

THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WAYNE SPENCER,
(an individual)

and

MACH 5 LEASING, INC.
(a Florida Corporation),
Plaintiffs,

v.

CASE NO. _____

TACO BELL, CORP.
(a California corporation,)
Defendant.

JURY TRIAL REQUESTED

COMPLAINT

Plaintiffs, Wayne Spencer, (hereinafter "Spencer") and Mach 5 Leasing, Inc., (hereinafter "Mach 5"), hereby bring this complaint against the Defendant, Taco Bell Corporation, (hereinafter "Taco Bell") and allege as follows:

THE PARTIES

(1) Plaintiff, Wayne Spencer, is an individual residing in the County of Hillsborough, State of Florida.

(2) Plaintiff, Mach 5, is a Sub-Chapter S Florida corporation, organized under the laws of the State of Florida, doing business in Hillsborough County, State of Florida.

(3) Defendant, Taco Bell Corporation is a California corporation, doing business in the Middle District of Florida. On information and belief, the Defendant owns and controls the Taco

Bell locations within the Middle District of Florida. The agent for service is CT Corporation System, located at 818 W. Seventh Street, Los Angeles, CA 90017.

JURISDICTION AND VENUE

(4) This is a civil action concerning Patent infringement in violation of the United States Patent Act of 1952, as amended, 35 U.S.C. § 271 et seq.

(5) The District Court for the Middle District of Florida has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a)-(b), as it involves substantial claims arising under the United States Patent Act of 1952, as amended, and 35 U.S.C. § 271 et seq.

(6) Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1400, since Defendant does business, and maintains a substantial presence, in the Middle District of Florida.

THE PATENT-IN-SUIT

(7) The Plaintiff Spencer owns all right, title and interest in and to United States Design Patent No. D643,474, (the "'474 patent") entitled "Coin Drop Game", which was duly issued by the United States Patent and Trademark Office ("PTO") on August 16, 2011, and presumed valid under 35 U.S.C. § 282. The '474 patent, at all times pertinent, was, and is, enforceable. A copy of the '474 patent is attached hereto as Exhibit 1.

(8) Plaintiff, Mach 5, is 50% owned by Spencer. As a Sub-Chapter S corporation, 50% of the profits and losses of Mach 5 pass directly to Spencer. The other 50% owner of Mach 5 shares is not a party to this case. Mach 5 is a closely held corporation, and is not publically owned.

(9) Mach 5 licenses the patent rights to the '474 patent from Spencer. All present leases of the coin drop games which are described in the '474 patent are leased to leasing parties through Mach 5.

(10) Spencer manufactures his coin drop game and provides such games to Mach 5, which leases the games.

COUNT ONE; PATENT INFRINGEMENT

(11) The Defendant has directly infringed the claim of the '474 patent, in that the Defendant is making, using, or offering for sale an item, or items, that are covered by the property interest described by the claim of the '474 patent.

(12) A photograph of the Defendant's infringing device is provided as Exhibit 2.

(13) A comparison by an ordinary member of the public of the Defendant's product along side the Plaintiff's product would result with the public member assuming that the Defendant's product and the Plaintiff's product were provided by the same entity.

(14) The Defendant's infringement of the '474 patent has been

deliberate, willful, wanton, and with full knowledge and awareness of the '474 patent as evidenced by the printing of the patent number on the Plaintiffs' product, as shown in Exhibit 3 and Exhibit 4. Exhibit 3 shows the patent number and Exhibit 4 is a larger view of Exhibit 3, showing the patent number as it relates to the entire device. Such willfulness makes this a special case as to damages, allowing triple damages in addition to attorney's fees and costs.

(15) The Defendant's acts have caused irreparable injury and damage to the Plaintiffs, for which the Plaintiffs have no adequate remedy at law.

(16) The item that is distributed by the Defendant which is alleged to infringe the claim of the '474 patent is the coin drop game, as shown in Exhibit 2.

WHEREFORE, PLAINTIFFS, SPENCER AND MACH 5, seek judgment, and ask that the Court award the following:

(A) Permanently enjoining Defendant and its principals, shareholders, officers, directors, employees, successors, assigns, suppliers, agents, servants and attorneys, and all those persons in active concert, participation or privity with them, or any of them from making using selling offering for sale, or offering for others to use items that are determined at trial to be an infringement of the '474 patent;

(B) Awarding the Plaintiffs, pursuant to 35 U.S.C. 284, damages adequate to compensate the Plaintiff for the defendant's infringement of the '474 patent, but in no event less than a reasonable royalty, together with pre-judgment interest. The Plaintiff requests that the Court find that the Defendant acted willfully, thereby allowing the Court to award enhanced damages, pursuant to 35 U.S.C. 284;

(C) Granting such further and other relief as the Court may deem necessary and proper.

Dated: February 23, 2012



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US00D643474S

(12) **United States Design Patent**
Spencer

(10) **Patent No.:** **US D643,474 S**
(45) **Date of Patent:** **** Aug. 16, 2011**

- (54) **COIN DROP GAME**
- (76) **Inventor:** **Wayne Spencer, Tampa, FL (US)**
- (**) **Term:** **14 Years**
- (21) **Appl. No.:** **29/373,021**
- (22) **Filed:** **Feb. 18, 2011**

4,322,074	A *	3/1982	James et al.	463/29
5,282,636	A *	2/1994	Wyman et al.	273/457
5,301,942	A *	4/1994	Lacrosse	273/138.3
D363,106	S *	10/1995	Faith	D21/310
D364,428	S *	11/1995	Caron	D21/310
D364,894	S *	12/1995	Mayuzumi	D21/310
6,367,801	B1	4/2002	Spencer	
7,059,477	B2 *	6/2006	Wolf et al.	209/373

* cited by examiner

Related U.S. Application Data

- (63) Continuation-in-part of application No. 12/316,419, filed on Dec. 12, 2008, which is a continuation-in-part of application No. 10/746,414, filed on Dec. 24, 2003, now abandoned.
- (51) **LOC (9) Cl.** **21-01**
- (52) **U.S. Cl.** **D21/310**
- (58) **Field of Classification Search** **D21/310, D21/311, 302, 801; 273/38.5, 457, 458, 273/447, 412**
See application file for complete search history.

Primary Examiner — Prabhakar Deshmukh
(74) *Attorney, Agent, or Firm* — Edward P Dutkiewicz

(57) **CLAIM**
The ornamental design for a coin drop game, as shown and described.

DESCRIPTION

FIG. 1 is a rear elevational view of a coin drop game showing my new design;
FIG. 2 is a front elevational view thereof;
FIG. 3 is a right side elevational view thereof;
FIG. 4 is a left side elevational view thereof;
FIG. 5 is a top plan view thereof; and,
FIG. 6 is a bottom plan view thereof.
The broken lines are for illustrative purpose only and form no part of the claimed design.

(56) **References Cited**

U.S. PATENT DOCUMENTS

508,922	A *	11/1893	Davis	194/295
D141,095	S *	5/1945	Meyer	D21/310
3,716,233	A *	2/1973	Kotwas et al.	273/440
4,177,986	A *	12/1979	Campbell	273/447

1 Claim, 3 Drawing Sheets

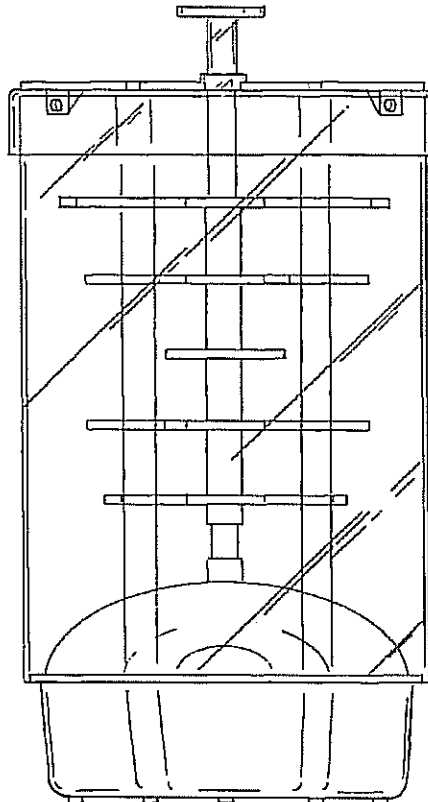


EXHIBIT 1

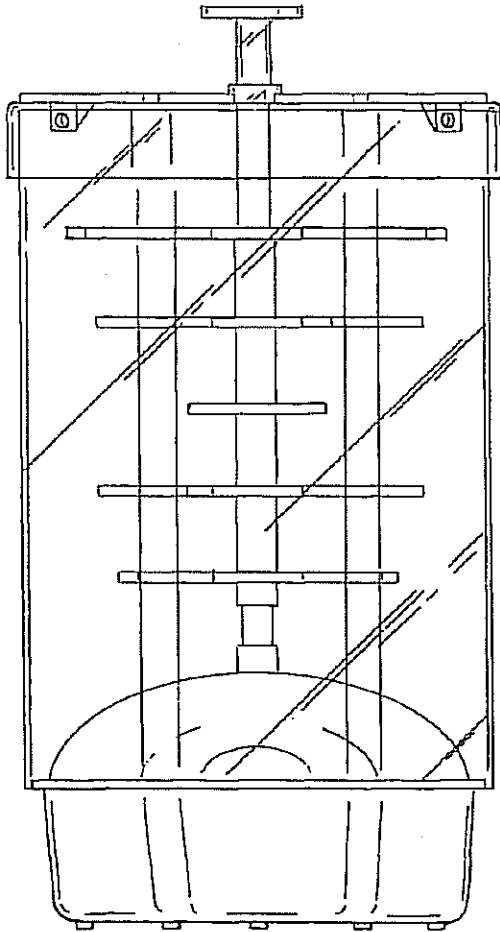


FIG. 1

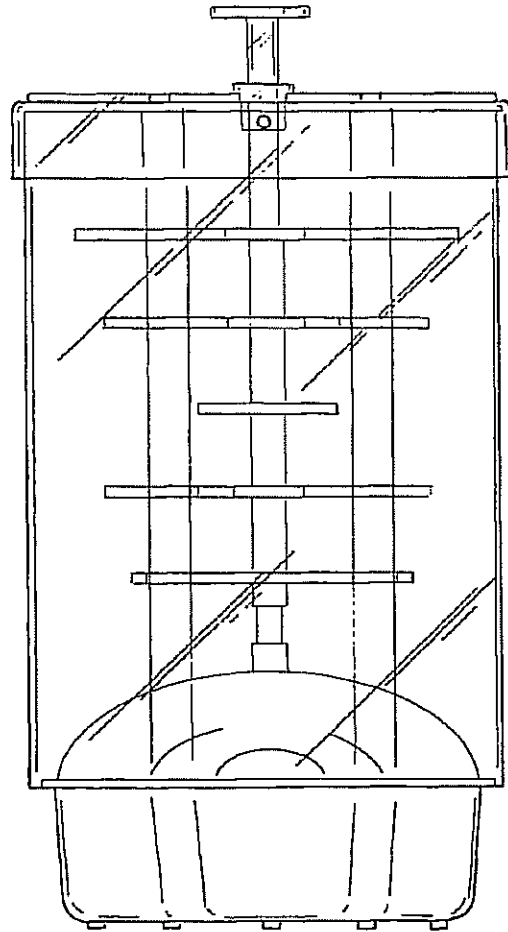


FIG. 2

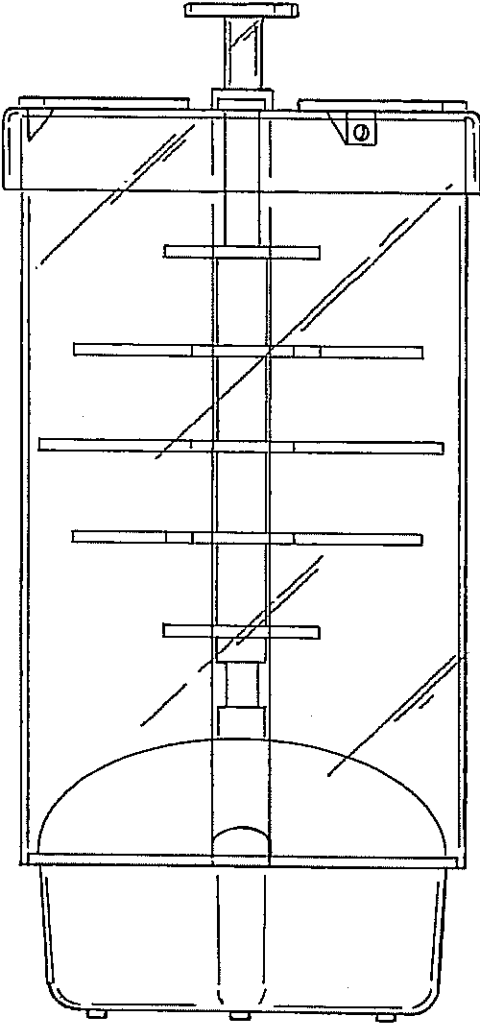


FIG. 3

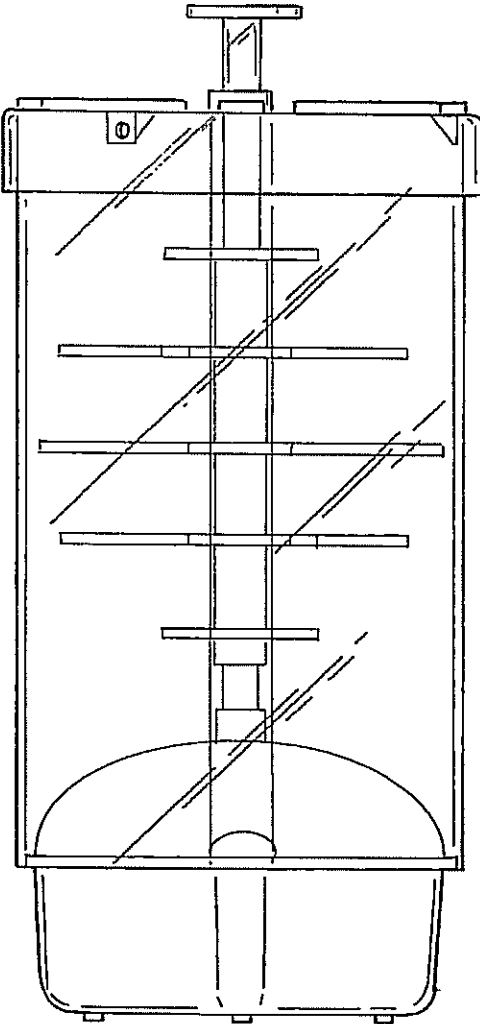


FIG. 4

FIG. 5

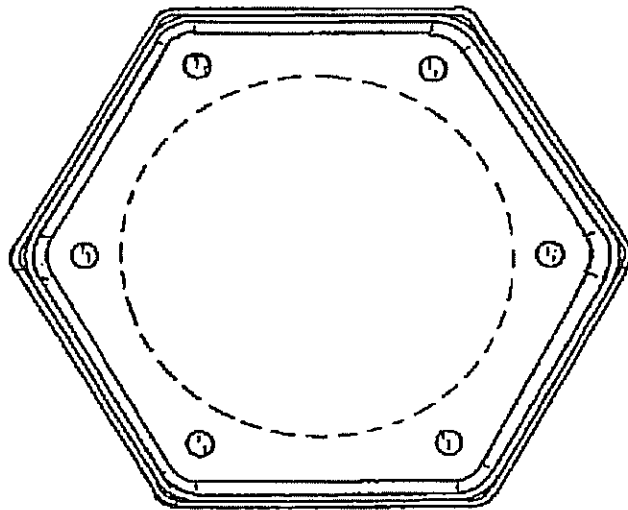
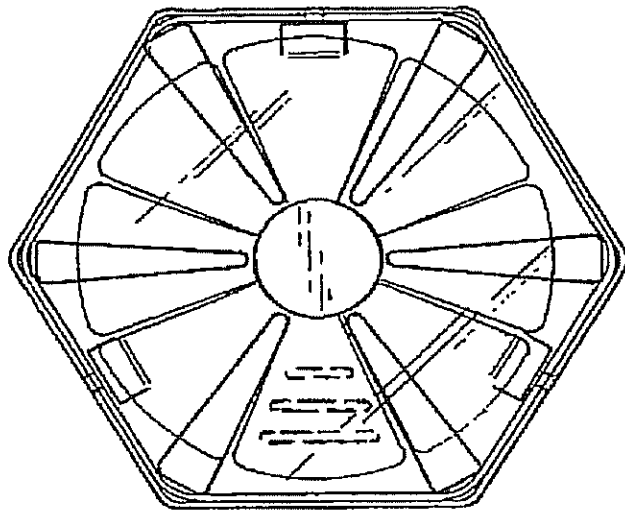


FIG. 6



EXHIBIT 2



EXHIBIT 3

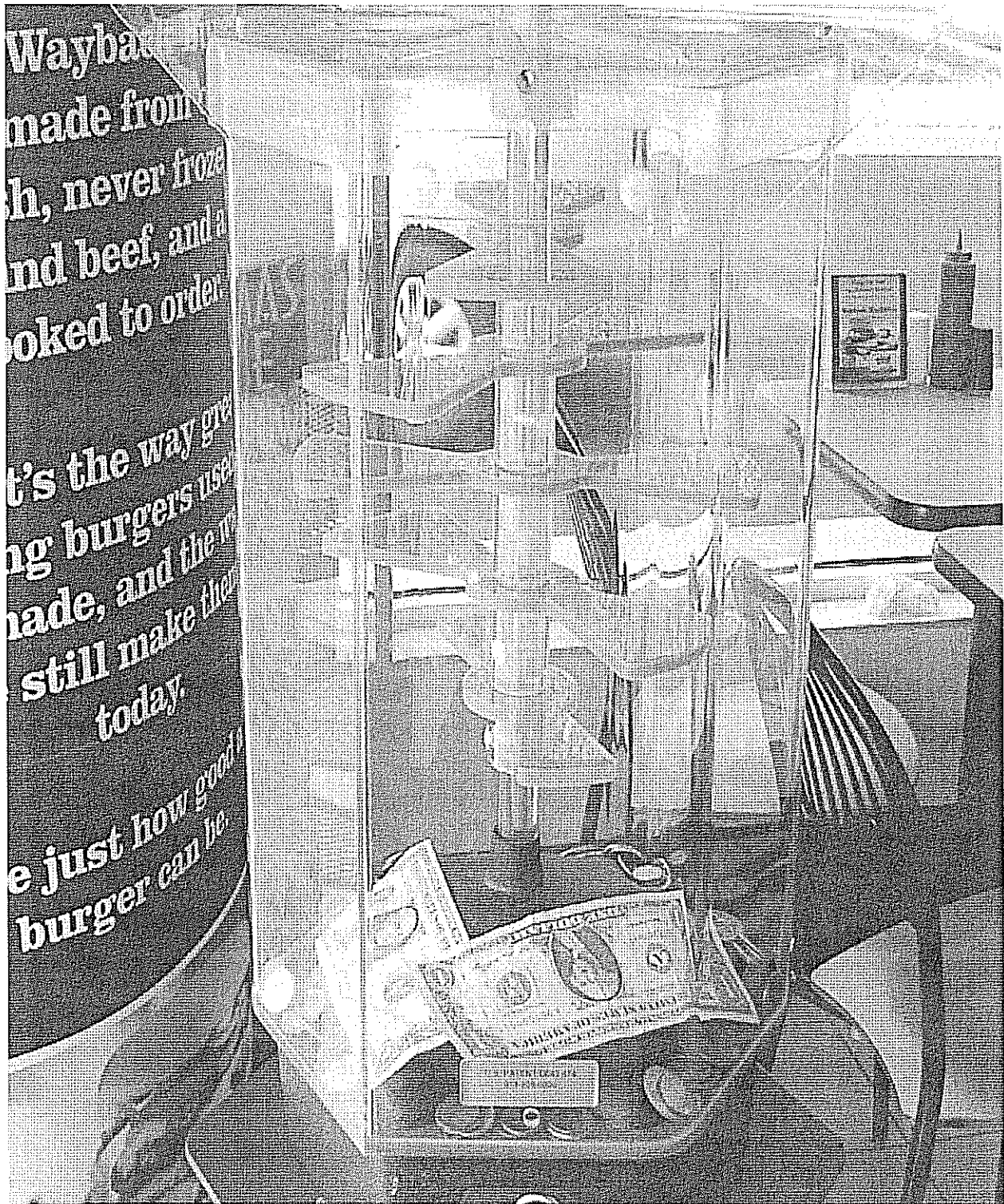


EXHIBIT A