

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

STEEDA AUTOSPORTS, LLC

Plaintiff,

v.

BMR SUSPENSION, INC.; MILLER
PERFORMANCE PRODUCTS INC.;
ALLAN MILLER; AND DOES 1
THROUGH 10,

Defendants.

CIVIL ACTION
FILE NO.:

JURY TRIAL DEMANDED

PLAINTIFF STEEDA AUTOSPORTS, LLC'S
COMPLAINT AGAINST BMR SUSPENSION, INC., MILLER
PERFORMANCE PRODUCTS, INC., and ALLAN MILLER

As and for its Complaint, Plaintiff Steeda Autosports, LLC (“Steeda”) hereby alleges against Defendants BMR Suspension, Inc. (“BMR”), Miller Performance Products, Inc. (“MPP”), Allan Miller (“Miller”), and DOES 1 through 10 (collectively “Defendants”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action under the patent laws of the United States, 35 U.S.C. § 271, *et seq.* and a trademark infringement action under the Lanham Act, 15 U.S.C. § 1125.

THE PARTIES

2. Steeda is a Florida corporation with its principal place of business located at 2019 Steeda Way, Valdosta, Georgia 31601.

3. Formed in 1988, Steeda is the largest privately-held aftermarket manufacturer of Ford® performance parts and accessories. Steeda engineers and manufactures performance equipment for several Ford® vehicles including Ford Mustang, Fusion, Focus, Fiesta, and Ford Trucks. Steeda manufactures a complete line of Ford® performance parts and accessories including suspension/chassis components such as bushing kits used in the independent rear suspension sub-frame.

4. Steeda is informed and believes and based thereon alleges that Defendant BMR is a corporation organized and existing under the laws of the State of Florida with a place of business located at 928 Sligh Avenue, Seffner, Florida 33584. According to the Florida Secretary of State, BMR may be served via its registered agent for service of process Leona A. Heaward, 928 Sligh Avenue, Seffner, Florida 33584.

5. Steeda is informed and believes and based thereon alleges that Defendant MPP is a corporation organized and existing under the laws of the State of Florida with a place of business located at 928 Sligh Avenue, Seffner, Florida

33584. According to the Florida Secretary of State, MPP may be served via its registered agent for service of process Allan L. Miller, Jr., 928 Sligh Avenue, Seffner, Florida 33584.

6. Upon information and belief, Defendant MPP owns, operates, and controls the URL “<https://www.bmrsuspension.com>” in concert with, or for the benefit of, Defendant BMR.

7. Steeda is informed and believes and based thereon alleges that Defendant Allan Miller is a resident of the State of Florida having an address at 928 Sligh Avenue, Seffner, Florida 33584.

8. Upon information and belief, Defendant Miller was at all times relevant an agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of BMR and MPP, and was the active, moving, and conscious force behind BMR and MPP, and personally participated in each and all of the acts or conduct alleged herein, including but not limited to full knowledge of each and every violation of Steeda’s rights and the damages to Steeda proximately caused thereby.

9. Steeda is unaware of the true names and capacities of the parties sued herein as DOES 1 through 10, inclusive, whether individual, corporate or otherwise, and therefore sues these defendants by such fictitious names. Steeda

will seek leave to amend the complaint to assert their true names when they have been ascertained. Steeda is informed and believes and based thereon alleges that all defendants sued herein as DOES 1 through 10 are in some manner responsible for the acts and omissions alleged herein.

JURISDICTION AND VENUE

10. This Court has original and exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

11. This Court has personal jurisdiction over Defendants because they regularly conduct business and/or solicit business in Georgia and within this District; because Defendants engage in other courses of conduct and derive revenue from products provided to residents of Georgia and this District as well as substantial revenue from interstate commerce; because Defendants have purposefully established substantial, systematic and continuous contacts with Georgia and this District and should reasonably expect to be haled into court in this District; and because Defendants have committed and continue to commit acts of patent infringement in Georgia and this District in violation of 35 U.S.C. § 271, and placing infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of Georgia, including in this District. The acts by Defendants caused injury to Steeda within this District.

12. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because Defendants have regularly transacted business in Georgia and within this District and offer for sale in this District products that infringe Steeda's patent, because certain of the acts complained of herein occurred in Georgia and within this District, and because Defendants derive and seek to derive revenue from sales of infringing products sold in Georgia and within this District. In addition, venue is proper because Steeda's principal place of business is in this District and Steeda suffered harm in this District.

GENERAL ALLEGATIONS

13. On April 25, 2017, the United States Patent and Trademark Office duly and lawfully issued U.S. Design Patent No. D784,881, titled "Bushing Kit for Aligning an Independent Rear Suspension Sub-frame to a Vehicle Body" ("the 'D881 patent"). Steeda is the owner by assignment of the 'D881 patent, a copy of which is attached hereto as Exhibit A.

14. Steeda is informed and believes and based thereon alleges that Defendants have willfully copied Steeda's products and have no patents or pending patent applications of their own.

15. Steeda is informed and believes and based thereon alleges that the making, using, selling, offering for sale, and/or importation of Defendants'

products, including but not limited to on the URL “https://www.bmrsuspension.com”, infringes the claim of the ‘D881 patent, including without limitation BMR’s CB005 – Cradle Bushing Lockout Kit, Level 2; CB010 - Cradle Bushing Lockout Kit, Level 1; BK051 – Differential Bushing Lockout Kit, Polyurethane; and BK054 - Differential Bushing Lockout Kit, Billet Aluminum (collectively, the “Accused Products”).

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Design Patent No. D784,881)

16. Steeda repeats, realleges and incorporates by reference the preceding allegations above as though set forth fully herein.

17. Defendants, by and through their agents, officers, directors, retailers, resellers, employees and servants, have been and are currently willfully and intentionally infringing the ‘D881 patent by making, using, offering to sell, and/or selling in the United States and/or importing into the United States one or more of the Accused Products, which embody the design covered by the ‘D881 patent. Defendants’ acts constitute infringement of the ‘D881 patent in violation of 35 U.S.C. §271.

18. Steeda is further informed and believes and thereon alleges that Defendants’ infringement is willful at least in part because Defendants have been

aware of Steeda's product design since at least May 2015, Defendants have been aware of the 'D881 patent filing since at least November 2015, Defendants have been aware of the 'D881 patent having been granted since at least May 2017, and Defendants have willfully copied Steeda's design.

19. Steeda sent cease-and-desist letters to Defendants in June 2017 and August 2017, and attempted to engage in good faith discussions with Defendants throughout June, July and August 2017 in an effort to put an end to Defendants' infringement. Despite these efforts, Defendants' infringement has continued up through the present day.

20. In fact, in early 2018, Defendants began selling a new version of the infringing product referred to as "CB010 - Cradle Bushing Lockout Kit, Level 1". Upon information and belief, Defendants' website was updated to note that the CB010 - Cradle Bushing Lockout Kit, Level 1 is "Compatible with Steeda...IRS Subframe 'Braces'". However, Defendants' infringing product is only "compatible" with other Steeda goods because the infringing product is a copy of Steeda's patented designs.

21. As the side-by-side comparison shown below reveals, Defendants have misappropriated Steeda's patented design (shown left) in the Accused

Products, including the CB010 - Cradle Bushing Lockout Kit, Level 1 and BK054 - Differential Bushing Lockout Kit, Billet Aluminum (shown right).

'D881 Patent	Accused Products
 <p data-bbox="456 909 529 940">FIG. 30</p>	 <p data-bbox="979 936 1279 968">Defendants' CB010</p>
 <p data-bbox="435 1430 529 1461">FIG. 23</p>	 <p data-bbox="979 1446 1279 1478">Defendants' BK054</p>

22. Steeda is informed and believes and based thereon alleges that Defendants' infringement of the 'D881 patent will continue unless enjoined by this Court.

23. By reason of the aforesaid infringing acts, Steeda has been damaged and is entitled to monetary relief in an amount to be determined at trial but in excess of the jurisdictional requirement of this Court.

24. Because of the aforesaid infringing acts, Steeda has suffered and continues to suffer great and irreparable injury for which there is no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(Trade Dress Infringement)

25. Steeda repeats, realleges and incorporates by reference the preceding allegations above as though set forth fully herein.

26. The design of Steeda's bushing kits is nonfunctional and the design's inherently distinctive quality is unique and has achieved a high degree of consumer recognition and serves to identify Steeda as the source of high quality goods.

27. Steeda has used the design of its bushing kits in commerce since as early as May 2015, and Steeda's bushing kit design constitutes protectable trade dress.

28. Defendants' unauthorized sale of the Accused Products in interstate commerce and advertising relating to same constitutes false designation of origin and a false representation that the goods and services are manufactured, offered,

sponsored, authorized, licensed by or otherwise connected with Steeda or come from the same source as Steeda's goods when in fact they do not.

29. Defendants' use of Steeda's bushing kit design is without Steeda's permission or authority and in total disregard of Steeda's rights to control its trademarks.

30. Defendants' use of Steeda's bushing kit design is likely to lead to and result in confusion, mistake or deception, and is likely to cause the public to believe that Steeda has produced, sponsored, authorized, licensed or are otherwise connected or affiliated with Defendants' commercial and business activities, all to the detriment of Steeda.

31. Steeda has no adequate remedy at law.

32. In light of the foregoing, Steeda is entitled to injunctive relief prohibiting Defendants from using Steeda's bushing kit design and/or any designs confusingly similar thereto, and to recover all damages, including attorneys' fees, that Steeda has sustained and will sustain, and all gains, profits and advantages obtained by Defendants as a result of its infringing acts alleged above in an amount not yet known, and the costs of this action pursuant to the Lanham Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Steeda prays for judgment against Defendants as follows:

(a) An Order adjudging Defendants to have infringed the ‘D881 patent under 35 U.S.C. § 271;

(b) An Order adjudging Defendants to have willfully infringed the ‘D881 patent under 35 U.S.C. § 271;

(c) A permanent injunction under 35 U.S.C. § 283 enjoining Defendants, their officers, directors, agents, servants, employees and attorneys, and those persons acting in concert or participation with Defendants, from directly and/or indirectly infringing the ‘D881 patent in violation of 35 U.S.C. § 271;

(d) An accounting of Defendants’ profits;

(e) An order for a trebling of damages and/or enhanced damages due to Defendants’ willful misconduct under 35 U.S.C. § 284;

(f) An Order adjudicating that this is an exceptional case;

(g) An award to Steeda of the attorneys’ fees and costs incurred by Steeda in connection with this action under 35 U.S.C. § 285;

(h) An award to Steeda of Defendants’ profits under 35 U.S.C. § 289;

(i) An award of pre-judgment and post-judgment interest and costs of this action against Defendants

(j) An award to Steeda of Defendants' profits and all damages sustained by Steeda as a result of Defendants' wrongful acts, and such other compensatory damages as well as applicable interest, costs, and attorney's fees prescribed by the Lanham Act;

(k) For a trial by a jury of twelve on all issues so triable; and

(l) For such other and further relief as the Court deems just and proper.

Respectfully submitted this 7th day of March, 2018.

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

One Atlanta Plaza
950 East Paces Ferry Rd, Suite 2850
Atlanta, GA 30326
p. 470.419.6650
f. 470.419.6651

/s/ W. Shawn Bingham
W. Shawn Bingham
Georgia Bar No.: 839706
*Attorneys for Plaintiff Steeda Autosports,
LLC*

COLEMAN TALLEY LLP

3475 Lenox Road NE
Suite 400
Atlanta, Georgia 30326
p. 229-671-8229
f. 229-333-0885

/s/ Edward F. Preston
Edward F. Preston
Georgia Bar No.: 587416
*Attorneys for Plaintiff Steeda Autosports,
LLC*