

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

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THOMPSON BROTHERS & COMPANY,  
LLC,

Plaintiff,

Case No.: \_\_\_\_\_

v.

**COMPLAINT**

MEIJER, INC.,  
MEIJER STORES LIMITED PARTNERSHIP,  
and  
WHOLESALE MERCHANDISERS, LLC,

**JURY TRIAL DEMANDED**

Defendants.

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Plaintiff Thompson Brothers & Company, LLC (“Thompson Brothers”) by and through counsel, states and alleges as follows:

**THE PARTIES**

1. Thompson Brothers & Company, LLC, (“Thompson Brothers”) is a limited liability company organized under the laws of the State of Minnesota having a principal place of business at 1270 Helmo Avenue North, Oakdale, MN 55128.

2. Meijer, Inc. is a corporation organized under the laws of the State of Michigan, with its principal place of business at 2929 Walker Avenue Northwest, Grand Rapids, MI 49544. Meijer, Inc. is a privately held supercenter chain, headquartered in Grand Rapids, MI.

3. Meijer Stores Limited Partnership is a limited partnership organized under the laws of the State of Michigan, with its principal place of business at 2929 Walker

Avenue Northwest, Grand Rapids, MI 49544. Meijer Stores Limited Partnership is a subsidiary of Meijer Companies, Ltd, headquartered in Grand Rapids, MI.

4. The Meijer defendants will collectively be referred to hereinafter as “Meijer.”

5. Wholesale Merchandisers, LLC (“Wholesale Merchandisers”) is a limited liability company organized under the laws of the State of Michigan, with its principal place of business at 2929 Walker Avenue Northwest, Grand Rapids, MI 49544.

Wholesale Merchandisers is and has been a distributor of products for Meijer, including the grill scraper products described below.

#### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. §§ 271 and 282-285.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(b), and the Court has personal jurisdiction over Defendants, because Defendants have done and presently transact business in this judicial district, including, upon information and belief, selling the infringing grill scrapers described below.

9. Meijer for example operates numerous brick and mortar stores in this judicial district, and, upon information and belief, defendant Wholesale Merchandisers has distributed products into this judicial district.

10. Upon information and belief, Defendants have offered for sale and sold the infringing grill scrapers described below in this judicial district through brick-and-mortar stores and/or via the internet.

### **FACTUAL BACKGROUND**

11. Thompson Brothers has developed wooden grill scrapers that, through use, develop grooves corresponding to the size and shape of the grill surface on which they are used.

12. Thompson Brothers has made numerous innovations to its grill scraper products and obtained several patents relating to its unique and proprietary designs.

13. For example, on June 3, 2014, U.S. Patent No. 8,741,068 (“the ‘068 patent”), entitled “BBQ GRILL SCRAPER,” was duly and legal issued by the United States Patent and Trademark Office, which is assigned to Thompson Brothers.

14. On April 16, 2019, U.S. Patent No. D846,218 (“the ‘218 patent”) was also duly and legally issued, which is assigned to Thompson Brothers.

15. Thompson Brothers is the owner of all right, title, and interest in the ‘068 patent and the ‘218 patent.

16. Copies of the ‘068 patent and the ‘218 patent are attached hereto as Exhibits A and B, respectively.

17. Owing to the value of Thompson Brothers’ intellectual property, numerous entities have agreed to cease and desist from selling infringing products and/or have agreed to take royalty-bearing licenses to Thompson Brothers’ patents.

18. Thompson Brothers has also previously filed suit for patent infringement, for example, in *Thompson Brothers & Company, LLC v. Sean Ung and Scrapesation, LLC*, in the U.S. District Court for the District of Arizona, Case No. 2:18-cv-00027-DJH.

19. The defendants in that case stipulated to infringement and validity of the patents-in-suit in that case, including the '068 patent, and were permanently enjoined from selling further infringing products.

20. As a result of Thompson Brothers' patented innovative designs, Meijer agreed to purchase grill scrapers from Thompson Brothers on a wholesale basis to sell at retail through Meijer.

21. Accordingly, by 2017, Meijer had placed several orders for Thompson Brothers' grill scrapers for retail sale through Meijer.

22. In late 2018, however, Meijer indicated to Thompson Brothers that it no longer wished to sell Thompson Brothers' patented grill scrapers, and that Meijer intended to have its own grill scrapers manufactured in China by a private label manufacturer for retail sale by Meijer.

23. Accordingly, Meijer stopped doing business with Thompson Brothers, and by spring 2019, Meijer began selling grill scrapers made in China for its own re-sale. The products will hereinafter be referred to as "the Accused Products."

24. Meijer sold the Accused Products under the brand name of "Grill Gourmet," distributed by defendant Wholesale Merchandisers.

25. Pictures of at least some of the Accused Products are as follows:









26. In April 2019, Thompson Brothers met with Meijer at Meijer's headquarters in Grand Rapids, MI.
27. During that meeting, Thompson Brothers reminded Meijer of the patents owned by Thompson Brothers, including the '068 patent, and asked Meijer to stop selling the Accused Products.
28. Meijer refused.
29. Upon information and belief, Meijer continued to sell the Accused Products for an extended period after the April 2019 meeting.
30. It is unknown whether Meijer continues to sell the Accused Products today.

**COUNT I**  
**Infringement of U.S. Patent No. 8,741,068**

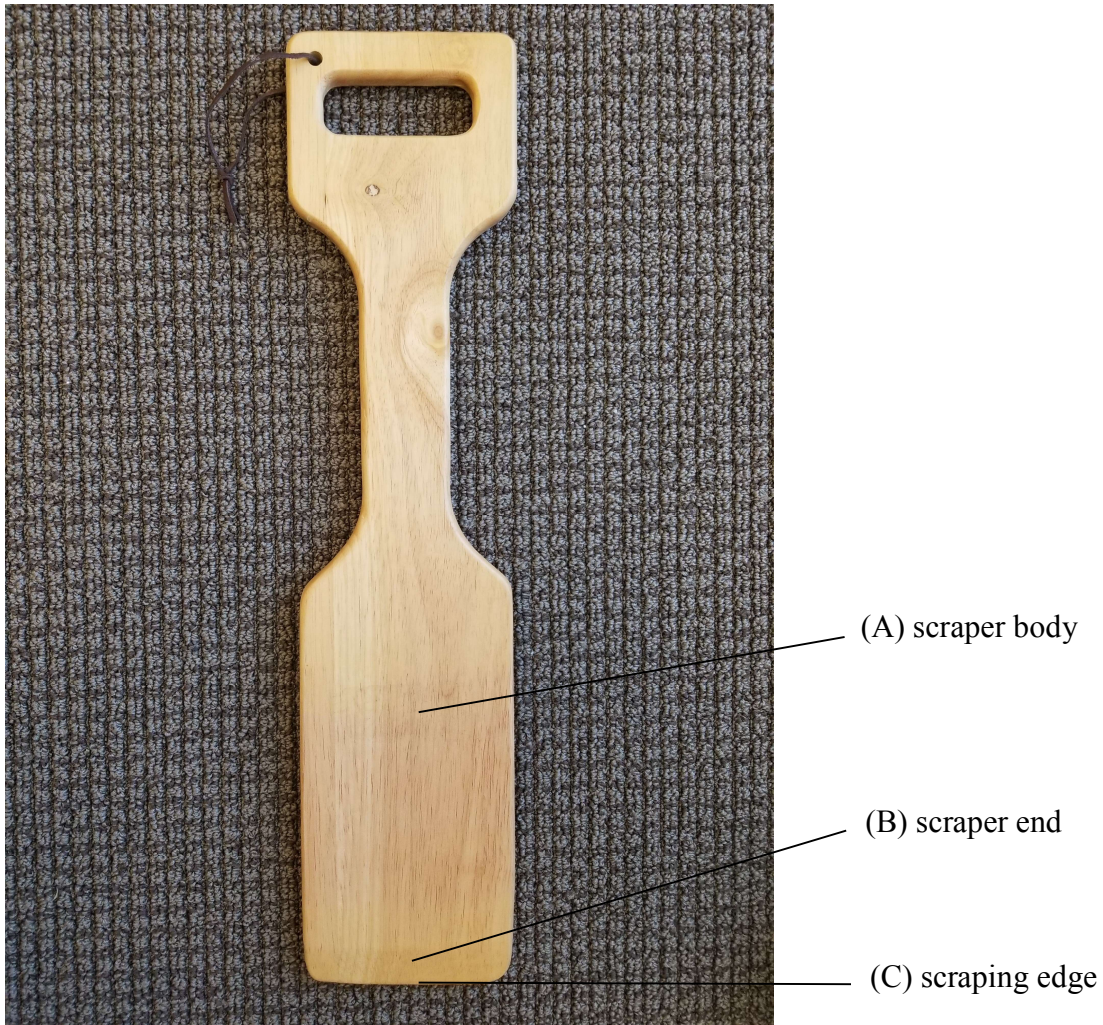
31. Thompson Brothers restates and hereby incorporates by reference the allegations from paragraphs 1 through 31 as if fully set forth herein.

32. By virtue of its ownership of the '068 patent, Thompson Brothers has the right to sue for infringement.

33. Defendants have infringed and induced infringement of the '068 patent through the importation, manufacture, offer for sale, sale, and use of the Accused Products.

34. As shown below, the Accused Products have all the features required by at least claim 1 of the '068 patent:





35. As shown, the Accused Products have a scraper body (A), and a scraper end (B), which end has a conformable scraping edge (C).

36. When used, as set forth in the packaging instructions pictured above, the Accused Product has a straight scraping edge prior to initial use, such that a plurality of grooves forms in the scraping edge of the wood of the Accused Product, wherein the arrangement and size of the grooves correspond directly with the upper edge of the grill surface.

37. Thus, use of the Accused Products infringes at least claim 1 of the '068 patent.

38. That is, the method claims of the '068 patent cover the steps in the packaging of the Accused Products, as shown in the photograph above.

39. Thompson Brothers has complied with the notice provision of 35 U.S.C. § 287 by marking its products with the '068 patent.

40. Thompson Brothers has also given Defendants actual notice of the '068 patent.

41. Defendants' importation, manufacture, offer for sale, sale, and use of the Accused Products or active encouragement of the use of the same has directly and indirectly infringed the claims of the '068 patent.

42. At least as early as April 30, 2019, Meijer had knowledge of the '068 patent and of the fact that its acts of inducing end users to use the end products by burning grooves in the scrapers constituted infringement of the '068 Patent.

43. At least as early as the filing of this suit, defendant Wholesale Merchandisers, has knowledge of the '068 patent and of the fact that its acts of inducing end users to use the end products by burning grooves in the scrapers constituted infringement of the '068 patent.

44. Defendants' infringement of the '068 patent has been willful.

45. Thompson Brothers has been damaged and will continue to be damaged as a result of the same unless and until Defendants, and their agents, assigns, and all those in privity with them, are permanently enjoined from further infringement of the '068 patent.

**COUNT II**  
**Infringement of U.S. Patent No. D846,218**

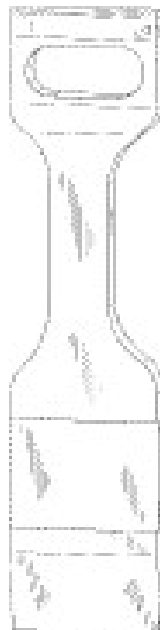
46. Thompson Brothers restates and hereby incorporates by reference the allegations from paragraphs 1 through 31 as if fully set forth herein.

47. By virtue of its ownership of the '218 patent, Thompson Brothers has the right to sue for infringement.

48. Defendants have infringed and induced infringement of the '218 patent through the importation, manufacture, offer for sale, sale, or use of the Accused Products.

49. Thompson Brothers has complied with the notice provision of 35 U.S.C. § 287 by marking its products with the '218 patent.

50. The '218 patent claims a specific ornamental design of a grill scraper, as depicted in the patent:



51. The Accused Products infringe the '218 patent.

52. That is, the design of the Accused Products are substantially the same as that of the '218 patent, such that the resemblance would deceive the ordinary observer, given the attention as a purchaser would usually give, inducing the purchaser of an Accused Product to believe it to be that of the design of the '218 patent:



53. Defendants' importation, manufacture, offer for sale, sale, and use of the Accused Products has directly infringed the claims of the '218 patent.

54. Thompson Brothers has been damaged by Defendants' infringement of the '218 patent.

55. Thompson Brothers has complied with the notice provision of 35 U.S.C. § 287 by marking its products with the '218 patent.

56. Defendants' infringement of the '218 patent has been willful.

57. Thompson Brothers has been damaged and will continue to be damaged as a result of the same unless and until Defendants, and their agents, assigns, and all those in privity with them, are permanently enjoined from further infringement of the '218 patent.

### **JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Thompson Brothers demands a jury trial for all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, Thompson Brothers respectfully prays for judgment that:

- a. Thompson Brothers owns and is entitled to enforce the '068 and '218 patents;
- b. Defendants have infringed one or more claims of the '068 and '218 patents;
- c. Defendants and those persons in active concert or participation with any of them be enjoined from further infringing '068 and '218 patents;
- d. Defendants pay damages under 35 U.S.C. § 284 arising out of the infringement of the '068 and '218 patents, with interest, the damages to be trebled under 35 U.S.C. § 284;
- e. Defendants pay the costs of this action (including all disbursements) and attorney fees pursuant to 35 U.S.C. § 285, with interest; and
- f. Thompson Brothers be awarded such other and further relief as this Court deems just and proper.



Respectfully Submitted,

Dated: March 16, 2022

By: s/ Nick Kuhlmann

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