

1 Brian W. LaCorte (012237)
lacorteb@ballardspahr.com
2 BALLARD SPAHR LLP
1 East Washington Street, Suite 2300
3 Phoenix, AZ 85004-2555
Telephone: 602.798.5400
4 Facsimile: 602.798.5595

5 *Attorneys for Plaintiff*

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 Smith & Wesson Corp.,

9 Plaintiff,

10 v.

11 Brookshire Tool and Manufacturing Co.,
Inc. d/b/a ProMag Industries,

12 Defendant.

Case No.:

COMPLAINT

(Jury Trial Demanded)

14 Plaintiff Smith & Wesson Corp. ("Plaintiff" or "Smith & Wesson"), through its
15 attorneys, for its Complaint for Patent Infringement against Defendant Brookshire Tool
16 and Manufacturing Company, Inc. d/b/a ProMag Industries ("Defendant" or "ProMag"),
17 alleges as follows:

18 **THE PARTIES**

19 1. Plaintiff Smith & Wesson Corp. is a Delaware corporation having its
20 principal place of business at 2100 Roosevelt Avenue, Springfield, MA 01104.

21 . . .

22 . . .

1 follower being sized so as to fit within the narrowed portion of the case forming the
2 neck. (*See* Exhibit B at 2–3, 9–10.)

3 15. The Accused Product has a slot positioned in the neck, the slot extending
4 lengthwise along the neck toward the one end of the case. (*See* Exhibit B at 3–4,
5 10–11.)

6 16. The Accused Product has a hook mounted on the follower, the hook being
7 positioned to extend outwardly from the slot when the follower moves slidably through
8 the hollow at the neck. (*See* Exhibit B at 4–5, 11–12.)

9 17. The magazine is characterized in that the case further comprises a
10 centerline positioned equidistant between the first and second sides of the case, wherein
11 the neck is positioned offset from the centerline. (*See* Exhibit B at 6, 15.)

12 18. The magazine is characterized in that the hollow is sized to receive .22
13 caliber long rifle rounds. (*See* Exhibit B at 7, 14.)

14 19. The Accused Product is a magazine for a firearm having a magazine well
15 (*i.e.* the M&P15-22). (*See e.g.* Exhibit B at 8–15.)

16 20. On information and belief, ProMag has offered for sale and sold, and
17 offers for sale and sells the Accused Product on the internet, including on its website
18 www.promagindustries.com ("the ProMag Website"). (Exhibit C, Screenshots taken
19 from the Promag Website.)

20 21. On the ProMag Website, Promag states that the Accused Products are "for
21 Smith & Wesson M&P15-22 rifles." (Exhibit C.)

22 . . .

1 22. ProMag provides an insert in the packaging for the Accused Product
2 stating that the Accused Product is for use with "S&W M&P15-22" and for use with
3 ".22 LR" ammunition. (Exhibit D, Accused Product Packaging.)

4 23. On information and belief, ProMag has offered for sale and sold, and/or
5 offers for sale and sells the Accused Products to retail stores in the United States,
6 including for example, at Bass Pro Shops, Sportsman's Warehouse and the Palmetto
7 State Armory retail stores, which retail stores sell the Accused Products to end user
8 customers for use in firearms such as the M&P15-22.

9 24. On information and belief, ProMag has offered for sale and sold, and/or
10 offers for sale and sells the Accused Products to online retailers in the United States,
11 which online retailers sell the Accused Products to end user customers for use in
12 firearms such as the M&P15-22.

13 25. The Accused Products have been, and/or are, offered for sale in the United
14 States on the internet, including on, for example, the following websites:
15 www.code3tactical.com and www.tacticalvantage.com. (Exhibit E, Screenshots taken
16 from Online Retailer Websites.)

17 26. On information and belief, the Accused Products have arrived in the state
18 of Arizona through ProMag's purposeful shipment of the products to customers from the
19 ProMag Website, and/or through an established distribution channel, through Promag's
20 sale of the Accused Products to retailers and/or online retailers.

21 . . .

22 . . .

1 *U.S. Patent No. 8,356,439: Claims 1–3*

2 27. ProMag has infringed and is still infringing at least claims 1–3 of the '439
3 patent directly under 35 U.S.C. § 271(a) by making, importing, offering for sale, using
4 and/or selling the Accused Products, and will continue to do so unless enjoined by this
5 Court.

6 28. On information and belief, retail stores have and are still infringing at least
7 claims 1–3 of the '439 patent directly under 35 U.S.C. § 271(a) by selling and/or
8 offering for sale in the United States the Accused Products.

9 29. Online retailers have and are still infringing at least claims 1–3 of the '439
10 patent directly under 35 U.S.C. § 271(a) by selling and/or offering for sale in the United
11 States the Accused Product.

12 30. End users have and are still infringing at least claims 1–3 of the '439
13 patent directly under 35 U.S.C. § 271(a) by using in the United States the Accused
14 Product.

15 31. ProMag has had knowledge that the Accused Product infringes the '439
16 patent since at least as early as April 2013. (Exhibit F, April 4, 2013 Letter.)

17 32. ProMag therefore is a contributory infringer of at least claims 1–3 of the
18 '439 patent under 35 U.S.C. § 271(c) with respect to retailers, online retailers and end
19 users' direct infringement of the '439 patent, and will continue to infringe unless
20 enjoined by this Court.

21 33. On information and belief, ProMag has purposefully caused, encouraged,
22 and urged retailers and online retailers to sell and/or offer for sale, and end users to use,

1 the Accused Products in the United States with the knowledge and intent that such
2 activities would directly infringe at least claims 1–3 of the '439 patent, and intended
3 retailers, online retailers and end users to carry out such activities. ProMag has had
4 such knowledge and intent since at least as early as April 2013. (Exhibit F.)

5 34. ProMag therefore induces under 35 U.S.C. § 271(b) retailers, online
6 retailers and/or end users' direct infringement of at least claims 1–3 of the '439 patent,
7 and will continue to do so unless enjoined by this Court.

8 ***U.S. Patent No. 8,356,439, Claims 4–7***

9 35. End users have purchased and/or otherwise obtained the Accused Product
10 and, in the United States, combined the Accused Product with a firearm having a
11 magazine well (*i.e.* the M&P15-22). By doing so, the end users have infringed and are
12 still infringing at least claims 4–7 of the '439 patent directly under 35 U.S.C. § 271(a)
13 by using the invention claimed therein.

14 36. ProMag makes, imports, offers for sale, uses and/or sells in the United
15 States the Accused Product.

16 37. Retail stores sell and/or offer for sale to end users in the United States the
17 Accused Product. On information and belief, ProMag ships the Accused Products,
18 directly or indirectly, to retail stores.

19 38. Online retailers sell and/or offer for sale to end users in the United States
20 the Accused Product. On information and belief, ProMag ships the Accused Products,
21 directly or indirectly, to online retailers.

22 . . .

1 39. The Accused Products are intended, designed, made, and configured to be
2 used with the M&P15-22.

3 40. ProMag has had knowledge that combining the Accused Products with the
4 M&P15-22, infringe at least claims 4–7 of the '439 patent since at least as early as April
5 2013. (Exhibit F.)

6 41. On information and belief, at least by advertising the infringing use in its
7 promotional materials and/or by including an insert in the packaging for the Accused
8 Products which direct end users to use the Accused Product with a firearm with a
9 magazine well (*i.e.* the M&P15-22), ProMag has purposefully caused, encouraged, and
10 urged end users to use the Accused Product, with the knowledge and intent that such
11 activities would directly infringe at least claims 4–7 of the '439 patent, and intend end
12 users to carry out such activities. ProMag knows or should know that end users use, in
13 the United States, the Accused Products because ProMag distributes the products to
14 retailers and online retailers for resale to end users for this purpose and also because
15 ProMag distributes the products directly to end users for this purpose.

16 42. ProMag therefore induces under 35 U.S.C. § 271(b) direct infringement of
17 at least claims 4–7 of the '439 patent by end users of the Accused Products, and will
18 continue to infringe unless enjoined by this Court. ProMag also therefore is a
19 contributory infringer of at least claims 4–7 of the '439 patent under 35 U.S.C. § 271(c)
20 with respect to direct infringement of at least claims 4–7 of the '439 patent by end users
21 of the Accused Products, and will continue to infringe unless enjoined by this Court.

22 . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

F. Such other further relief in law or equity to which Plaintiff may be
justly entitled.

JURY DEMAND

Plaintiff demands a trial by jury.

RESPECTFULLY SUBMITTED this 4th day of April, 2013.

BALLARD SPAHR LLP

By: /s/ Brian W. LaCorte
Brian W. LaCorte (012237)
lacorteb@ballardspahr.com
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400
Facsimile: 602.798.5595

Attorneys for Plaintiff