

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

BRIAN KERN and DYLAN KERN

Plaintiff,

Case No. _____
Jury Trial Demanded

v.

A1 CYCLES, INC., and MIKE BELAND,
individually, and M3-MAD MONKEY
MOTORSPORTS, LLC, and BRANDON WHITE
and CYNTHIA WHITE, individually.

Defendant.

**PLAINTIFFS' COMPLAINT FOR DESIGN PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiffs, Brian Kern and Dylan Kern (collectively Plaintiffs), by and through their undersigned attorneys, complain and allege against Defendants, A1 Cycles, Inc. and Mike Beland, individually (collectively "A1 Cycles"), and M3-Mad Monkey Motorsports, LLC, and Brandon White and Cynthia White individually (collectively "Mad Monkey") as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. §§ 271, 283, 284, and 285. A1 Cycles and Mad Monkey, have made, used, offered for sale, sold, and/or imported motorcycle engine clutch rods (the "Accused Products") for Harley Davidson Touring Models (2015-2020) in the United States that infringe

Plaintiffs' rights in U.S. Patent No. D902834S ("the 'D834 patent") entitled "Motorcycle Engine Clutch Rod."

THE PARTIES

2. Plaintiffs Brian Kern and Dylan Kern are individuals domiciled in the state of Michigan and have a principal place of business at 44044 Merrill Road, Sterling Heights, Michigan 48314-1440.

3. On information and belief, Defendant A1 Cycles, Inc. is a corporation organized and existing under the laws of the State of Florida with a principle place of business location at 4336 S. NC 16 Hwy, Maiden, North Carolina 28650.

4. On information and belief, Defendant Mike Beland is the owner of A1 Cycles, Inc.

5. On information and belief, Defendant M3-Mad Monkey Motorsports LLC is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business office located at 1441 Brighton Road, Winston-Salem, North Carolina 27127.

6. On information and belief, defendants Brandon White and Cynthia White are the owners of M3-Mad Monkey Motorsports LLC. Cynthia White is listed as the registered agent.

JURISDICTION AND VENUE

7. This action is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

9. Defendants A1 Cycles and Mike Beland, are subject to this Court's specific and general jurisdiction consistent with the principles of due process and/or Michigan Long Arm Statute. On information and belief, this Court has personal jurisdiction over A1 Cycles and Mike Beland at least because (i) A1 Cycles and Mike Beland continuously and systematically transacts business within Michigan; (ii) this lawsuit arises out of A1 Cycles and Mike Beland's infringing activities including, without limitation, manufacturing, distributing, selling, and/or offering to sell infringing products in Michigan and/or importing infringing products and components into Michigan; and (iii) A1 Cycles and Mike Beland have made, used, sold, offered for sale, and/or imported their infringing products and placed such infringing products in the stream of interstate commerce with the expectation that such infringing products would be used, distributed, sold and/or offered for sale within Michigan.

10. For example, A1 Cycles offers to sell, sells, distributes, and/or ships the Accused Products to distributors and/or customers located in Michigan as

components to be installed in motorcycle engines for Harley Davidson Touring Models (2015-2020) located in Michigan.

11. As a result, A1 Cycles and Mike Beland have directly and/or through a coordinated distribution network regularly placed the Accused Products in the stream of commerce with the knowledge and/or understanding that such products will be sold and used in this judicial district. A1 Cycles and Mike Beland are subject to the general jurisdiction of this Court because they have regular and systemic contacts with this forum.

12. Further, this Court has personal jurisdiction over A1 Cycles and Mike Beland because they have established minimum contacts with the forum by doing business with customers located in Michigan, such that the exercise of personal jurisdiction over A1 Cycles and Mike Beland will not offend the traditional notions of fair play and substantial justice.

13. In addition, this Court has personal jurisdiction over A1 Cycles and Mike Beland because they have knowingly and actively engaged in acts that have infringed the 'D834 patent in this judicial district. It is therefore reasonable and fair for this Court to exercise personal jurisdiction over A1 Cycles and Mike Beland in this case.

14. Defendants M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White are subject to this Court's specific and general jurisdiction consistent

with the principles of due process and/or Michigan Long Arm Statute. On information and belief, this Court has personal jurisdiction over Defendants M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White at least because (i) Defendants M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White continuously and systematically transacts business within Michigan; (ii) this lawsuit arises out of Defendants M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White infringing activities including, without limitation, manufacturing, distributing, selling, and/or offering to sell infringing products in Michigan and/or importing infringing products and components into Michigan; and (iii) Defendants M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White have made, used, sold, offered for sale, and/or imported their infringing products and placed such infringing products in the stream of interstate commerce with the expectation that such infringing products would be used, distributed, sold and/or offered for sale within Michigan.

15. For example, Mad Monkey offers to sell, sells, distributes, and/or ships the Accused Products to distributors and/or customers located in Michigan as components to be installed in motorcycle engines for Harley Davidson Touring Models (2015-2020) located in Michigan.

16. As a result, M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White have directly and/or through a coordinated distribution network

regularly placed the Accused Products in the stream of commerce with the knowledge and/or understanding that such products will be sold and used in this judicial district. M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White are subject to the general jurisdiction of this Court because they have regular and systemic contacts with this forum.

17. Further, this Court has personal jurisdiction over M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White because they have established minimum contacts with the forum by doing business with customers located in Michigan, such that the exercise of personal jurisdiction over M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White will not offend the traditional notions of fair play and substantial justice.

18. In addition, this Court has personal jurisdiction over M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White because they have knowingly and actively engaged in acts that have infringed the 'D834 patent in this judicial district. It is therefore reasonable and fair for this Court to exercise personal jurisdiction over M3-Mad Monkey Motorsports LLC, Brandon White and Cynthia White in this case.

19. Defendants A1 Cycles and Mad Monkey have in the past and continue to cause harm to Plaintiffs in the State of Michigan and other parts of the United

States as a result of the infringing acts they have and continue to commit both inside and outside the State of Michigan.

20. Venue over A1 Cycles and Mad Monkey is proper in this judicial district under 28 U.S.C. §§ 1391(c), 1391(d), and 1400(b) because A1 Cycles and Mad Monkey have committed acts of infringement in this judicial district and do business in this judicial district.

THE ASSERTED PATENT

21. The ‘D834 patent was duly and legally issued by the United States Patent and Trademark Office (“USPTO”) on November 24, 2020 and names Plaintiffs Brian Kern and Dylan Kern as inventors. A true and correct copy of the patent is attached as Exhibit A ‘D834Patent.

22. The ‘D834 patent discloses and claims the ornamental design for a motorcycle engine clutch rod which is described and shown from multiple perspectives in Figures 1-3, reproduced below.

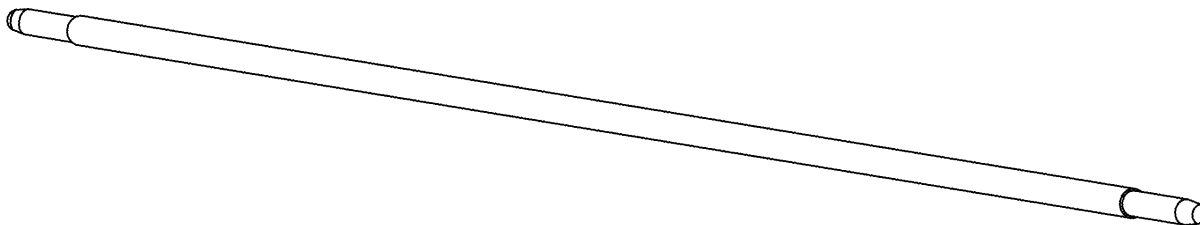


FIG - 1

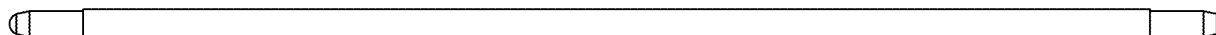


FIG - 2



FIG - 3

23. An example of the ornamental design disclosed and claimed by the ‘D834 patent is embodied by the motorcycle clutch rods depicted in the photographs below which embody the same non-functional ornamental features. The top view in each photo is the Plaintiffs’ commercial embodiment (“Plaintiffs’ Patented Product”) and the bottom view in each photo is the version being sold by A1 Cycles and Mad Monkey, i.e., the Accused Products.

Plaintiffs' Patented Product



The Accused Products



24. As can be seen in the photographs above of Plaintiffs' Patented Product, Plaintiffs have marked their commercial embodiment with the 'D834 patent number.

25. A1 Cycles manufactures, imports, sells, and/or offers for sale the Accused Products shown in the photographs above, which are motorcycle clutch rods for use in engines for Harley Davidson Touring Models (2015-2020).

26. Mad Monkey sells and/or offers for sale the Accused Products shown in the photographs above by purchasing and re-selling the Accused Products from A1 Cycle and/or by acting as a distributor for A1 Cycles.

27. For example, on or about July 23, 2019, Mr. Greg Williams (dba Macomb County Choppers), who is an authorized distributor of Plaintiffs, sold a quantity of 50 of Plaintiffs' Patented Product to A1 Cycles.

28. On information and belief sometime after July 23, 2019, A1 Cycles began selling the Accused Products to customers.

29. The Accused Products are virtually identical to Plaintiffs' Patented Product.

30. On or about December 17, 2019, Greg Williams contacted A1 Cycles and Mad Monkey via Facebook to advise each of them that their sales of knock off products is an infringement of Plaintiffs' patented design and would result in potential legal action.

31. On or about January 17, 2020, Plaintiffs' counsel sent a cease and desist letter via certified mail to A1 Cycles notifying that a patent application covering the design in question had been filed with the United States Patent and Trademark Office. A copy of the January 17, 2020 letter is attached as Exhibit B Cease and desist to A1 Cycles. Receipt of the January 17, 2020 cease and desist letter was confirmed by A1 Cycles.

32. On or about January 31, 2020, Plaintiffs' counsel received an e-mail from A1 Cycles, refuting Plaintiffs' charges.

33. On information and belief, A1 Cycles has continued to sell the Accused Products after receiving Plaintiffs' January 17, 2020 cease and desist letter.

34. On information and belief, A1 Cycles has and continues to act with intentional disregard for the 'D834 patent by continuing to make, use, sell, offer for sale, and/or import the Accused Products in the United States after having learned of the 'D834 patent through Plaintiffs' patent markings, the January 17, 2020 cease and desist letter, and the filing of this Complaint.

35. On or about January 31, 2020, Plaintiffs' counsel sent a cease and desist letter via certified mail to Mad Monkey notifying that a patent application covering the design in question had been filed with the United States Patent and Trademark Office. A copy of the January 31, 2020 letter is attached as Exhibit C Cease and desist letter to Mad Monkey. Receipt of the January 31, 2020 cease and desist letter was confirmed by Mad Monkey.

36. On information and belief, Mad Monkey has continued to sell the Accused Products after receiving Plaintiffs' January 31, 2020 cease and desist letter.

37. On information and belief, Mad Monkey has and continues to act with intentional disregard for the ‘D834 patent by continuing to manufacture, use, sell, and/or offer to sell the Accused Products in the United States after having learned of the ‘D834 patent through Plaintiffs’ patent markings, the January 31, 2020 cease and desist letter, and the filing of this Complaint.

COUNT ONE

(Direct Infringement of the ‘D834 Patent)

38. Plaintiffs incorporate by reference and re-allege each of the allegations set forth in paragraphs 1-37, above.

39. The ‘D834 patent claims the non-functional ornamental design for a motorcycle clutch rod.

40. The Accused Products are motorcycle clutch rods with ornamental designs that directly infringe the ‘D834 patent. As shown in the photographs of the Accused Products in Paragraph 23, A1 Cycles and Mad Monkey have appropriated the ornamental design for a motorcycle clutch rod as shown and described in the ‘D834 patent.

41. The aforementioned commercial activities of A1 Cycles and Mad Monkey constitute an infringement of the ‘D834 patent under 35 U.S.C. §271.

42. On information and belief, infringement of the ‘D834 patent by A1 Cycles and Mad Monkey has been intentional and willful, making this an exceptional case.

43. A1 Cycles and Mad Monkey have either known or remained willfully blind of Plaintiffs’ rights in the ‘D834 patent. There is little to no difference between the Accused Products and the patented design shown in the ‘D834 patent. Therefore, there was and is an objectively high likelihood that the acts of A1 Cycles and Mad Monkey of making, using, selling, offering for sale, and/or importing the Accused Products in the United States constituted an infringement of the ‘D834 patent.

44. A1 Cycles and Mad Monkey have not taken any actions to refrain from directly infringing the ‘D834 patent.

45. As a result of the infringing conduct by A1 Cycles and Mad Monkey, Plaintiffs have been and will continue to be irreparably harmed and denied the benefit of the protections afforded by the ‘D834 patent.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

RELIEF SOUGHT

WHEREFORE, Lacks respectfully prays for:

A. Judgment that A1 Cycles and Mad Monkey have directly infringed the ‘D834 patent in violation of 35 U.S.C. §271(a);

B. Judgment that infringement of the ‘D834 patent by A1 Cycles and Mad Monkey has been deliberate and willful;

C. Preliminary injunctive relief prohibiting further infringement of the ‘D834 patent by A1 Cycles and Mad Monkey, their officers, agents, employees, representatives, successors and assigns and those acting in privity or concert with them;

D. Permanent injunctive relief pursuant to 35 U.S.C. § 283 prohibiting further infringement of the ‘D834 patent by A1 Cycles and Mad Monkey, their officers, agents, employees, representatives, successors and assigns and those acting in privity or concert with them;

E. An award of damages adequate to compensate Plaintiffs for the patent infringement that has occurred pursuant to 35 U.S.C. §284, which shall be trebled as a result of willful patent infringement by A1 Cycles and Mad Monkey, or an award of the profits realized by A1 Cycles and Mad Monkey from their infringement pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;

F. For a judgment declaring that this case is exceptional and awarding the Plaintiffs expenses, costs, and attorneys' fees in accordance with 35 U.S.C. §§ 284-285 and Rule 54(d) of the Federal Rules of Civil Procedure;

G. An award of prejudgment and post judgment interests on the damages caused by the infringement;

H. For an order directing the A1 Cycles and Mad Monkey, their agents, servants, employees, partners, attorneys, successors, and assigns, and all those acting in concert with them, to deliver to this Court or to the Plaintiffs all infringing products for destruction, or show proof of said destruction; and

I. Such other and further relief as this Court deems just and proper.

Dated: July 22, 2021

Respectfully submitted,

By: /s/ J. Bradley Luchsinger
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