

Defendants.

Case No.

JUDGE

Jury Demanded

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EAST. DIV. COLUMBUS
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JUDGE MARBLEY

MAGISTRATE JUDGE KING

COMPLAINT FOR DESIGN PATENT INFRINGEMENT WITH DEMAND FOR JURY

Plaintiff, Kimber Cakeware, LLC ("Kimber"), for its Complaint against Defendant Bradshaw International, Inc. ("Bradshaw") alleges and states as follows:

NATURE OF THE ACTION

1. This is an action for design patent infringement and arises under the Patent Laws of the United States, Title 35, United States Code.

THE PARTIES

2. Kimber is an Ohio corporation having its principal place of business at 3333 Scioto Farms Dr., Hilliard, Ohio 43026. Among other things, Kimber manufactures, offers for sale, and sells baking accessories, including batter separators for use in baking cakes and cupcakes.
3. Kimber is the owner, by written assignment, of all right, title and interest in and to U.S. Design Patent No. D671,376 ("the '376 patent"), entitled "Batter Separator", which

issued on November 27, 2012 to Robert S. Reiser (“Mr. Reiser”) based on an application filed on April 1, 2011. A true and accurate copy of the ‘376 patent is attached hereto as Exhibit A.

4. Upon information and belief, Bradshaw is a Delaware corporation having a place of business at 9409 Buffalo Avenue, Rancho Cucamonga, California 91730. Upon further information and belief, Bradshaw is, among other activities, engaged in the manufacture, offer for sale and/or sale of housewares under the “GOOD COOK”, “TOUCH”, “BETTY CROCKER”, “BONNY”, “PROFRESHANOLS”, “ONEIDA”, “BIALETTI”, “BUTTLER”, “DAWN”, “MR. CLEAN”, and “BLACK&DECKER” trade names.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (jurisdiction over patent actions).
6. This Court has personal jurisdiction over Bradshaw because Bradshaw has conducted, and does conduct, business within the State of Ohio and the Southern District of Ohio. Bradshaw, either directly or through distributors and/or retailers or others, ships, distributes, offers for sale, sells, and advertises its products in the United States, the State of Ohio, and within this judicial district.
7. Upon information and belief, Bradshaw has existing business relationships in Ohio, and has purposefully directed its business activities to Ohio consumers by means including: (a) the sale of Bradshaw products to Ohio consumers through its relationship with The Kroger Company, Giant Eagle, Inc., and The Andersons, Inc.; and (b) directing Ohio consumers to Bradshaw’s products in Ohio through its retail website (<http://www.goodcook.com>).

8. Upon information and belief, Bradshaw has imported into the United States and has offered for sale and sells, directly and through distributors and/or retailers or others, products in the United States, the State of Ohio, and within this judicial district, that infringe the '367 patent with the expectation that these products will be purchased by consumers in the Southern District of Ohio.
9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)–(d) and 28 U.S.C. § 1400(b).

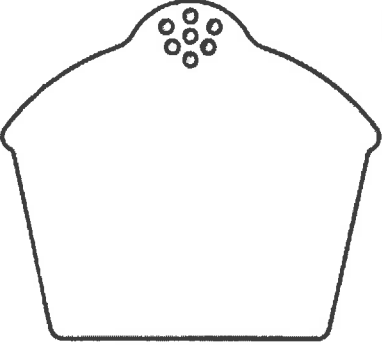


FACTUAL ALLEGATIONS AND BACKGROUND

10. Kimber incorporates herein the allegations set forth in Paragraphs 1 through 9 above.
11. Kimber has established itself as a creative company producing cutting edge innovations to make baking easy and fun. Kimber has protected its innovative designs through patents, such as the '376 patent.
12. Prior to the formation of Kimber, Mr. Reiser, one of the initial members of Kimber, and current president of Kimber, designed and began to market a full-sized cake batter separator called the Batter Daddy (the "Batter Daddy"). In 2009 Mr. Reiser sought to partner with a number of companies for manufacturing and distribution, including Bradshaw.
13. Bradshaw rejected working with Mr. Reiser on the Batter Daddy on the basis that due to the difficulties in the economy at the time, Bradshaw was not developing any new products.
14. Mr. Reiser sought professional advice and conducted market research, and determining that there was a market for the Batter Daddy, began to prepare to manufacture and market the Batter Daddy.

15. Mr. Reiser, together with other members, founded Kimber on May 17, 2010, with Mr. Reiser serving as president of Kimber.
16. Mr. Reiser, invented a novel and non-obvious ornamental design for a batter separator suitable for making cupcakes, and filed for a design patent to protect this invention on April 1, 2011. This application matured into the '376 patent on November 27, 2012.
17. Mr. Reiser assigned the right, title and interest in and to the '376 patent to Kimber effective upon the filing date of the '376 patent.
18. In December of 2010, Kimber first offered for sale sets of six units of a product utilizing the ornamental design of the '376 patent called "Batter Babies".
19. On Friday, December 16, 2011, an employee of Bradshaw, Keri Anderson ("Ms. Anderson"), ordered a set of Batter Babies from Kimber with a shipping address of "bradshaw int'l, 9409 buffalo ave, rancho cucamonga, CA 91730, United States". A true and accurate copy of Ms. Anderson's order is attached hereto as Exhibit B.
20. The Batter Babies package which shipped to Ms. Anderson at Bradshaw's address was clearly labeled with the notification "Patent Pending".
21. On Saturday, December 17, 2011, Mr. Reiser contacted Ms. Anderson by email to inquire as to Bradshaw's interest in the Batter Babies product, and to offer to work with Bradshaw as a distributor for the Batter Babies and/or Batter Daddy product lines.
22. Ms. Anderson called Kimber at the end of 2011 and spoke briefly with Kimberly M. Reiser ("Mrs. Reiser"), member and vice president of Kimber, and indicated that she would call again to speak with Mr. Reiser in more detail after the New Year holiday, but Ms. Anderson did not, in fact, call again.

23. Mr. Reiser again reached out to Ms. Anderson by email on Monday, February 13, 2012, but neither Ms. Anderson nor any other employee of Bradshaw responded to Mr. Reiser's second email. A true and accurate copy of Mr. Reiser's first and second emails to Ms. Anderson is attached hereto as Exhibit C.
24. Upon information and belief, Bradshaw received the set of Batter Babies ordered by Ms. Anderson.
25. Upon information and belief, Bradshaw was aware that a patent had been applied for with respect to the design of the Batter Babies.
26. Upon information and belief, Bradshaw copied the design of the Batter Babies for use in its "Sweet Creations by Good Cook[™] cupcake divider" batter separator.
27. Kimber first became aware of Bradshaw's batter separator on October 22, 2012, when Mrs. Reiser received an email from Kim Teresi ("Ms. Teresi"), Senior Buyer and Director of Advertising at Chef Central. Mrs. Reiser had reached out to Ms. Teresi to explore whether Chef Central would be interested in carrying Batter Babies for sale. Ms. Teresi, apparently evidencing confusion as to the source of Bradshaw's batter separator, responded that Chef Central was "already carrying this product through Bradshaw/Good Cook." Mrs. Reiser responded to inquire how long Bradshaw had been selling its batter separator, to which Ms. Teresi responded that Bradshaw's batter separator had been introduced at the International Housewares Show in March of 2012. A true and accurate copy of the email chain between Mrs. Reiser and Ms. Teresi is attached hereto as Exhibit D.

28. As shown in the table below, the design of Bradshaw's batter separator is substantially the same as the patented design shown in the '376 patent and the Batter Babies manufactured by Kimber.

Patented Design	Bradshaw Batter Separator	Kimber's Batter Babies
		

COUNT I
(Infringement of U.S. Design Patent No. D671,376)

29. Kimber incorporates herein the allegations set forth in Paragraphs 1 through 28 above.
30. The design of Bradshaw's batter separator is basically the same as Kimber's patented design given an objective evaluation by an ordinary observer.
31. The design of Bradshaw's batter separator as marketed and sold would cause an ordinary observer, familiar with the prior art designs, to be deceived into believing that the design of Bradshaw's batter separator is the same as Kimber's patented design.
32. The design of Bradshaw's batter separator as marketed and sold causes confusion in the marketplace for the ordinary consumer with the patented design of Kimber's Batter Babies.
33. Bradshaw has imported into the United States, offered to sell, promoted, distributed and/or sold, either directly or through third party retailers batter separators having designs

that infringe upon the '376 patent, and the claimed design thereof, without Kimber's authorization.

34. By importing into the United States, and offering for sale and/or selling, directly and/or through third party retailers of baking supplies, in the United States batter separators embodying the patented design of the '376 patent without Kimber's authorization, Bradshaw has directly infringed, contributorily infringed and induced the infringement of and will continue to directly infringe, contributorily infringe and induce the infringement of the '376 patent under 35 U.S.C. § 271 (a), (b), (c), and/or (f), literally and/or under the doctrine of equivalents.
35. Bradshaw, without Kimber's license, has applied the patented design of the '376 patent, or a colorable imitation thereof to articles of manufacture for the purpose of sale, sold and exposed for sale articles of manufacture to which the design of the '376 patent, or a colorable imitation thereof, has been applied.
36. By applying the patented design of the '376 patent, or a colorable imitation thereof to articles of manufacture for the purpose of sale, and selling and exposing for sale articles of manufacture to which the design of the '376 patent, or a colorable imitation thereof, has been applied without Kimber's license, Bradshaw has infringed and will continue to infringe the '376 patent under 35 U.S.C. § 289.
37. Upon information and belief, Bradshaw's conduct is and has been willful such that Kimber is entitled to treble damages under 35 U.S.C. § 284.
38. Upon information and belief, Bradshaw's knowing and repeated infringing conduct is and has been continuous, malicious, intentional, deliberate and willful, making this an exceptional case within the meaning of 35 U.S.C. § 285.

39. As a direct and proximate consequence of Bradshaw's infringement of the '376 patent, Kimber has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Kimber is entitled to relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment for Kimber as follows:

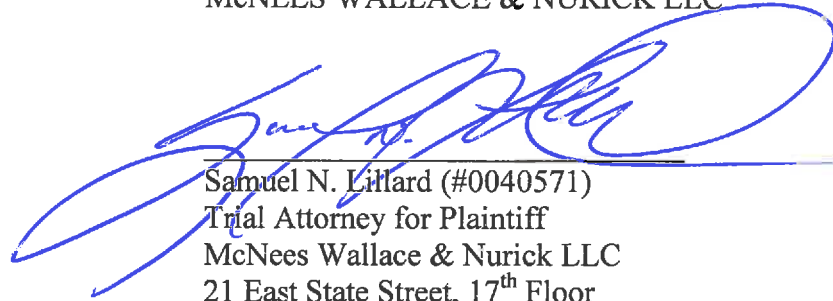
- A. Enter judgment that Bradshaw has infringed, induced the infringement of, or contributed to the infringement of, U.S. Design Patent No. D671,376;
- B. Enter a preliminary and permanent injunction restraining and enjoining each of Bradshaw and its officers, agents, servants, employees, sales representatives, attorneys, parents, subsidiaries, affiliates, successors and assigns, and any and all persons or entities in active concert or participation with any or all of them who receive actual notice of the order by personal service or otherwise, from further importation, sales or use of the infringing batter separators, whether direct or indirect;
- C. For damages to compensate Kimber for Bradshaw's infringement of the '376 patent pursuant to 35 U.S.C. § 284, which shall be trebled as a result of Bradshaw's willful patent infringement, or an award of Bradshaw's profits from its infringements pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;
- D. That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Kimber to an award of its reasonable attorneys' fees and that such reasonable attorneys' fees be awarded; and
- E. Kimber shall receive such further relief against Bradshaw as the Court deems lawful, just and proper.

JURY DEMAND

Plaintiff Kimber Cakeware, LLC hereby demands and requests trial by jury of all issues raised that are triable by jury.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC



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