

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

OMIX-ADA, INC.,)	
)	
Plaintiff,)	
v.)	Civil Action No.
)	Jury Trial Demanded
REV WHEEL, LLC; DV8 OFFROAD; OE)	
WHEELS DIRECT; KO OFFROAD; and)	
OFF-ROAD WORKS,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Omix-ADA, Inc. (“Omix”) brings this action for patent infringement against Defendants Rev Wheel, LLC, DV8 OffRoad, OE Wheels Direct (“OE Wheels”), KO OffRoad, and Off-Road Works (collectively, Defendants).

NATURE OF THE CASE

1.

Omix seeks legal and equitable remedies for the infringement of Omix’s United States Design Patent No. D718,682 for a “VEHICLE HOOD” (“the ’682 patent”) resulting from each of the Defendants making, using, offering for sale, or selling a vehicle hood (the Infringing Product) that falls within the scope of the

'682 patent. A true and accurate copy of the '682 patent is attached here as Exhibit A.

PARTIES

2.

Omix is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located at 460 Horizon Drive, Suite 400, Suwanee, GA 30024.

3.

Omix is the world's largest manufacturer and wholesaler of Jeep parts and accessories and is an innovator in this field. Omix partners with leading Jeep parts retailers and warehouse distributors in the United States and around the world to distribute Omix-made Jeep parts and accessories.

4.

On information and belief, Defendant Rev Wheel, LLC is a company organized and existing under the laws of the State of California with its business addresses located at 3240 Trade Center Dr., Riverside, CA 92507, and at 421 Main Street, Riverside, CA 92501.

5.

On information and belief, Defendant Rev Wheel, LLC is owned by Robert McMath residing at 911 Eagle Crest Ct., Riverside, CA 92506.

6.

On information and belief, DV8 OffRoad is a fictitious name used by Rev Wheel, LLC to conduct business.

7.

On information and belief, DV8 OffRoad and Rev Wheel, LLC (collectively “DV8”) are one and the same business entity.

8.

On information and belief, DV8’s principal place of business is located at 421 Main St., Riverside, CA 92501, and it operates at least through its website dv8offroad.com. DV8 is a seller and distributor of the Infringing Product.

9.

On information and belief, DV8 is owned by Robert McMath.

10.

On information and belief, OE Wheels Direct is an e-commerce organization with an address located at 3240 Trade Center Dr., Riverside, CA 92507. OE Wheels is a seller and distributor of the Infringing Product.

11.

On information and belief, OE Wheels Direct is owned by Robert McMath.

12.

On information and belief, KO OffRoad is an e-commerce organization with an address located at 421 Main St., Riverside, CA 92501, and it operates through at least its website kooffroad.com. KO OffRoad is a seller and distributor of the Infringing Product.

13.

On information and belief, the website kooffroad.com is registered to Robert McMath.

14.

On information and belief, Off-Road Works is an e-commerce organization with an address located at 421 Main Street, Riverside, CA 92501, and it operates through at least its website off-roadworks.com. Off-Road Works is a seller and distributor of the Infringing Product.

15.

On information and belief, the website off-roadworks.com is registered to Randy Miller of Rev Wheel, LLC.

JURISDICTION AND VENUE

16.

This Court has subject matter 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 of America, including 35 U.S.C. § 271 *et seq.*

17.

Furthermore, this is a civil action between citizens of different states and the value of the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars, and jurisdiction is therefore proper in accordance with 28 U.S.C. § 1332.

18.

On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Georgia Long Arm Statute, due at least to their substantial business in this forum, including business related to the infringing acts alleged in this complaint.

19.

On information and belief, DV8 solicits business throughout the nation, including Georgia, on its interactive website dv8offroad.com. On information and belief, DV8 also solicits dealers throughout the country and sells its products to the

public through these dealers (including OE Wheels, KO OffRoad, and Off-Road Works).

20.

DV8 advertises the Infringing Product on its interactive website at <http://dv8offroad.com/collections/jeep-jk-hoods/products/dv8-cowl-hood-jeep-jk>, inviting the public (including Georgia residents) to purchase the product through its interactive website and its dealership network. (*See Exhibit B*).

21.

On information and belief, DV8 regularly offers for sale and sells its products (including the Infringing Product) to Georgia residents through its interactive website, which is accessible in Georgia, and its network of dealers, and DV8 offers to ship and ships the products (including the Infringing Product) to Georgia.

22.

On information and belief, DV8 derives revenue from its direct sales into Georgia and through its dealers' sales into Georgia of products introduced into the stream of commerce by DV8.

23.

OE Wheels solicits sales of the Infringing Product at least through the following interactive webpage: <http://www.ebay.com/itm/Jeep-JK-Wrangler-Rubicon-Steel-Performance-Metal-Vented-Hood-07-16-Paintable-/191965045002?hash=item2cb202210a:g:8uYAAOSwFdtX0KUo&vxp=mtr>. (See Exhibit C).

24.

On information and belief, OE Wheels regularly offers for sale and sells the Infringing Product in Georgia through at least the above disclosed interactive webpage, which is accessible in Georgia, and offers to ship and ships the Infringing Product to Georgia.

25.

KO OffRoad offers a large variety of custom automobile accessories on its interactive website kooffroad.com. KO OffRoad solicits sales of the Infringing Product at least through the following interactive webpage:

https://www.amazon.com/Wrangler-Rubicon-Performance-Vented-Paintable/dp/B01M0EXBPH/ref=sr_1_6?ie=UTF8&qid=1474923910&sr=8-6&keywords=ko+offroad+hood. (See Exhibit D).

26.

On information and belief, KO OffRoad regularly offers for sale and sells the Infringing Product in Georgia through at least the above disclosed interactive webpage, which is accessible in Georgia, and offers to ship and ships the Infringing Product to Georgia.

27.

Off-Road Works, in conjunction with KO OffRoad, solicits sales of the Infringing Product at least through the following interactive webpage:

https://www.amazon.com/Wrangler-Rubicon-Performance-Vented-Paintable/dp/B01M0EXBPH/ref=sr_1_6?ie=UTF8&qid=1474923910&sr=8-6&keywords=ko+offroad+hood. (*See Exhibit D*).

28.

On information and belief, Off-Road Works regularly offers for sale and sells the Infringing Product in Georgia through at least the above disclosed interactive webpage, which is accessible in Georgia, and offers to ship and ships the Infringing Product to Georgia.

29.

On information and belief, Defendants solicit sales in Georgia and allow the public in Georgia to purchase products (including the Infringing Product) through

their own interactive websites (which operate as storefronts) and through interactive storefronts on sites such as Amazon.com and eBay.com.

30.

On information and belief, Defendants derive revenue through sales in Georgia to customers located in Georgia.

31.

On information and belief, Defendants' products (including the Infringing Product) are not only offered for sale in Georgia and available for shipment to Georgia through various internet-based, interactive storefronts operated by Defendants, they are also purchased by Georgia customers and shipped to Georgia by Defendants as a result of purchases made through the various internet-based, interactive storefronts operated by Defendants.

32.

Omix has sustained injuries in Georgia as a result of Defendants actions.

33.

Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) for at least the reasons that a substantial part of the events giving rise to these claims occurred in this District, because Omix has suffered injury in this District, and because Defendants reside in this District as defined by the patent venue

statute by virtue of having committed acts of patent infringement in this District and being subject to the personal jurisdiction of this Court at the time suit was filed.

BACKGROUND

THE PATENT-IN-SUIT

34.

On February 23, 2016, the United States Patent Office (“USPTO”) issued the ’682 patent.

35.

The ’682 patent issued from an application filed with the USPTO on August 8, 2013, and since its date of issue the ’682 patent has been valid and enforceable at all times.

36.

The claim of the ’682 patent covers an ornamental design for a VEHICLE HOOD, which is depicted in the seven figures included in the patent. (See Exhibit A).

37.

Omix is the owner of the ’682 patent by virtue of an assignment from the inventors Reid McFarlin and Patrick Bennett to Omix.

38.

Omix has standing to bring this lawsuit for the infringement of the '682 patent.

39.

Omix advertises, promotes, markets, and sells Vehicle Hoods under the '682 patent. Those products are duly marked with the patent number of the '682 patent. Omix further marks its advertising materials and product packaging with the number of the '682 patent.

DEFENDANTS' ACTIONS

40.

Defendants make, use, offer for sale or sell products that fall within the scope of the '682 patent.

(a) Pictured below on the left is Figure 1 from the '682 patent with the Infringing Product depicted on the right:

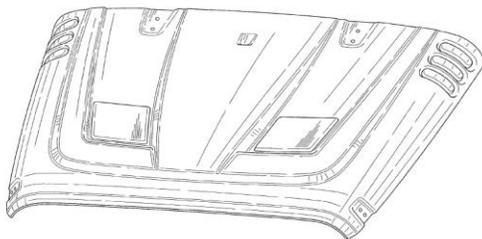


FIG. 1

Design Patent



DV8 Product

(b) Pictured below on the left is Figure 3 from the '682 patent with the Infringing Product depicted on the right:

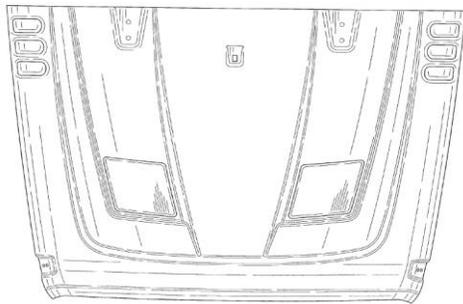


FIG. 3

Design Patent



KO OffRoad Product

(c) Pictured below is Figure 5 from the '682 patent with the Infringing Product depicted below:

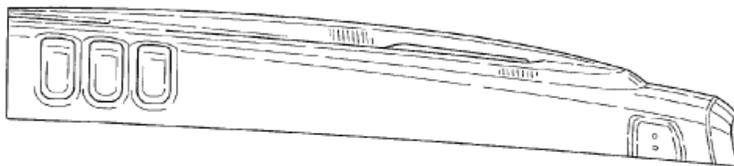


FIG. 5

Design Patent



DV8 Product

41.

Defendants DV8, OE Wheels, KO OffRoad, and Off-Road Works have each offered for sale and, on information and belief, sold the Infringing Product directly into Georgia (including into this District) through their interactive websites or through interactive storefronts on e-commerce outlets such as Amazon and eBay.

42.

On information and belief, Defendants DV8, OE Wheels, KO OffRoad, and Off-Road Works have offered to ship and shipped the Infringing Product into Georgia (including into this District) to customers within Georgia and in this District.

43.

On information and belief, OE Wheels, KO OffRoad, and Off-Road Works have acted as authorized dealers and representatives of DV8 in selling, offering to ship, and shipping the Infringing Product into this District.

44.

Defendants' offer for sale and sale of the Infringing Product, including into this District, has been without the permission, authority, or license of Omix.

45.

Defendants' infringement of the '682 patent has been for the purpose of deriving revenue and other financial gain.

46.

Defendants' infringement of the '682 patent is willful and intentional as Defendants have had constructive notice of the '682 patent by virtue of the patent markings on the Omix products incorporating the patented design and on the packaging for those products.

COUNT I

(Infringement of the '682 Patent)

47.

Paragraphs 1 to 46 are incorporated herein as set forth above.

48.

As shown by the foregoing facts, Defendants have infringed and are continuing to infringe the '682 patent by making, using, offering for sale, or selling within the United States, including this District, products that fall within the scope of the '682 patent.

Defendants' acts constitute patent infringement under 35 U.S.C. § 271 *et seq.*, as Defendants have no permission, license, or consent from Omix for their actions.

49.

On information and belief, Defendants will continue to infringe the '682 patent unless enjoined by the Court. Pursuant to 35 U.S.C. § 283, Omix is entitled to an injunction restraining Defendants, their officers, agents, employees, and all persons acting in concert with them from engaging in further infringement of the '682 patent.

50.

Omix is entitled to recover damages sustained as a result of the Defendants' infringement of the '682 patent that are adequate to compensate for the infringement, pursuant to 35 U.S.C. § 284, and additional damages for infringement of a design patent, including all Defendants' profits resulting from the infringement, pursuant to 35 U.S.C. § 289, but in any event no less than a reasonable royalty, pursuant to 35 U.S.C. § 284.

51.

Omix is entitled to recover its costs, expenses, and reasonable attorneys' fees incurred in bringing the present action, pursuant to 35 U.S.C. § 285.

52.

The circumstances of the patent infringement renders this case an exceptional case under 35 U.S.C. § 285, with the appropriate resulting award.

53.

The circumstances of this case justify enhanced damages under 35 U.S.C. § 284, up to three times the damages found or assessed.

JURY DEMAND

Omix demands a trial by jury of any and all issues to which a right to trial by jury attaches.

PRAYER FOR RELIEF

WHEREFORE, Omix prays for an order of the Court entering judgment:

- a. That Defendants Rev Wheel, LLC, DV8 OffRoad, OE Wheels Direct, KO OffRoad, and Off-Road Works have infringed the '682 patent;
- b. That Defendants, their officers, agents, employees, and all persons acting in concert or participation with them be permanently enjoined from engaging in further infringement of the '682 patent;
- c. That Omix be awarded all of the profits generated by Defendants' infringement of the '682 patent, pursuant to 35 U.S.C. § 289;

d. That Omix be awarded additional damages, pursuant to 35 U.S.C. § 284, in an amount adequate to compensate Omix for Defendants' infringement of the '682 patent (in no event less than a reasonable royalty);

e. That based on the willful nature of Defendants' infringement of the '682 patent, the damages be increased to three times the amount of damages found or assessed, and Omix be awarded its costs and reasonable attorneys' fees, all in accordance with 35 U.S.C. §§ 284-285;

f. That this case be found exceptional under 35 U.S.C § 285 and Omix be awarded its reasonable attorneys' fees;

g. That Defendants be required to destroy or surrender all Infringing Products at the election of Omix;

h. That Defendants be required to destroy or surrender tooling used to manufacture the Infringing Product and all tooling used to manufacture all other products that infringe the '682 patent, at the election of Omix;

i. That Defendants be directed to file with the Court and serve on Omix, no later than thirty (30) days after the issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the Court's injunction;

j. That Omix be awarded its taxable costs, expenses, and pre-judgment and post-judgment interest; and

k. That Omix be awarded such other and further relief as the Court deems just and equitable or otherwise proper under the law.

Dated: October 24, 2016

Respectfully submitted,

/s/ William M. Ragland, Jr.

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