

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Z-MAN FISHING PRODUCTS, INC.,	)	Civil Action No.
	)	
Plaintiff,	)	
	)	
vs.	)	<u>COMPLAINT</u>
	)	
APPLIED ELASTOMERICS, INC.,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW Z-Man Fishing Products, Inc. (“Z-Man”) and files the instant Complaint against Applied Elastomerics, Inc. alleging as follows:

PARTIES

1. Plaintiff Z-Man is a South Carolina corporation with its principal place of business in Hanahan, South Carolina.
2. Defendant Applied Elastomerics, Inc. (“AEI”) is a California corporation with its principal place of business in South San Francisco, California.

JURISDICTION AND VENUE

3. This Court is vested with jurisdiction over the parties and the subject matter of this action under 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the claims in this Complaint which arises under the statutory and common law of the State of South Carolina pursuant to 28 U.S.C. § 1367(a), since the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. Personal jurisdiction is proper in the District of South Carolina because AEI does substantial business nationwide, including in South Carolina, subjecting AEI to general jurisdiction in the State of South Carolina. For example, AEI manufactures and distributes GlueBall®, GlueFrog®, GlueSlug®, and other Memory-Gel® products through interstate commerce, including, upon information and belief, into the State of South Carolina. Moreover, specific personal jurisdiction is proper by virtue of AEI's execution of a contract with Z-Man which is the subject of the instant Complaint. Critical steps of contract formation took place in South Carolina, execution by Z-Man occurred in South Carolina, AEI knew that the contract would be performed in large part in South Carolina, and AEI sent numerous letters and placed numerous telephone calls to South Carolina concerning issues related to the Agreement. AEI's breach of the contract caused injury to Z-Man in South Carolina, a substantial part of the events and omissions giving rise to the dispute took place in this district, and it would not be unjust or unreasonable to subject AEI to jurisdiction in this district.

5. Venue is proper under 28 U.S.C. §§ 1391(b) and 1400 (b).

#### ALLEGATIONS

6. Z-Man develops and manufactures fishing lure components and fishing lures for major lure manufacturers. Z-Man has historically been known for its original development and manufacture of silicone skirts for lures.

7. AEI develops and distributes products containing gel composites, in particular, gel toys.

8. Mike Shelton is the Vice President of Marketing and Sales, Director of Technology for Z-Man. Mr. Shelton has been active in developing the technology for Z-Man's

products since he joined the company. Mr. Shelton has 35 years of experience with rubber, silicone and numerous elastomeric and plastic compounds and coatings.

9. For many years prior to 2001, Mr. Shelton had been leading efforts to develop a stronger, softer, and more buoyant plastic lure than those made of plastisol and related compounds that formed the bulk of the “plastic” lures on the market. As part of that process, Mr. Shelton conducted extensive polymer research and tested various polymers and elastomeric compounds and formulas.

10. In doing so, Mr. Shelton became aware of AEI and John Chen. John Chen is the president of AEI. All references to Mr. Chen herein are to his actions on behalf of AEI. It was Mr. Shelton’s understanding that AEI had experience with soft gels of the type that Mr. Shelton thought might have application to the fishing lures that Mr. Shelton had been developing prior to 2001 for Z-Man.

11. In early 2001, Mr. Shelton, from his office at Z-Man in South Carolina, contacted Mr. Chen by telephone at AEI’s headquarters in South San Francisco to discuss the revolutionary gel lure product line that Mr. Shelton was developing for Z-Man. During this telephone call Mr. Shelton explained in detail characteristics required of the lures that Z-Man was trying to develop. Mr. Chen, on behalf of AEI, made various representations about AEI’s patents, including assuring Mr. Shelton that AEI’s patented technology covered what Z-Man was trying to do with fishing lures and that Mr. Chen had successfully enforced his patents against others.

12. After hearing from Mr. Chen that AEI had mature technology that would facilitate and expedite Z-Man’s development efforts, Mr. Shelton inquired as to the possibility of licensing all of AEI’s relevant technology if it would allow Z-Man to produce a revolutionary new line of durable lures.

13. Mr. Chen sent Mr. Shelton a copy of AEI's standard nondisclosure and license agreement. Mr. Shelton and Mr. Chen -- by telephone and fax -- negotiated the terms of the parties' relationship from their respective offices. The focus from Z-Man was primarily on the length of the licensing agreement, the consideration to be paid by Z-Man to AEI, and the exclusivity of the parties' relationship. There was no negotiation as to the dispute resolution and choice-of-law provisions that are included in the Agreement.

14. By late July 2001, AEI had revised somewhat its standard license agreement and sent it to Mr. Shelton in South Carolina for execution. The copy of the license agreement that arrived in Z-Man's office had been executed by Mr. Chen on July 18, 2001. Mr. Shelton executed the Agreement on July 24, 2001 with the understanding that the dollar figures relating to annual sales and minimum royalties reflected in the Agreement would be significantly lowered and that a subsequent amendment to the license would be executed.

15. In July of 2001, in South Carolina, Z-Man executed the Exclusive Patent License Agreement ("License Agreement"), with an effective date of April 26, 2001. (A true and correct copy of the License Agreement is attached hereto as Exhibit A and incorporated herein by reference.) Pursuant to the License Agreement, Z-Man was to receive a license to use the "Licensed Products" identified in the License Agreement in the development of a new line of soft plastic fishing lures.

16. The License Agreement recites that AEI owns and has rights to license certain "Patent Rights."

17. "Patent Rights" is defined as "the United States and international patents listed on Schedule A" and patents that "read on the Licensed Products"; "continuing patents (divisionals,

continuations, and C-I-Ps) which are directed to the subject matter of patents on Schedule A”; and “reissues, etc. of patents” described above (“Patent Rights”). (Agrmt. at ¶ 1.7.)

18. Schedule A of the License Agreement lists the following four Patents which cover crystal gels: U.S. Patent No. 5,884,639, “Crystal Gels With Improved Properties,” issued March 23, 1999 (the “‘639 Patent”); U.S. Patent No. 6,117,176, “Elastic Crystal Gel,” issued September 12, 2000 (the “‘176 Patent”); U.S. Patent No. 6,148,830, “Tear Resistant, Multiblock Copolymer Gels and Articles,” issued November 21, 2000 (the “‘830 Patent”); and U.S. Patent No. 6,161,555, “Crystal Gels Useful As Dental Floss With Improved High Tear; High Tensile, And Resistance To High Stress Rupture Properties,” issued December 19, 2000 (the “‘555 Patent”) (collectively referred to hereinafter as “the Schedule A Patents”).

19. Additionally, AEI has alleged at various times in writing that U.S. Patent 5,633,286 (the ‘286 Patent”) and U.S. Patent 6,552,109 (the “‘109 Patent”) as well as CIP U.S. Patent No. 6,420,475 (the “‘475 Patent), were covered by Schedule A of the License Agreement (the patents listed in Paragraphs 18 and 19 are referred to collectively as “AEI’s Non-Fishing Lure Patents”).

20. The License Agreement grants Z-Man a nonexclusive, royalty bearing license under AEI’s Patent Rights “to develop, make, have made, use, offer to sell, sell, lease, export, and import Licensed Products.” (Agrmt. § 2.1(a)).

21. The Agreement further provides for exclusivity by restriction as follows: “AEI agrees not to license any third party to manufacture or sell a Licensed Products.” (Agrmt. § 2.2(a)).

22. AEI was to maintain the exclusivity of the license pursuant to the terms of the Agreement and the parties’ course of conduct.

23. “Licensed Products” is defined as “one or more fishing lure products in the Field which is developed, manufactured and marketed by Company under Company’s specifications and trademarks as listed by product item number, described, defined, and with the designation of the type of gel composition used on Schedule B as of the Effective Date or later added as a New Licensed Product . . . that cannot be manufactured made, used, offered for sale, leased, or sold, in whole or in part, without infringing one or more of the Patent Rights.”

24. “Field” is defined as “the fishing lure field limited to Licensed Products which are listed and described on Schedule B. . . .”

25. “Schedule B” lists: “a fishing lure made from Crystalline poly(styrene-ethylene-ethylene-propylene-styrene) gel or SEEPS gel.”

26. Article I also defines various categories of information which are included within the license (but not “Patent Rights”) as follows:

“AEI Technology” shall mean materials, any information relating to manufacturing techniques, know-how, processes, developments, experimental works, works in progress, trade secrets, or any other matter relating to the business of AEI or developed by AEI.

Agrmt. § 1.13 (emphasis added).

27. The ‘639, ‘176, ‘830 and ‘555 Patents recite, in their independent claims, highly crystalline or substantially crystalline midblock copolymers. Each of these nearly identical passages state, in summary, that such crystal gels must have a DSC melting endotherm of at least 20 to 25 degrees Celsius.

28. Patents that read on Licensed Products is limited by the definition of Field, which is in turn limited by those items described on Schedule B. Schedule B describes fishing lures made from Crystalline SEEPS. The Agreement, read as a whole, makes clear that “Crystalline”

refers to highly or substantially crystalline midblocks and those materials have DSC melting endotherms of at least 20 to 25 degrees Celsius.

29. In consideration for the exclusive license of the Schedule A Patents and AEI's guarantees that AEI would maintain the exclusivity of the license, Z-Man was obligated under the Agreement to pay certain minimum royalties.

30. To memorialize the previous agreement concerning lower minimum royalties, a modification to the License Agreement's minimum royalties provision was executed by Z-Man and sent to AEI in late March 2002, a true and accurate copy of which is attached at Exhibit B.

#### PHASE ONE DEVELOPMENT OF CYBERFLEXX LINE

31. Mr. Chen, on behalf of AEI, provided a limited number of formulations to Z-Man that were represented to be within the scope of the Patent Rights licensed to Z-Man. However, the formulas that were provided were not covered by the AEI's Patent Rights.

32. Throughout the remainder of 2001, Z-Man worked with Don Rawlings of Color Technologies, Inc. of Brooklet, Georgia ("CTI"), a plastics manufacturer with which Z-Man had worked in the past, to further develop its durable stretch lure product line. Z-Man, in fact, reassigned one of its employees, Randy Hillyer, to Georgia in 2001 so that he could work on site at CTI directly on the development of the product line. CTI used Z-Man's molding equipment in the process as it did not own the appropriate production equipment itself. Z-Man performed the work with CTI pursuant to an understanding of exclusivity and confidentiality.

33. Z-Man and CTI had some contact with Mr. Chen during the development phase of the product line. The product line, named "CYBERFLEXXX" by Z-Man, was developed at Z-Man's facility in South Carolina and CTI's facility in Georgia, and initially manufactured in

Georgia. In fact, Z-Man made a substantial investment (well in excess of \$1 million) in machinery to manufacture the product line, which machines were placed temporarily with CTI.

34. To the extent Mr. Chen was involved in the development of the CYBERFLEXXX product, it was by way of communications made over the telephone and faxes and a small number of samples exchanged between AEI in South San Francisco and Z-Man or CTI in South Carolina or Georgia.

35. By December 2001, Z-Man had entered into a supply agreement with Strike King for the bulk manufacture of CYBERFLEXXX products, which were to be marketed under the name “3X” by Strike King. Z-Man eventually entered into similar agreements with Outdoor Innovations (d/b/a “Terminator Lures”) and Wahoo Fishing Products, Inc. (a Florida corporation located in Punta Gorda, Florida) (“Wahoo”). Outdoor Innovations marketed the products it purchased under the name “Snap-Back” and Wahoo labeled the products it purchased under the name “Cyberflexx.” All of the CYBERFLEXXX products sold by Z-Man were sold to these three manufacturers.

36. Z-Man first began shipping CYBERFLEXXX products, which were manufactured at CTI’s facility in Georgia, toward the end of the first quarter of 2002.

37. However, customers reported that these initially shipped products started to deform because of a heat distortion problem resulting from heat exposure. As a result, they were pulled off the market in March 2002 to examine the “heat set” problem.

#### PHASE TWO REVISIONS AND DISCLOSURE OF Z-MAN’S TRADE SECRETS TO AEI

38. Mr. Shelton led Z-Man’s effort to fix the “heat set” problem and undertook research and development to revise the product line. These initial revisions to the product line are referred to hereinafter as “Phase Two” revisions.



39. During the collaboration with AEI on the Phase Two re-formulation of the CYBERFLEXXX products, Mr. Chen asked for information from Z-Man which consisted of Z-Man's trade secrets.

40. On April 26, 2001, Mr. Chen executed on behalf of AEI a Confidentiality Agreement, which provides in relevant part as follows:

The parties agree that all information obtained from the other, including without limitation ideas, inventions, materials, any information relating to manufacturing techniques, know-how, processes, algorithms, developments, experimental works, works in progress, products, trade secrets, scripts, characters, artwork, story lines or any other matter relating to artistic creations or the business of each party, information acquired by a party from the other's employees or inspection of a parties property, proprietary information disclosed to a party by third parties, together with any material prepared by a party which contains or otherwise relates to such information or any information relating to transactions and/or meetings between the parties shall be deemed "Confidential Information."

The parties agree that after the date of any disclosure they will not reveal the Confidential Information obtained to others . . . .

No other use or disclosure of the Confidential Information shall be made by a party without prior written consent of the other party.

(Confidentiality Agreement, Attached as Exhibit C at ¶¶ 1-2.)

41. Pursuant to the Confidentiality Agreement, Z-Man responded to Mr. Chen's requests by providing him with information regarding scents that could be added to fishing lures, heat distortion testing procedures developed by Z-Man, data and testing samples, drawings, information on the potential use of rattle pockets, education on the development and chemical formulations of lures, colorization of lures, durometer of lures, compilations of fishing techniques, information on plastisol, drawings of lure bodies, and other illustrations ("Proprietary Fishing Lure Information").

42. Mr. Shelton indicated by letter dated April 15, 2002 that this Proprietary Fishing Lure Information was being provided to Mr. Chen for use in a potential joint Patent Application by the two parties.

43. By letters dated June 2, 2004, June 14, 2004, and September 25, 2005, Mr. Chen acknowledged receipt of the rattle pockets, drawings and testing procedures and data, all being part of Proprietary Fishing Lure Information.

44. The second generation CYBERFLEXXX products started shipping in late third quarter 2002. The Phase Two product line was reformulated by increasing the viscosity of the oil in an effort to reduce the heat distortion problem.

45. The Phase Two CYBERFLEXXX product line reduced the heat distortion to an acceptable level, but greatly increased the surface tack. After initial wetting and drying, the individual lures would become tacky and undesirable, clinging to itself and making the lure more difficult to fish. The Phase Two lures were also considered too soft by some.

46. In February 2003, production stopped once again on the CYBERFLEXXX Phase Two product line in an effort to examine and fix the tackiness issues and make the product more fishable.

#### AEI'S FAILURE TO MAINTAIN EXCLUSIVITY

47. At around the same time that Z-Man realized that the CYBERFLEXXX line once again required reformulation, Z-Man was repeatedly notifying AEI through Mr. Chen of various infringing products that were in the marketplace.

48. For example, Z-Man learned that Gene Larew Plastic, Spro Plastics, and Cabela's were all manufacturing infringing products and notified AEI repeatedly of the same.

49. AEI acknowledged by letter dated July 31, 2003 its duty to maintain exclusivity by policing infringers. For example, AEI assured Z-Man that it would notify Cabela's and Spro of their infringement and demand they stop their infringement without delay.

50. On August 28, 2003, Z-Man made a payment to AEI under protest due to AEI's failure to perform the steps necessary to police and stop the various infringing parties such as Cabela's and Spro from continuing to sell "knock off" products in competition with the CYBERFLEXXX product line.

51. By the same letter, Z-Man notified AEI of an additional infringing sample (manufacturer unknown at that time) which was distributed to at least one of Z-Man's customers.

52. Z-Man advised AEI that sales of its CYBERFLEXXX product line were drastically and adversely affected by the existence of the competing products and AEI's failure to maintain exclusivity as required under the Agreement.

53. Despite this series of notifications and follow-up correspondence by Z-Man, AEI failed to act reasonably to stop these infringing uses or otherwise maintain exclusivity as it was required to do under the Licensing Agreement.

54. Because AEI failed to maintain exclusivity, Z-Man's product sales declined significantly.

55. Moreover, Mr. Chen notified Z-Man for the first time that certain competing products using soft gels on the market were covered under a different patent allegedly owned by AEI that was not included in the Licensing Agreement. It was at this point that Mr. Chen offered to license other of AEI's patent rights to Z-Man, which Z-Man believed should have already been covered by the Licensing Agreement. Z-Man had been advised previously that all of AEI's Patents involving gel formulations to be used in fishing lures were covered by the Licensing

Agreement. In fact, Mr. Chen subsequently acknowledged that he had made such representations at the outset of entering into the Licensing Agreement. In his letter dated September 25, 2004 to Z-Man, Mr. Chen states as “Background” that the License Agreement “granted Z-Man exclusive rights to all AEI’s patents and pending patent applications in Patent Rights to make, use, and sell Licensed Products in the Field, including AEI Technology in connection with the manufacture, use, and sale of Licensed Products.” (Ltr. From Chen to Z-Man dated September 25, 2004 at 1 (emphasis added)).

56. Z-Man has since learned that the gel formulation initially provided by AEI which was incorporated in Z-Man’s CYBERFLEXXX Phase One line and Phase Two re-formulation was not covered by AEI’s Patent Rights.

MR. CHEN’S NEW PATENT APPLICATIONS AND MISAPPROPRIATION OF Z-MAN’S TRADE SECRETS

57. In January 2003, Z-Man learned for the first time that Mr. Chen applied for a patent which was published on December 12, 2002 and meant to encompass the products that Z-Man was manufacturing (e.g., frogs, grubs, worms) (Publication 2002/0188057). Mr. Chen also applied for additional patents which were intended to encompass all of the products that Z-Man was manufacturing. (Publications 2003/0130407; 2004/0018223; and 2004/0018272). These patents were CIP Patent Applications Serial Nos. 10/199, 361, 10/199, 362, 10/199, 363 and 10/199, 364 (collectively, “AEI’s Fishing Lure Patent Applications”).

58. It was from Mr. Shelton that Mr. Chen learned that the original AEI formulation provided to Z-Man ostensibly under the License Agreement was a failure due to heat distortion problems and needed to be re-formulated.

59. Mr. Shelton and Mr. Chen worked together collaboratively on the Phase Two reformulation of the CYBERFLEXXX product line to address the heat set problems that had occurred in the Phase One product line.

60. During the research and development process of this Phase Two reformulation, there was information sharing between AEI and Z-Man.

61. Z-Man had provided Mr. Chen with certain propriety information of Z-Man's during this process pursuant to the parties' Confidentiality Agreement.

62. It was through Mr. Shelton that Mr. Chen learned of a test by which samples could be screened for heat distortion problems. This information was shared pursuant to the parties' Confidentiality Agreement.

63. The test that Mr. Shelton shared with Mr. Chen pursuant to the Confidentiality Agreement was included in the publications submitted by Mr. Chen in support of AEI's Fishing Lure Patent Applications.

64. It was through Mr. Shelton that Mr. Chen gained information about the fishing lure market, including such things as the advantage of adding food-type attractants to the bait and drawings of popular baits, the development and chemical formulations of lures, colorization of lures, and durometer of lures, all provided pursuant to the parties' Confidentiality Agreement.

65. All of this information was made public by its inclusion in statements made by Mr. Chen in support of the patent applications.

66. On January 13, 2003, Jeff Winkler, counsel for Z-Man, wrote a letter to Mr. Chen regarding Mr. Chen's inclusion of Z-Man's proprietary information in the patent applications.

67. The patent applications contain Z-Man's trade secrets which were disclosed to Mr. Chen pursuant to the parties' Confidentiality Agreement during the Phase Two re-

formulation of the CYBERFLEXXX line, including Z-Man's drawings, information, and testing formulas.

68. Mr. Chen did not seek or obtain authorization for the disclosure of Z-Man's trade secrets; nor did he attribute Z-Man's trade secrets to Z-Man or Mr. Shelton in any respect in the Patent Application.

#### CONTINUED EFFORTS TO SOLVE PROBLEMS WITH CYBERFLEXXX

69. Because of the ongoing difficulties, which included AEI's failure to maintain exclusivity as well as the ongoing problems with the formulations provided by AEI, Z-Man reformulated its CYBERFLEXXX product line through its own research and development efforts, without input or collaboration with AEI.

70. To help support this ongoing research by Z-Man, in June 2003, Z-Man established a new dedicated Research and Development facility in Ladson, South Carolina.

71. Mr. Shelton headed up the research and reformulation of the CYBERFLEXXX product line, primarily to solve the tackiness problem and the problem that the lures were considered too soft by the relevant consuming public.

72. For over one year, Mr. Shelton and another Z-man employee conduct research and experiments to develop a lure that would meet the characteristics demanded by Z-Man's customers. A new lure formulation and colorization was developed by May 5, 2005. Such formulation is completely different from any suggestions or formulations provided by AEI and has characteristics making the baits essentially tack free and fishable.

73. Z-Man eventually recovered its molding equipment from CTI, which had been shut down due to lack of orders, and started manufacturing additional CYBERFLEXXX products at its facility in South Carolina.

AEI'S BREACH OF LICENSE AGREEMENT

74. Unaware of AEI's various fraudulent and improper business practices, Z-Man paid the minimum royalties under the Agreement for the first, third, and fourth quarters of 2002, and for the first quarter of 2003, as well as other running royalties for products sold by Z-Man that Z-Man believed at the time to be covered by the Agreement. Z-Man also made running royalty payments in the second, third and fourth quarters of 2003 for products sold by Z-Man that Z-Man believed at the time to be covered by the Agreement, certain payments of which were under protest.

75. Under the Agreement, Z-Man made a total of 9 payments to AEI of approximately \$420,000. Z-Man made its first payment on June 11, 2001 and its last on February 23, 2004. Each of the nine payments was made by check drawn on an account maintained by Z-Man with Branch Banking and Trust Company of South Carolina. The checks were mailed by Z-Man from South Carolina to AEI's offices in South San Francisco.

76. On or before February 23, 2004, the date of Z-Man's last payment, AEI had already previously materially breached the License Agreement in a variety of ways, including but not limited to, not maintaining exclusivity, failing to provide Z-Man with any formulation within the scope of the covered Patent Rights, failing to provide a formula that met the characteristics of suitable for fishing lures as promised and failing to act in accordance with its duties of good faith and fair dealing.

77. On June 4, 2004, AEI wrote a letter to Z-Man seeking additional royalties, alleging that Z-Man's CYBERFLEXXX line consisted of materials covered by the License Agreement.

78. On August 24, 2004, Z-Man notified AEI of Z-Man's intent to terminate the minimum royalty provisions of the Agreement on account of AEI's unlawful actions and breaches of the License Agreement, to the extent any obligation remained in light of AEI's failure to maintain exclusivity.

79. On September 25, 2004, Mr. Chen responded on behalf of AEI and maintained that the Patents covered by the License Agreement were valid.

80. By the same letter, Mr. Chen asserted that in addition to the four listed Patents on Schedule A, the "Patent Rights" covered by the Agreement also included the '286 and '109 Patents, as well as, CIP U.S. Patent No. 6,420,475, U.S. Patent No. 6,794,440 and CIP Applications Ser. Nos.: 10/199,362 and 10/199,363.

81. Z-Man asserts that a plain reading of the Agreement does not include U.S. Patents '109 and '286 and that Mr. Chen's course of conduct prior to attempting to extract additional royalties from Z-Man establishes the invalidity as well as the inequity of his later position. Mr. Chen took positions inconsistent with his letter dated September 25, 2004 by asserting previously that he could not maintain exclusivity to the degree requested by Z-Man because not all of AEI's relevant technology had been licensed to Z-Man. Z-Man further asserts these patents are not infringed.

82. Z-Man has filed the present action asserting claims for breach of the License Agreement, breach of the Confidentiality Agreement, misappropriation of trade secrets, negligent misrepresentation, fraud in the inducement, fraud in the execution, breach of fiduciary duty, and various declaratory judgments that the Licensing Agreement is void and, even if that were not the case, that there is no money due to AEI under the Agreement because, among other reasons, the lures Z-Man developed did not come within AEI's Patent rights and therefore did



not trigger any royalty obligations. Z-Man further seeks a return of all monies previously paid under the Licensing Agreement in light of the failure of consideration for that Agreement and the inequity that would result from failing to return Z-Man to the *status quo*.

COUNT ONE

(Breach of Exclusive License Agreement for Failure to Provide Formulations Covered by Patent Rights)

83. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

84. The parties entered into the License Agreement, which if valid would be enforceable against AEI.

85. AEI was obligated under the License Agreement to provide Z-Man with certain technical information, including formulas, to enable Z-man to manufacture, use and sell License Products.

86. AEI failed to provide Z-Man with any formula either within the scope of patent rights licensed under the License Agreement. The failure to do so was a material breach of the Agreement.

100. There was no prior material breach by Z-Man.

101. Z-Man has been and continues to be damaged as a result of AEI's breach of the License Agreement, including but not limited to in the form of lost business and profits, harm to reputation and good will, and payment of monies under the Agreement without receipt of the agreed-upon consideration for the same.

COUNT TWO

(Breach of License Agreement for Failure to Maintain Exclusivity)

102. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

103. The parties entered into the License Agreement, which if valid is enforceable against AEI.

104. The License Agreement obligates AEI to maintain exclusivity of the Licensed Products.

105. AEI breached the License Agreement by failing to maintain exclusivity.

106. AEI's failure to maintain exclusivity was a material breach of the License Agreement and in particular the minimum royalties provision.

107. There had been no prior material breach of the License Agreement by Z-Man.

108. Z-Man has been and continues to be damaged as a result of AEI's breach of the License Agreement, including but not limited to in the form of lost profits, harm to reputation and good will, and payment of monies under the Agreement without receipt of the agreed-upon consideration for the same.

COUNT THREE  
(Breach of Confidentiality Agreement)

109. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

110. The parties entered into a Confidentiality Agreement which is valid and enforceable against AEI.

111. The Confidentiality Agreement provides in relevant part that AEI could not disclose Z-Man's proprietary information to any third party absent certain exceptions not relevant here.

112. Pursuant to the Confidentiality Agreement, Z-Man provided AEI with Proprietary Fishing Lure Information.

113. AEI breached the terms of the Confidentiality Agreement by disclosing Z-Man's proprietary information in one or more patent applications, including CIP Patent '440 and CIP Patent Applications '362 and '363.

114. As a result of AEI's breach of the Confidentiality Agreement, Z-Man has been and continues to suffer pecuniary harm.

COUNT FOUR  
(Breach of Covenant of Good Faith and Fair Dealing)

115. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

116. The License Agreement and the Confidentiality Agreement entered into between the parties are valid and enforceable against AEI.

117. The License Agreement and the Confidentiality Agreement include implied covenants of good faith and fair dealing.

118. AEI breached the covenants of good faith and fair dealing in various ways, including but not limited to by failing to provide Z-Man with formulas that were covered by AEI's Patent Rights, by representing that its formulas would perform the functions that Z-Man required in the development of its line of fishing lure products, by failing to maintain exclusivity, by attempting to license other formulas to Z-Man represented to be already within the scope of the License Agreement, by attempting to extract additional royalty payments not warranted under the License Agreement using fraudulent means, and by converting Z-Man's proprietary information for AEI's own pecuniary gain to the detriment of Z-Man.

119. As a result of AEI's failure to honor its duties of good faith and fair dealing, Z-Man has been and continues to be damaged, including but not limited to in the form of lost profits, harm to reputation and good will, and payment of monies under the Agreement without receipt of the agreed-upon consideration for the same.

COUNT FIVE  
(Misappropriation of Trade Secrets)

120. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

121. During the collaboration with AEI on the Phase One development and Phase Two re-formulation of the CYBERFLEXXX product line, Z-Man shared information with Mr. Chen on behalf of AEI which consisted of Z-Man's trade secrets.

122. Pursuant to the Confidentiality Agreement, Z-Man provided Mr. Chen with Proprietary Fishing Lure Information.

123. All of the information, testing procedures and data, and formulas shared with Mr. Chen consisted of Z-Man's trade secrets within the meaning of the South Carolina Trade Secrets Act, S.C. Code Ann. §§ 39-8-1 *et. seq.* and the Uniform Trade Secrets Act.

124. Z-Man took reasonable steps to maintain the confidentiality of its trade secrets.

125. AEI gained access to Z-Man's trade secrets and confidential information as a result of its collaboration with Z-Man on the reformulation of the CYBERFLEXXX product line. AEI gained access to the Proprietary Fishing Lure Information under circumstances giving rise to a duty to maintain its secrecy and limit its use.

126. AEI is using and disclosing trade secrets belonging to Z-Man and is doing so in competition with Z-Man by, for example, including the trade secrets in patent applications for the benefit of AEI.

127. Z-Man's trade secrets are not generally known to or readily ascertainable by proper means by Z-Man's competitors and Z-Man derives economic value from these trade secrets not generally being known.

128. AEI's actions constitute actual and threatened misappropriation of trade secrets in violation of the South Carolina Trade Secrets Act and the Uniform Trade Secrets Act.

129. As a result of AEI's conduct, Z-Man has been damaged, and AEI has been unjustly enriched.

130. Unless restrained, AEI will continue to misappropriate Z-Man's confidential information and trade secrets, causing continuing and irreparable injury to Z-Man's business for which Z-Man has no adequate remedy at law.

131. Pursuant to S.C. Code § 39-8-2 and the Uniform Trade Secrets Act, Z-Man is entitled to an injunction prohibiting and preventing AEI from continuing to use or disclose trade secrets.

132. In addition, Z-Man is entitled to damages pursuant to S.C. Code § 39-8-3 and the Uniform Trade Secrets Act for the misappropriation that has taken place and continues to take place.

133. Said misappropriation is willful and malicious, and Z-Man is entitled to damages in an amount not exceeding twice an award made under S.C. Code § 39-8-3, as well as reasonable attorneys' fees under S.C. Code § 39-8-4.

COUNT SIX  
(Conversion)

134. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

135. During the collaboration with AEI on the Phase One development and the Phase Two re-formulation of the CYBERFLEXXX product line, Z-Man shared information with Mr. Chen on behalf of AEI which consisted of Z-Man's trade secrets.

136. Pursuant to the Confidentiality Agreement, Z-Man provided Mr. Chen with Proprietary Fishing Lure Information.

137. Mr. Chen, acting on behalf of AEI, is using and has used such data, documents or other things for AEI's own purposes by submitting the data, documents or things in support of patent applications on behalf of AEI to the benefit of AEI and detriment of Z-Man.

138. Such aforementioned data, documents or things belong to Z-Man, not to AEI.

139. Z-Man did not consent to or otherwise authorize this conversion.

140. Z-Man has demanded that it be properly identified as the rightful owner of all data, documents or other items and things belonging to Z-Man, and AEI has not returned any data, documents or other items or things to Z-Man or otherwise properly accredited such data, documents or other items and things as belonging to Z-Man in the patent applications.

141. AEI's actions in converting such data, documents or other items or things was willful, reckless and/or committed with conscious indifference to the rights of others, including Z-Man.

142. As a result of AEI's acts of conversion, Z-Man been and continues to suffer damage. Z-Man is entitled to recover damages, including punitive damages, from AEI.

COUNT EIGHT  
(Fraud in the Inducement)

143. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

144. Mr. Chen made certain representations to induce Z-Man to enter into the License Agreement, including (1) that the patents that he was licensing to Z-Man on behalf of AEI would provide what Z-Man needed for its fishing lure product line; (2) that AEI would maintain the exclusivity of the Licensed Products; (3) that he would maintain the confidentiality of Z-Man's proprietary information; and (4) that he had and would continue to zealously enforce AEI's patents.

145. These representations made by Mr. Chen were made with knowledge of their falsity or reckless disregard of the truth or falsity and were material to Z-Man's decision to enter into the License Agreement. The technology that Mr. Chen provided to Z-Man in fact did not work for its intended use, first due to heat set problems, and then due to tackiness problems. Mr. Chen did not maintain the exclusivity of the Licensed Products and instead allowed competitors

to introduce infringing fishing lure products on the market to the detriment of Z-Man's profits and contractual relationships. Mr. Chen failed to maintain the confidentiality of Z-Man's proprietary information and instead converted it for his own pecuniary gain in various patent applications as set forth in preceding paragraphs.

146. Mr. Chen's specific fraudulent intent is shown, for example, by his response to Z-Man's notification regarding Cabela's manufacture of an infringing product. Rather than police Cabela's infringing product as agreed, Mr. Chen asserted for the first time that there was another technology that Z-Man needed to license that was not otherwise covered by the License Agreement. Z-Man had been led to believe through Mr. Chen's intentionally fraudulent representations prior to entering into the License Agreement that Z-Man was acquiring the right to use all the relevant technology covered by all of AEI's Non-Fishing Lure Patents. Indeed, Mr. Chen again made such representations in later attempting to collect additional royalties from Z-Man following his own conduct in violation of the Agreement, by for example, stating that the License Agreement granted Z-Man exclusive rights to "all" of AEI's patents and pending patent applications in Patent Rights to make, use, and sell Licensed Products in the Field. (Ltr. from Chen to Z-Man dated Sept. 25, 2004 at 1.) These inconsistent representations were intentionally fraudulent and solely for Mr. Chen's pecuniary gain.

147. Mr. Chen intended for Z-Man to rely on and act on his false representations.

148. Z-Man was ignorant of the falsity of Mr. Chen's representations and had the right to rely upon Mr. Chen's representations in deciding to enter the License Agreement.

149. Z-Man has been and continues to be damaged as a consequent and proximate result of Mr. Chen's fraudulent claims and statements made to induce Z-Man into entering the License Agreement. has been and continues to be damaged, including but not limited to in the

form of lost profits, harm to reputation and good will, as a result of AEI's breach of the License Agreement.

COUNT NINE  
(Negligent Misrepresentation)

150. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

151. Mr. Chen negligently made false representations to induce Z-Man to enter into the License Agreement, including (1) that the Patents that he was licensing to Z-Man on behalf of AEI would provide what Z-Man needed for its fishing lure product line; (2) that AEI would maintain the exclusivity of the Licensed Products; (3) that he would maintain the confidentiality of Z-Man's proprietary information; and (4) that he had and would continue to zealously enforce AEI's patents.

152. These representations were knowingly, intentionally, recklessly, or negligently made. The Licensed Products were worthless. AEI failed to undertake any reasonable efforts to maintain the exclusivity of the Licensed Products; and Mr. Chen intentionally disclosed Z-Man's proprietary information to a third party for his own pecuniary gain without Z-Man's prior knowledge or consent.

153. Mr. Chen had a pecuniary interest in making the false representations, namely, to induce Z-Man to sign and make payments to AEI under a worthless License Agreement.

154. Mr. Chen owed Z-Man a duty of care to see that he transmitted truthful information to Z-Man.

155. Mr. Chen breached that duty by failing to exercise due care.

156. Z-Man reasonably relied on Mr. Chen's representations in deciding to enter the License Agreement.



157. Z-Man has been and continues to be damaged, including but not limited to in the form of lost profits, harm to reputation and good will, as a proximate result of its reliance on Mr. Chen's negligent claims and statements.

COUNT TEN  
(Fraud In The Execution)

158. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

159. Mr. Chen made certain false and inconsistent representations to Z-Man, including (1) that he could not police infringing products because they did not fall within the technology licensed to Z-Man; (2) that he had additional technology that could be licensed to Z-Man in the relevant Field of fishing lure products; and then, in an attempt to collect additional royalties not owed to AEI, and (3) that he had in fact at the outset of the License Agreement license "all" of AEI's patents and pending patent applications in the relevant field of fishing lure products.

160. These representations made by Mr. Chen were made with knowledge of their falsity or feckless disregard of the truth or falsity and were material to Z-Man's decision to continue to make payments under the License Agreement.

161. Mr. Chen intended for Z-Man to rely on and act on his false representations by, for example, making additional royalty payments.

162. Z-Man was ignorant of the falsity of Mr. Chen's representations and had the right to rely upon Mr. Chen's representations in continuing to make payments under the License Agreement.

163. Z-Man has been and continues to be damaged, including but not limited to in the form of lost profits, harm to reputation and good will, as a consequent and proximate result of Mr. Chen's fraudulent claims and statements made to induce Z-Man into continuing to make payments under the License Agreement.

COUNT ELEVEN  
(Tortious Interference With Contractual Relations)

164. Z-Man incorporate herein by reference the preceding paragraphs of the Complaint as if set forth herein verbatim.

165. At relevant times in 2001-2003, Z-Man had certain valid and enforceable contracts with customers, including Strike King, Terminator, and Outdoor Innovations.

166. AEI was made aware of those customer relations and contracts through correspondence with Z-Man.

167. Z-Man repeatedly advised AEI of lures introduced to the market that, at a minimum, resembled the properties of the CYBERFLEXXX lures and advised AEI that the continued introduction of these “knock-off” products with no apparent license protection from AEI was harming its contractual and customer relations.

168. AEI was notified that its failure to abide by its duty to maintain exclusivity and police infringing uses of its Patent Rights was harming Z-Man’s contractual relationships.

169. AEI’s failure to police infringing uses interfered with Z-Man’s contractual relations, and AEI’s actions and omissions were without justification.

170. AEI’s actions and omissions have harmed Z-Man, and Z-Man has incurred damages as a result of such actions, including but not limited to millions of lures made with formulations AEI claimed were covered by its patents but were not acceptable to Z-Man’s customers.

171. As a result of AEI’s actions, Z-Man is entitled to recover its damages, including but not limited to in the form of lost profits, harm to reputation and good will, and punitive damages, from AEI.

COUNT TWELVE

(Declaratory Judgment-No Breach of Contract by Z-Man due to Failure of Consideration for AEI's Failure to Provide Z-Man with Formula Within Scope of Patent Rights and/or that Worked for its Intended Purpose)

172. Z-Man repeats and reiterates the preceding paragraphs as if fully set forth herein.

173. This is an action in which Z-Man seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

174. Z-Man seeks a declaratory judgment that the License Agreement is void and unenforceable as a matter of law for failure of consideration and that there is no material breach of the License Agreement by Z-Man.

175. An actual controversy exists between Z-Man and AEI with respect to the License Agreement because AEI has taken the position on numerous occasions that Z-Man is in breach of the License Agreement.

176. AEI was obligated under the License Agreement to provide Z-Man with certain technical information, including formulas, to enable Z-man to manufacture, use and sell License Products.

177. AEI failed to provide Z-Man with any formula either within the scope of patent rights licensed under the License Agreement. AEI provided Z-Man with formulations in early 2002, but, upon information and belief, the formulas provided were never covered by the patent rights that were licensed to Z-Man. The formulas provided never worked for their intended purpose.

178. The failure to provide Z-Man with any formula licensed under the License Agreement and/or that worked for its intended purpose causes the License Agreement to be void for failure of consideration.

179. Because the License Agreement is void for failure of consideration, Z-Man is entitled to a return of all monies paid to AEI thereunder.

COUNT THIRTEEN  
(Declaratory Judgment-No Breach of Contract by Z-Man Due to Failure of Consideration  
for AEI's Failure to Maintain Exclusivity)

180. Z-Man repeats and reiterates the preceding paragraphs as if fully set forth herein.

181. This is an action in which Z-Man seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

182. Z-Man seeks a declaratory judgment that the License Agreement is void and unenforceable as a matter of law for failure of consideration and that there is no material breach of the License Agreement by Z-Man.

183. An actual controversy exists between Z-Man and AEI with respect to the License Agreement because AEI has taken the position on numerous occasions that Z-Man is in breach of the License Agreement.

184. The License Agreement obligates AEI to maintain exclusivity of the Licensed Products.

185. AEI failed to maintain exclusivity and failed to undertake reasonable efforts to maintain exclusivity.

186. AEI's agreement to maintain exclusivity was the consideration for the minimum royalties provision in the License Agreement. AEI's failure to maintain exclusivity caused the minimum royalties provision in the License Agreement to fail for lack of consideration.

187. The failure of consideration renders the minimum royalties provision void and unenforceable.

188. Because the minimum royalties provision is void for failure of consideration, Z-Man is entitled to a return of all monies paid to AEI thereunder.

COUNT FOURTEEN

(Declaratory Judgment-No Breach of Contract By Z-Man Because Z-Man's Performance Under The License Agreement Is Excused By AEI's Prior Material Breach Of The License Agreement In Failing To Provide Z-Man With A Formula Within AEI's Patent Rights And/Or That Was Appropriate For Its Intended Use)

189. Z-Man repeats and reiterates the preceding paragraphs as if fully set forth herein.

190. This is an action in which Z-Man seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

191. Z-Man seeks a declaratory judgment that Z-Man has not breached the License Agreement and that Z-Man's performance under the License Agreement is excused by AEI's prior material breach of the License Agreement in failing to provide Z-Man with a formula within AEI's Patent Rights and/or that was appropriate for its intended use.

192. An actual controversy exists between Z-Man and AEI with respect to the License Agreement because AEI has taken the position on numerous occasions that Z-Man is in breach of the License Agreement.

193. AEI was obligated under the License Agreement to provide Z-Man with certain formulas that were either within the scope of AEI's Patents or that read on the Licensed Products.

194. AEI failed to provide Z-Man with any formula either within the scope of AEI's Patents or that read on the Licensed Products. AEI provided Z-Man with formulations in early 2002, but, upon information and belief, the formulas provided were never covered by the Patent Rights that were licensed to Z-Man.

195. The failure to provide Z-Man with any formula within AEI's Patent Rights constitutes a material breach of the Agreement that excused Z-Man's continued performance under the Agreement.

196. As a result of AEI's material breach of the License Agreement, Z-Man is entitled to a return of all monies paid to AEI thereunder.

COUNT FIFTEEN

(Declaratory Judgment-No Breach of Contract by Z-Man Because Z-Man's Performance Under The License Agreement Is Excused By AEI's Prior Material Breach Of The License Agreement In Failing To Maintain Exclusivity)

197. Z-Man repeats and reiterates the preceding paragraphs as if fully set forth herein.

198. This is an action in which Z-Man seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

199. Z-Man seeks a declaratory judgment that Z-Man has not breached the License Agreement and that Z-Man's performance under the License Agreement is excused by AEI's prior material breach of the License Agreement in failing to maintain exclusivity in a manner contemplated by the parties' agreements.

200. An actual controversy exists between Z-Man and AEI with respect to the License Agreement because AEI has taken the position on numerous occasions that Z-Man is in breach of the License Agreement.

201. AEI was obligated under the License Agreement to maintain exclusivity and police infringing uses of its Patent Rights and relevant technology.

202. AEI failed to maintain exclusivity, allowing competitors to introduce into the marketplace multiple "knock-off" products that harmed Z-Man and its contractual relationships.

203. AEI acknowledged by letter its duty under the License Agreement to maintain exclusivity and yet failed to do so.

204. Z-Man provided multiple opportunities for AEI to cure its material breach, but AEI failed to do so.

205. AEI's failure to maintain exclusivity constitutes a material breach of the Agreement that excused Z-Man's continued performance under the License Agreement.

206. As a result of AEI's material breach of the License Agreement, Z-Man is entitled to a return of all monies paid to AEI thereunder.

COUNT SIXTEEN  
(Declaratory Judgment-No Breach of Contract by Z-Man for  
Failure to Pay Royalties Because of Non-Infringement)

207. Z-Man repeats and reiterates the preceding paragraphs as if fully set forth herein.

208. This is an action in which Z-Man seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

209. Z-Man seeks a declaratory judgment that Z-Man has not breached the License Agreement by failing to pay royalties because its making, using, selling, offering for sale, importing or exporting of its the product line does not read upon AEI's patents licensed under the License Agreement.

210. An actual controversy exists between Z-Man and AEI with respect to the License Agreement because AEI has taken the position on numerous occasions that Z-Man is in breach of the License Agreement.

211. AEI's patents licensed under the License Agreement require highly or substantially crystalline midblocks with DSC melting endotherms of at least 20 to 25 degrees Celsius

212. Z-Man's CYBERFLEXXX fishing lure products are not made from the substantial crystalline materials subject to the License Agreement and therefore do not read on AEI's patent rights.

213. The making, using, selling, offering for sale, importing or exporting of the CYBERFLEXXX product line does not infringe any properly construed claim of AEI's patents licensed under the License Agreement.

COUNT SEVENTEEN  
(Declaratory Judgment for Non-Infringement)

214. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

215. This is an action in which seeks a declaratory judgment under the Patent Statute of the United States, 35 USC § 1 *et seq.* and the Declaratory Judgment Act, 28 USC §§ 2201-2202.

216. An actual controversy exists between Plaintiff and Defendant with respect to infringement of these patents. Mr. Chen has accused Z-Man of Patent Infringement on multiple occasions including, for example, by letter dated June 15, 2004 (entitled "Reasons of Patent Infringement").

217. Z-Man seeks a declaratory judgment that its making, using, selling, offering for sale, importing or exporting of its CYBERFLEXXX product line does not infringe, literally or under the doctrine of equivalents, any of the claims of AEI's Non-Fishing Lure Patents.

218. Z-Man seeks attorneys' fees and injunctive relief as provided for by law.

COUNT EIGHTEEN  
(Declaratory Judgment for Non-Infringement / Co-Inventorship)

219. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.



220. This is an action in which seeks a declaratory judgment under the Patent Statute of the United States, 35 USC § 1 *et seq.* and the Declaratory Judgment Act, 28 USC §§ 2201-2202.

221. During the research and development process of the reformulation process, Z-Man's employee, Mr. Shelton, shared proprietary information with AEI pursuant to the terms of the parties' Confidentiality Agreement and thus made an original inventive contribution to the final resulting invention.

222. Z-Man's Proprietary Fishing Lure Information shared with AEI included but is not limited to information regarding the use of rattle pockets in fishing lures and regarding testing procedures and data which were conducted in the research and development of the CYBERFLEXXX lures.

223. On or about July 20, 2002, Mr. Chen on behalf of AEI filed four patent applications (CIP Patent Applications Serial Nos. 10/199, 361, 10/199, 362, 10/199, 363 and 10/199, 364), referred to herein as AEI's Fishing Lure Patents, which included Z-Man's proprietary information and materials.

224. If the patent applications are approved, upon information and belief, they will be asserted against Z-Man.

225. As a joint inventor, AEI's Fishing Lure Patents cannot be asserted against Mr. Shelton's assignee, Z-Man.

226. Z-Man seeks a declaration that Mr. Shelton is a joint inventor of the Joint Patents and preliminary and permanent injunctive relief against enforcing the Joint Patents against Z-Man as to its CYBERFLEXXX product due to non-infringement.

227. Z-Man seeks attorneys' fees and injunctive relief as provided for by law.

COUNT NINETEEN  
(Declaratory Judgment for Invalidity)

228. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

229. This is an action in which seeks a declaratory judgment under the Patent Statute of the United States, 35 USC § 1 *et seq.* and the Declaratory Judgment Act, 28 USC §§ 2201-2202.

230. During the research and development process of the reformulation process, Z-Man's employee, Mr. Shelton, shared proprietary information with AEI pursuant to the terms of the parties' Confidentiality Agreement and thus made an original inventive contribution to the final resulting invention.

231. The proprietary information shared with AEI included but is not limited to information regarding the use of rattle pockets in fishing lures and regarding testing procedures and data which were conducted in the research and development of the CYBERFLEXXX lures.

232. On or about July 20, 2002, Mr. Chen on behalf of AEI filed AEI's Fishing Lure Patents which included Z-Man's proprietary information and materials.

233. If the patent applications are approved, upon information and belief, they will be asserted against Z-Man.

234. Z-Man seeks a declaration that AEI's Fishing Lure patents are invalid for deceptive inventorship under 35 USC § 256.

235. Z-Man seeks attorneys' fees and injunctive relief as provided for by law

COUNT TWENTY  
(Constructive Trust)

236. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

237. By virtue of its wrongful acts, AEI should hold AEI's Fishing Lure Patents as constructive trustee for the benefit of Z-Man.

238. Z-Man seeks an order the AEI's Fishing Lure Patents be held in constructive trust and assigned to Z-Man.

COUNTY-TWENTY ONE  
(Restitution-Unjust Enrichment)

239. Z-Man repeats and reiterates all preceding paragraphs as if fully stated herein.

240. Z-Man is entitled to a return of all money paid under the License Agreement because AEI never performed under the Agreement as promised and the Agreement failed for want of consideration in light of AEI's failure to perform as promised, including but not limited to AEI's failure to deliver a formula within the Patent Rights and that worked for its intended purpose and/or AEI's failure to maintain exclusivity.

241. Further, AEI has stolen and misused Z-Man's resources, business opportunities, and confidential information and trade secrets.

242. Permitting AEI to retain the monies paid under the Agreement and/or the benefit of the use of these opportunities and trade secrets without the authorization of Z-Man would be inequitable.

243. AEI has been unjustly enriched and should pay restitution such that Z-Man is returned to the *status quo*.

WHEREFORE, Z-Man requests that injunctive relief be entered in its favor on the Complaint; that declaratory judgment of non-infringement, patent invalidity, breach of the License Agreement by AEI, and no breach of the License Agreement by Z-Man all be entered in its favor; that judgment be entered in Z-Man's favor on the claims and that Z-Man be awarded

damages, punitive damages, treble damages, restitution, pre- and post-judgment interest, and reasonable attorneys' fees; the injunctive relief requested herein and such other and further relief as the Court may deem just and proper. Z-Man requests a jury trial for those issues appropriately tried to a jury.

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