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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Houston White and Foxwise Products
LLC,
Plaintiff,

vs.

J.T. Marketing, LTD and W.C. Tackett
III, both dba Apple Picker, both
Arizona residents; Ozark Leather Co.,
Inc., a Texas Corporation; Miller
Manufacturing Company, a Minnesota
Corporation; and Companies 3-10.
Defendants.

Case No.

COMPLAINT

(Patent Infringement, Counterfeiting,
Unfair Competition, Attorneys' Fees, and
Exemplary Damages)

The plaintiffs Houston White (hereafter White) and Foxwise Products LLC (hereafter Foxwise) (hereafter collectively Plaintiffs), through counsel, as and for its Complaint against J.T. Marketing, LTD and W.C. Tackett III, dba Apple Picker (hereafter Apple Picker), Ozark Leather Co., Inc. (hereafter Ozark), and Miller Manufacturing Company (hereafter Miller), alleges as follows:

PARTIES

1. Plaintiff Houston White is an inventor and an Arizona resident. He is the inventor of the unique and valuable design in the field of stall forks.

2. Foxwise is an Arizona Limited Liability, owned and operated by White.

3. On information and belief, the defendant, Apple Picker comprises an Arizona Corporation (J.T. Marketing, LTD) and an individual W.C. Tackett III. The two defendants called Apple Picker co-own an Arizona trade name no. 155437 for Apple Picker. A non-existent Arizona Corporation called APPLE PICKER, LTD., owns U.S. Registration No. 3,067,814 for the mark Apple Picker, but that registration is invalid under case law, since the incorrect (nonexistent) Applicant applied and registered it. *See* Exhibits 1 and 2.

4. Ozark Leather Co., Inc. is a corporation organized under the laws of the State of Texas, and having an established place of business in Arizona at <http://www.ozarksaddleking.com/>. There, the Ozark Defendant currently uses and offers for sale in Arizona infringing handle/basket combinations, but as recently as last year, sold a rake. *See* Exhibit 3.

5. Miller Manufacturing Company is a corporation organized under the laws of the State of Michigan, and having an established place of business in Arizona at <http://www.hotshotproducts.com/>. There, the Miller Defendant makes use of and offers to sell, metal handle forks, at <http://www.hotshotproducts.com/page/1/product-line.jsp?groupId=696>. A particularly applicable design is used and offered for sale in Arizona at <http://www.hotshotproducts.com/page/1/Product-Detail.jsp?groupId=760&prodId=60538>. *See* Exhibit 4.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq.

7. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, and 1338(a).

1 8. This Court may exercise personal jurisdiction over Wal-Mart based upon
2 its contacts with this forum, including, at least, regularly and intentionally doing
3 business here.

4 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)
5 and 1400(b).

6 **GENERAL ALLEGATIONS – THE WHITE DESIGN PATENT**

7 10. For several years, White engaged in the development, manufacture, and
8 sale of a wide array of horse and stable products, and in 1999 developed a Stall Fork
9 design.

10 11. White has taken steps to protect its innovative designs, including its horse
11 and stable related products and designs. In particular, White owns United States design
12 patent relating to its stable stall fork. Relevant to this dispute, White is and has been the
13 owner of all right, title, and interest to United States design patent no. DES 418,726
14 identified in Exhibit 5 (hereafter, the White Design Patent or the „726 patent) since the
15 date the design patent duly and legally issued to White.

16 12. White innovated and sold locally in Arizona, horse and stable products a
17 few years. He then formed Foxwise in 2003, to carry the products nationwide, under an
18 implied license to compensate White.

19 13. Plaintiffs attended several trade shows, where they met each of the
20 Defendants in this case. The Plaintiffs sold, advertised, and offered for sale myriad,
21 patent marked forks (*see* Exhibit 6) to each of the Defendants in this case.

22 14. Myriad design-patented stall forks were sold by Plaintiffs to Defendants
23 Apple Picker and Ozark. Defendant Miller inspected Plaintiffs patent marked forks at
24 each trade show, but did not then copy it.

1 **GENERAL ALLEGATIONS – DEFENDANTS’ INFRINGING ACTIVITIES**

2 15. Plaintiff White was divorced in recent years, and had to cease operations
3 selling Horse and Stable products for a short time. Yet, more recently, on information
4 and belief, each of the Defendants have advertised and used, and offered for sale and
5 sold in the United States fork having design that are covered by the White Design Patent
6 (hereafter, the “Infringing Forks”). Upon information and belief, each defendant
7 knowingly and intentionally sold and continues to sell the Infringing Forks as
8 simulations of Plaintiffs forks.

9 16. Plaintiffs attach as Exhibits 7, 8, and 9 each of Apple Picker’s Infringing
10 Forks, Ozark’s Infringing Forks, and Miller’s Infringing Forks. With copies of those
11 photographs shown herein, each has a bent handle as Plaintiffs’ White Design Patent,
12 and a basket similar to the basket therein. Plaintiffs have reason to believe each
13 Defendant sold many of these infringing forks.

14 17. Plaintiffs have sold and are currently selling the Foxwise Stall Fork model
15 bearing the design claimed in the „726 patent. As contemplated by the Patent Act, 35
16 U.S.C. § 287, Plaintiffs have provided notice of the „726 patent by marking the „726
17 patent number on Plaintiffs’ fork models bearing the patented design since
18 approximately the time the United States Patent and Trademark Office issued the „726
19 patent.

20 18. On information and belief, Apple Picker’s, Ozark’s, and Miller’s
21 infringement of the White Design Patent has been and continues to be intentional and
22 willful.

23 **COUNT 1: PATENT INFRINGEMENT**

24 19. Plaintiffs hereby allege and incorporate by reference each and every
25 allegation contained in all paragraphs above, inclusive, as though fully set forth in detail
26 herein.

1 20. All of the Defendants has made, used, offered to sell, sold, and/or imported
2 into the United States, and still are making, using, offering to sell, selling, and/or
3 importing into the United States, forks having design that infringe the White Design
4 Patents without Plaintiffs' authorization.

5 21. On information and belief, Defendant's infringement has been intentional
6 and willful, making this an exceptional case

7 22. Plaintiffs have been and continue to be irreparably harmed by Defendants
8 infringement of the White Design Patent.

9 WHEREFORE, Plaintiffs respectfully pray for:

10 A. Judgment that each Defendant willfully infringed the White Design Patent in
11 violation of 35 U.S.C. § 271(a);

12 B. An injunction against further infringement of the White Design Patents by any
13 and all of the Defendant, their agents, servants, employees, officers, and all others
14 controlled by them;

15 C. An award of damages adequate to compensate Foxwise for the patent
16 infringement that has occurred pursuant to 35 U.S.C. § 284, which shall be
17 trebled as a result of Defendant's willful patent infringement, or an award of
18 Defendant's profits from its infringement pursuant to 35 U.S.C. § 289, whichever
19 is greater, together with prejudgment interest and costs;

20 D. Awarding actual damages to plaintiff White for each defendant's patent
21 infringement under 35 U.S. C. §284, in an amount to be determined, but in no
22 event less than a reasonable royalty, trebled as a result of Defendant's willful
23 patent infringement;

24 E. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C.
25 § 285, with prejudgment interest;

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

1 **COUNT 2: COUNTERFEITING**

2 23. Plaintiff hereby incorporates the above allegations as if stated fully herein.

3 24. By patenting Plaintiff White's Stall Fork, he acquired the exclusive rights
4 to make, use, offer to sell, or sell his patented invention, within the United States or
5 import it into the United States any patented invention during the term of the patent
6 therefor (35 U.S.C. 271). Plaintiff White also has the choice who to share the invention
7 with, and with Plaintiff Foxwise, it became the exclusive distributor of Plaintiff White's
8 Stall Fork.

9 25. Plaintiffs are the exclusive source of Plaintiff White's Stall Fork. Each of
10 the defendants marks their copy Plaintiff White's Stall Fork with a mark, when the
11 unauthorized, counterfeit copies of plaintiff's "Stall Fork" product are counterfeit
12 marked pursuant to 15 U.S.C. § 1117. Only Plaintiff Foxwise is the source of authorized
13 branded copies.

14 26. Plaintiffs have been and continue to be irreparably harmed by each
15 defendant's mark counterfeiting its patented Stall Fork.

16 WHEREFORE, Plaintiffs respectfully pray for:

17 A. Judgment that each Defendant willfully made unauthorized, counterfeit copies of
18 plaintiff's "Stall Fork" product pursuant to 15 U.S.C. § 1117;

19 B. An injunction against further unauthorized, counterfeit copies of plaintiff's "Stall
20 Fork" product that are counterfeit pursuant to 15 U.S.C. § 1117 by any and all of
21 the Defendant, their agents, servants, employees, officers, and all others
22 controlled by them;

23 C. An award of damages adequate to compensate Foxwise for the infringement that
24 has occurred pursuant to 15 U.S.C. § 1117 or an award of Defendant's profits
25 from its infringement pursuant to 15 U.S.C. § 1117, whichever is greater, together
26 with prejudgment interest and costs;

- 1 D. Treble damages and an assessment of costs, including reasonable attorney fees,
2 pursuant to 15 U.S.C. § 1117, with prejudgment interest;
3 E. Such other and further relief as this Court deems just and proper.
4

5 **COUNT 3: COMMON LAW UNFAIR COMPETITION**

6 27. Plaintiffs hereby incorporate the above allegations as if stated fully herein.

7 28. Plaintiff's stall fork product design packaging serve to identify the source
8 of the stall fork product, and therefore constitute protectable assets of plaintiffs.

9 29. Each defendant's importation, offer for sale and sale of the unauthorized,
10 counterfeit copies of plaintiffs' stall fork product is likely to cause confusion, and upon
11 information and belief, has caused confusion, in consumers as to the authorized source
12 of the bent-handle stall fork products and/or the source of each defendant's unauthorized,
13 counterfeit copies.

14 30. Each defendant's importation, offer for sale and sale of the unauthorized,
15 counterfeit copies of plaintiffs' stall fork product constitutes common law unfair
16 competition.

17 31. Plaintiff has been and continues to be irreparably harmed by each
18 defendant's actions.

19 WHEREFORE, Plaintiffs respectfully pray for:

20 A. Judgment that each Defendant made copies of plaintiffs' stall fork product that is
21 likely to cause confusion, and upon information and belief, has caused confusion,
22 in consumers as to the authorized source of the bent-handle stall fork products
23 and/or the source of each defendant's unauthorized, counterfeit copies.

24 B. Awarding actual damages to plaintiff for each defendant's infringement under 35
25 U.S.C. § 284 and 15 U.S. C. § 1117, in an amount to be determined;
26

- 1 C. Awarding to plaintiffs each defendant's profits, realized by defendant through its
2 trade dress infringement, under 35 U.S.C. § 284 and 15 U.S. C. § 1117, in an
3 amount to be determined;
- 4 D. Awarding actual damages to each plaintiff for each defendant's common law
5 patent/trademark infringement and unfair competition, in an amount to be
6 determined;
- 7 E. Awarding exemplary damages to each plaintiff in an amount equal to three times
8 the actual damages and profits awarded;
- 9 F. Awarding plaintiff its costs and attorneys' fees;
- 10 G. Permanently enjoining each defendant from importing, offering for sale and
11 selling any product which infringes plaintiff's copyrights, patent rights and trade
12 dress rights.
- 13 H. Requiring each defendant to undertake remedial action, to be approved by the
14 Court, designed to correct the confusion caused by each defendant's use of
15 plaintiffs' protected design; and
- 16 I. Providing all other equitable relief the Court deems just and proper.

17 Respectfully submitted this 31st day of March, 2011

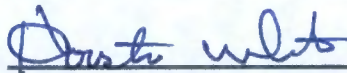
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19 By: s/Jordan M. Meschkow
Jordan M. Meschkow, Bar #007454
Meschkow & Gresham, P.L.C.
7250 North Sixteenth Street, Suite 318
Phoenix, Arizona

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VERIFICATION

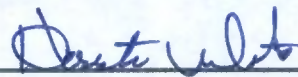
I, Houston White, individually and as the member of Foxwise Products LLC
declare as follows:

I declare that I am the Plaintiff herein and the sole member of the entity Plaintiff;
that I have read the foregoing Complaint and I know the contents thereof; that the
matters alleged therein are true to my own knowledge, except for those matters stated
on information and belief, which I believe to be true, and that I do so under penalty of
perjury.



Houston White

Foxwise Products LLC



Houston White

Dated: March 30 2011

EXHIBIT 1


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Registered Name Information Search

Generated by TnT Names Search Version 3.11

[Instructions](#)

General Information

File ID	155437
Description	Trade Name
Status	Active
Name	APPLE PICKER
Address 1	P.O. BOX 2667
City	MESA
State	AZ
ZIP	85281-
Phone	480-829-0412
Business Type	MANUFACTURING HORSE STALL ACCESSORIES
Domestic Begin Date	12/1/1995

Agent/Owner Information

Agent ID	Type	Fullname	Address	City	State	ZIP	Phone
1054466	Owner	J.T. MARKETING, LTD	P.O. BOX 2667	MESA	AZ	85281-	480-829-0412
1054468	Owner	W.C. TACKETT III	P.O. BOX 2667	MESA	AZ	85281-	480-829-0412

Registration Information

Received	Amended	Assigned	Expiration	Cancelled	Revoked
2/7/2011			3/8/2016		
1/26/2006			3/8/2011		

3/8/2001			3/8/2006		
3/8/1996			3/8/2001		

Correspondence History

Description	Date	Printed	Filmed	Loc. No.	Page No.	Pages
Renewal	2/7/2011	2/9/2011 2:44:42 PM				1
Renewal	1/26/2006	2/6/2006 1:45:41 PM				1
Renewal	3/8/2001	3/8/2001 9:25:21 AM				1
Application	3/8/1996	1/3/2001				

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[Disclaimer](#)

EXHIBIT 2

Int. Cl.: 8

Prior U.S. Cls.: 23, 28 and 44

United States Patent and Trademark Office

Reg. No. 3,067,814

Registered Mar. 14, 2006

**TRADEMARK
PRINCIPAL REGISTER**

APPLE PICKER

APPLE PICKER, LTD. (ARIZONA CORPORATION)

2042 W. 1ST STREET

TEMPE, AZ 85281

FOR: HAND RAKES, MANURE FORKS, YARD
RAKES, IN CLASS 8 (U.S. CLS. 23, 28 AND 44).

FIRST USE 9-19-1974; IN COMMERCE 9-19-1974.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PICKER", APART FROM THE MARK AS SHOWN.

SER. NO. 78-552,631, FILED 1-24-2005.

IRA J. GOODSID, EXAMINING ATTORNEY

02/24/2011

Arizona Corporation Commission
State of Arizona Public Access System

12:23 PM

Name	File Number
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Search Type

Alpha Word

To Check the availability of a specific name and/or reserve the name for 120 days [click here.](#)

Corporation List

File Number	Corporation Name	Name Type
L11980080	APPLE PIE DREAM HOUSE LLC	L.L.C.
L09671311	APPLE PIE HOMES, L.L.C.	L.L.C.
L16150738	APPLE PIE, L.L.C.	L.L.C.
R10933459	APPLE PIE PROPERTIES III LLC	FOREIGN L.L.C.
L14654640	APPLE PIE PROPERTIES, LLC	L.L.C.
377031	APPLE PIE REALTY	TRADE NAME
L11502077	APPLE PLUMBING & COOLING, L.L.C.	L.L.C.
464036	APPLE PLUMBING SERVICES	TRADE NAME
452028	APPLE PRINTING	TRADE NAME
462508	APPLE PROMOTIONAL AND ADVERTISING PRODUCTS	TRADE NAME
L14442346	APPLE PROMOTIONAL AND ADVERTISING PRODUCTS LLC	L.L.C.
437007	APPLE PROMOTIONAL PRODUCTS	TRADE NAME
139237	APPLE PROPERTIES	TRADE NAME
08060108	APPLE REAL ESTATE LOAN CORPORATION	CORPORATION
10886177	APPLE REALTY, INC.	CORPORATION
R08914779	APPLE RESTORATION, L.L.C.	FOREIGN L.L.C.
493355	APPLES AND OLIVE	TRADE NAME
501444	APPLES AND ORANGE	TRADE NAME
463210	APPLES AND PEARS	TRADE NAME
413735	APPLE SAUCE, EDUCATIONAL SUPPLIES	TRADE NAME
400947	APPLE SAUCE EDUCATIONAL SUPPLY	TRADE NAME
251880	APPLESEED BUSINESS	TRADE NAME
09900689	APPLESEED BUSINESS INC.	CORPORATION
L15059700	APPLESEED MEDICAL, LLC	L.L.C.
F14121579	APPLE SEVEN HOSPITALITY MANAGEMENT, INC.	CORPORATION



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EXHIBIT 3

Ozark Leather Company

Saddle King of Texas



This page is best viewed with Mozilla Firefox.
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STALL FORKS

To assure that you have the right fork to meet any customers needs, Ozark has totally revamped its complete line of stall forks. As in past years, our heads and handles are sold in lots of six. However, this year is different in that the fork heads and the handles are sold separately. This gives you the opportunity to put together the type of stall fork that you know will sell in your area. Choose from our new deep basket fork, our regular basket fork or our youth fork. We have metal, wood and ergonomic handles that fit all models. All fork heads carry a one year guarantee and are available in lots of six, with two each of red, blue & black. Versatility along with durability set our forks miles ahead of the competition.

Heads:



Deep Basket
19009



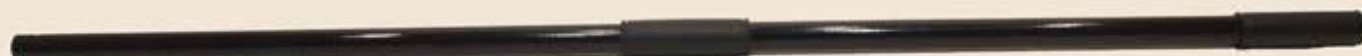
Regular Basket
19010



Youth Basket
19010Y

**ALL FORK
HEADS SOLD 6
TO A CASE**

Handles:



Comfort Grip Adult
Approximately 48"
19007



Comfort Grip Youth
Approximately 43"
19007Y



Adult Wood
Approximately 48"
19007W



Adult Ergonomic
Approximately 53"
19007E

**All fork heads carry a 1 Year Guarantee.
For replacement, return the head only.**

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EXHIBIT 4



SEARCH

HISTORY

CUSTOMER SERVICE

PRODUCT INSTRUCTIONS

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Products

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- > [Poultry](#)
- > [Livestock Handling](#)
- > [Pest Control](#)
- > [Pet](#)
- > [Small Animal & Rabbit](#)
- > [Miscellaneous](#)



Miller Manufacturing Company is a customer driven manufacturer and international distributor of farm, ranch and pet products. Our products are sold through distributors that serve retailers of farm and ranch products in the USA, Canada and over 30 countries around the world.

Recognized brands

- o Little Giant® – Market leader for over 69 years
- o Hot-Shot® – Industry standard for over 71 years
- o Pet Lodge™ – Quality products for pet and small animals

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Products

▼ Equine/Cattle/Hog

[Automatic Stock Waterers & Floats](#)[Nursing & Hog Feeders](#)[Plastic Buckets, Tubs & Feeders](#)[Rubber Buckets, Tubs & Feeders](#)[Stable Supplies](#)[Stock Tanks](#)

> Poultry

> Livestock Handling

> Pest Control

> Pet

> Small Animal & Rabbit

> Miscellaneous

DuraPitch [View more »](#)



Metal DuraForks [View more »](#)



Plastic DuraForks [View more »](#)



Metal Handle Forks [View more »](#)



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PRODUCT INSTRUCTIONS

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▼ Equine/Cattle/Hog

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Nursing & Hog Feeders >

Plastic Buckets, Tubs & Feeders >

Rubber Buckets, Tubs & Feeders >

Stable Supplies >

Stock Tanks >

> Poultry

> Livestock Handling

> Pest Control

> Pet

> Small Animal & Rabbit

> Miscellaneous

[Stable Forks](#) > [Metal Handle Forks](#)

EASY LIFT ERGO DURAFORK

Item #:PDFERED

Description:

Manufactured from extra strong polycarbonate to provide strength and enhanced flexibility. Designed for long- lasting use around the farm, ranch and home. Specially designed tines are uniquely angled to provide easy manure pickup with less spilling. Nylon locknut secures handle. 52 inch lightweight anodized pre-bent ergonomic handle and foam grip. Fork head is 13 1/8 inch long and 15 1/8 inch wide. Available in red.



HIGH RESOLUTION

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EXHIBIT 5



US00D418726S

United States Patent [19]
White, Jr.

[11] Patent Number: Des. 418,726
[45] Date of Patent: ** Jan. 11, 2000

[54] STALL FORK
[76] Inventor: **Houston R. White, Jr.**, 15225 E. Riggs Rd., Chandler, Ariz. 85249
[**] Term: **14 Years**
[21] Appl. No.: **29/100,965**
[22] Filed: **Feb. 19, 1999**
[51] **LOC (7) Cl.** **08-01**
[52] **U.S. Cl.** **D8/13**
[58] **Field of Search** D8/1, 2, 7-13; 294/49, 50, 50.5, 52, 55.5

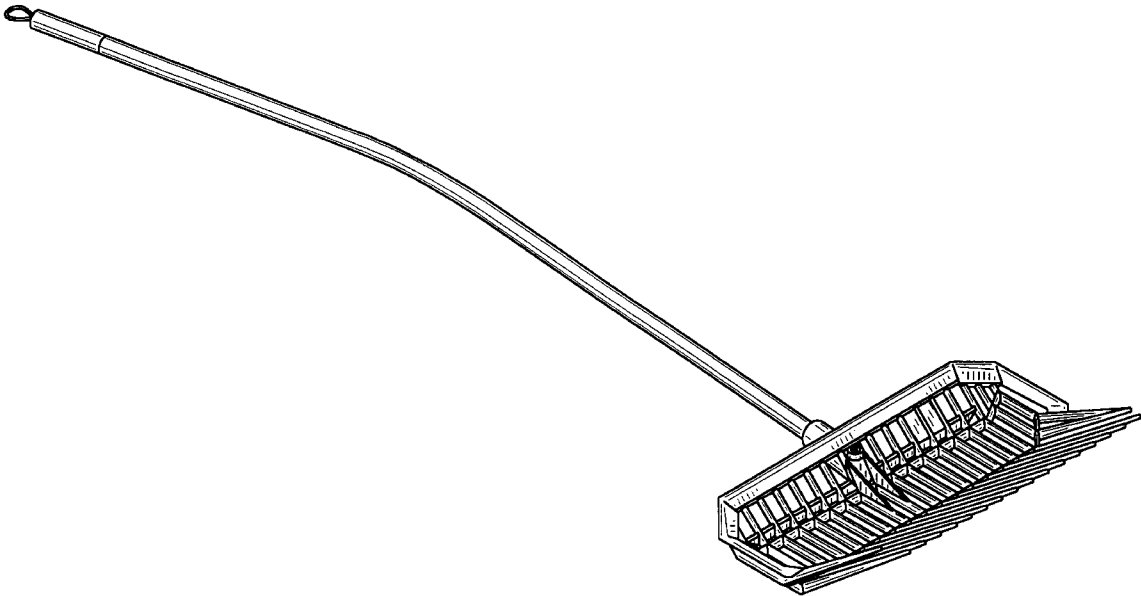
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Primary Examiner—Robin V. Taylor
Attorney, Agent, or Firm—Meschkow & Gresham, P.L.C.; Lowell W. Gresham; Jordan M. Meschkow

[57] **CLAIM**
The ornamental design for a stall fork, as shown and described.

DESCRIPTION
FIG. 1 is a perspective view of a stall fork, showing my new design therefor;
FIG. 2 is a top plan view;
FIG. 3 is a bottom plan view;
FIG. 4 is a left side elevation view, it being understood that a right side elevation view would be a mirror image of this left side elevation view;
FIG. 5 is a back side elevation view; and,
FIG. 6 is a front side elevation view.

1 Claim, 3 Drawing Sheets



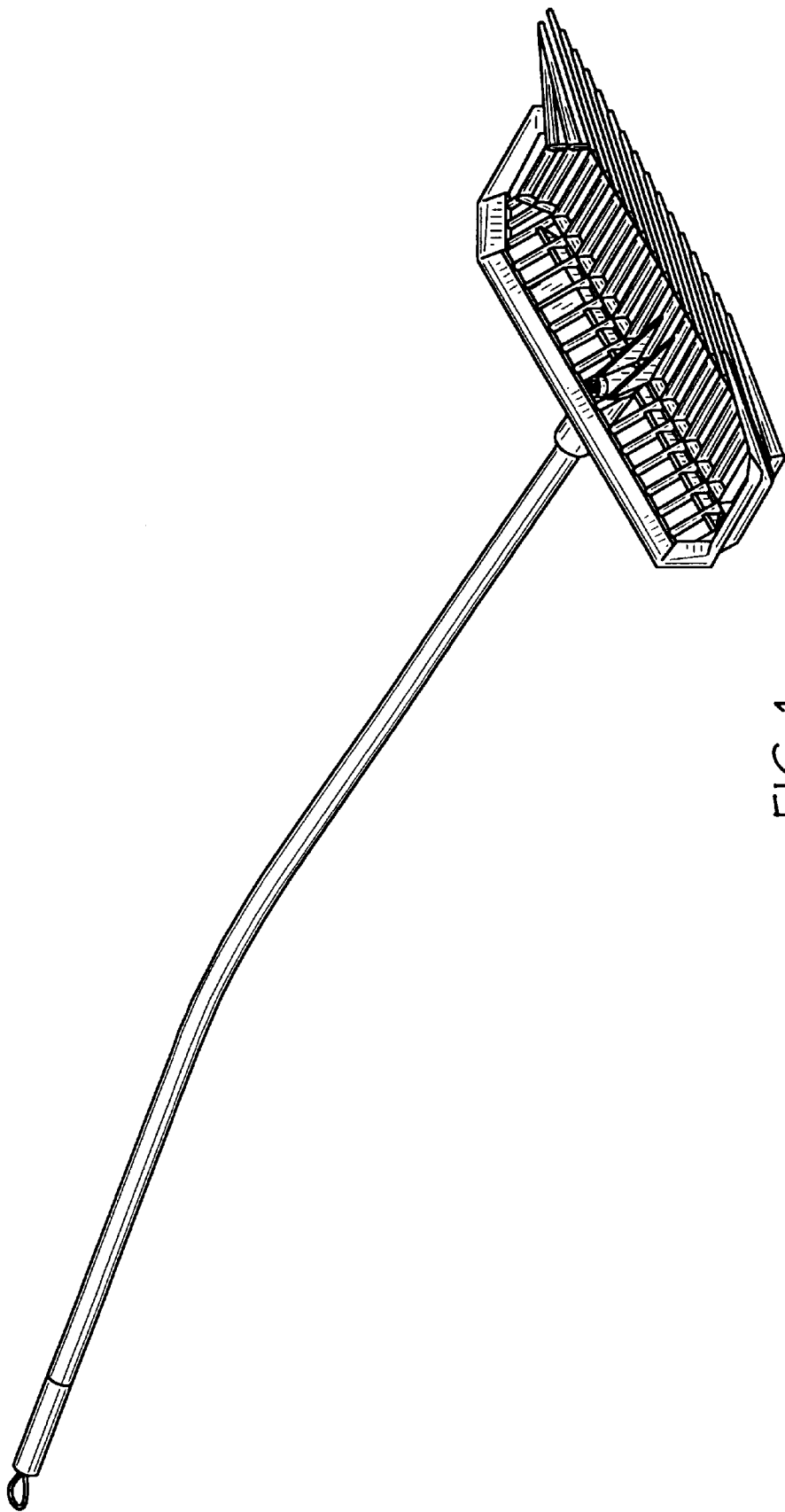


FIG. 1

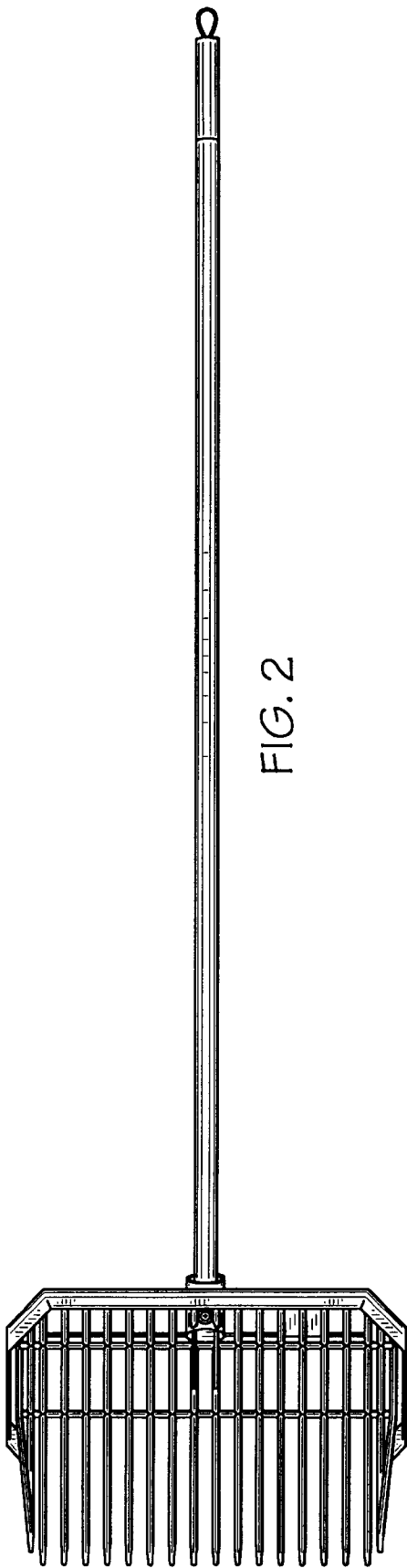


FIG. 2

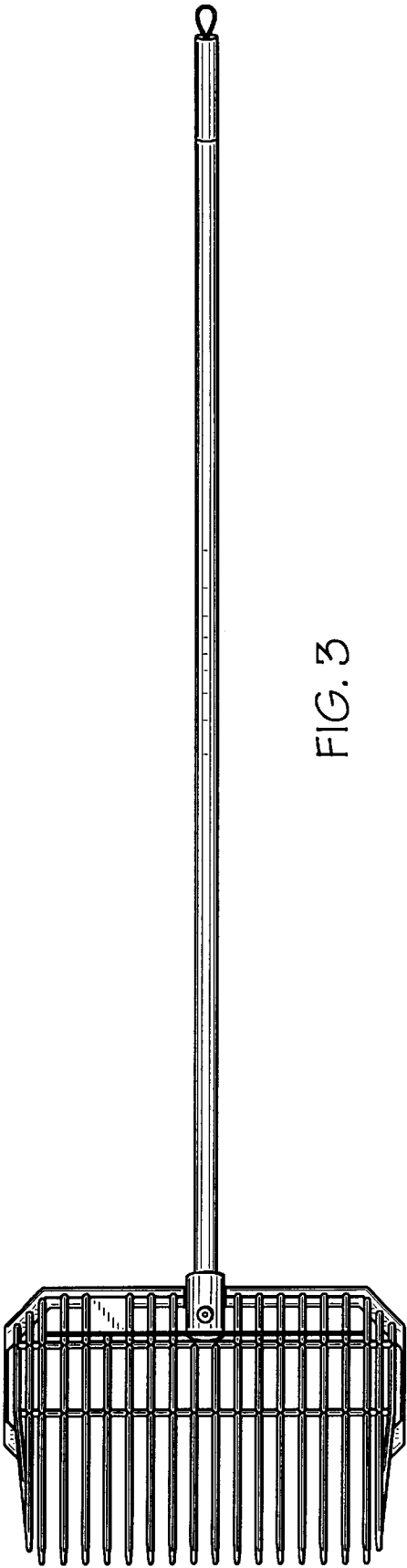


FIG. 3

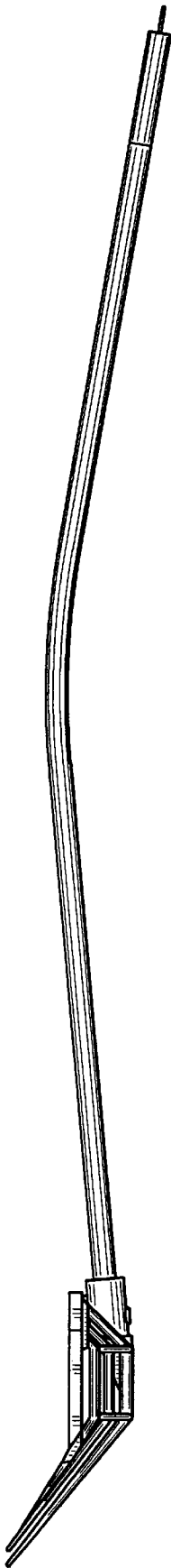


FIG. 4

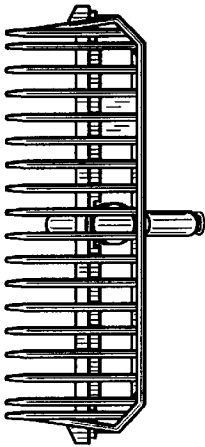


FIG. 6

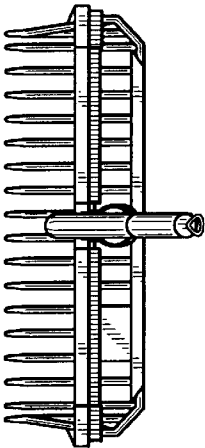


FIG. 5

EXHIBIT 6



EXHIBIT 7



EXHIBIT 8



EXHIBIT 9

