

Defendants.

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Plaintiff Braxton McNaughton (hereinafter “Plaintiff” or “McNaughton”), by and through his undersigned counsel, files this First Amended Complaint against the following Defendants: Strike King Lure Company; Northland Fishing Tackle, LLC; Pure Fishing Inc. d/b/a Berkley; Big Bite Baits, Inc.; Venom Manufacturing & Distributing Company, Inc. d/b/a Venom Lures; Mizmo, Inc.; Jackall, LLC; Plastic Research and Development Corporation; Jann’s Netcraft, LLC; Outkast Tackle, Inc.; Classic Fishing Products, Inc. d/b/a Culprit; Poor Boy’s Baits, Inc.; Xcite Baits, LLC; Alluring Baits; D&J

Plastics, Inc., and Prowler Pro Pitch Lures, Inc. (collectively referred to herein as “Defendants”).

NATURE OF THE ACTION

1. This is a patent infringement action, *inter alia*, to stop the Defendants’ infringement of McNaughton’s United States Patents No. 7,308,773 B1 (the “773 patent”) and 7,610,714 B1 (the “714 patent”; copies of which are attached hereto as Exhibit “A”) entitled “Fishing Lure”. McNaughton seeks injunctive relief and monetary damages.

2. This is also a false patent marking action, *inter alia*, to stop Defendant Venom Manufacturing & Distributing Company, Inc. d/b/a Venom Lures (hereinafter referred to as “Venom”) from marking its “Dream Craw” product with the patent number of an expired patent and by advertising its “Dream Craw” product as “patented” when this product is not covered or protected by any extant patent. Venom committed such violations of 35 U.S.C. § 292(a) with an intent to deceive competitors and the public.

PARTIES

3. Plaintiff Braxton McNaughton is an individual residing in Butler County, Alabama. McNaughton is the owner of all right, title, and interest in and to the ’773 and ’714 patents.

4. Upon information and belief, Defendant Strike King Lure Company is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business located in Collierville, Tennessee.

5. Upon information and belief, Defendant Northland Fishing Tackle, LLC is a limited liability company organized and existing under the laws of the State of Minnesota with its principal place of business located in Bemidji, Minnesota.

6. Upon information and belief, Defendant Pure Fishing, Inc. d/b/a Berkley is a corporation organized and existing under the laws of the State of Iowa with its principal place of business located in Boca Raton, Florida.

7. Upon information and belief, Defendant Big Bite Baits, Inc. is a corporation organized and existing under the laws of the State of Alabama with its principal place of business located in Eufaula, Alabama.

8. Upon information and belief, Defendant Venom Manufacturing & Distributing Company, Inc. d/b/a Venom Lures is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located in Carroll, Ohio.

9. Upon information and belief, Defendant Mizmo, Inc. is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business located in Jonesboro, Arkansas.

10. Upon information and belief, Defendant Jackall, LLC is a limited liability company organized and existing under the laws of the State of California with its principal place of business located in Los Alamitos, California.

11. Upon information and belief, Defendant Plastic Research and Development Corporation is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business located in Birmingham, Alabama.

12. Upon information and belief, Defendant Jann's Netcraft, LLC is a limited liability company organized and existing under the laws of the State of Ohio with its principal place of business located in Toledo, Ohio.

13. Upon information and belief, Defendant Outkast Tackle, Inc. is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business located in Bloomington, Minnesota.

14. Upon information and belief, Defendant Classic Fishing Products, Inc. d/b/a Culprit is a corporation organized and existing under the laws of the State of Florida with its principal place of business located in Clermont, Florida.

15. Upon information and belief, Defendant Poor Boy's Baits, Inc. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business located in LaGrange, Indiana.

16. Upon information and belief, Defendant Xcite Baits, LLC is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business located in Highland Village, Texas.

17. Upon information and belief, Defendant Alluring Baits is a business entity organized and existing under the laws of the State of Texas with its principal place of business located in Lubbock, Texas.

18. Upon information and belief, Defendant D&J Plastics, Inc. is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located in Georgetown, Georgia.

19. Upon information and belief, Defendant Prowler Pro Pitch Lures, Inc. is a corporation organized and existing under the laws of the State of Kentucky with its principal place of business located in Leitchfield, Kentucky.

JURISDICTION AND VENUE

20. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 292. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a).

21. The Court has personal jurisdiction over the Defendants because the Defendants have minimum contacts within the State of Alabama and the Northern District of Alabama; the Defendants have purposefully availed themselves of the privileges of conducting business in the State of Alabama and in the Northern District of Alabama; the Defendants have sought protection and benefit from the laws of the State of Alabama; the Defendants regularly conduct business within the State of Alabama and within the Northern District of Alabama; and, Plaintiff's causes of action arise directly from Defendants' business contacts and other activities in the State of Alabama and in the Northern District of Alabama.

22. More specifically, the Defendants, directly and/or through intermediaries, ship, distribute, offer for sale, sell, and/or advertise their products and services in the United States, the State of Alabama, and the Northern District of Alabama. Upon information and belief, the Defendants, through the marketing and/or sale of their products, have committed patent infringement in the State of Alabama and in the Northern District of Alabama, have contributed to patent infringement in the State of Alabama and in the

Northern District of Alabama, and/or have induced others to commit patent infringement in the State of Alabama and in the Northern District of Alabama. The Defendants solicit customers in the State of Alabama and in the Northern District of Alabama.

23. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. §§ 1391, 1395(a), and 1400(b).

COUNT I – PATENT INFRINGEMENT OF THE '773 AND '714 PATENTS

24. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-23 above.

25. United States Patent No. 7,308,773, entitled “Fishing Lure,” was duly and legally issued by the United States Patent and Trademark Office on December 18, 2007, after full and fair examination. McNaughton is the owner of all rights, title, and interest in and to the '773 patent, and possesses all rights of recovery under the '773 patent, including the right to sue for infringement and recover past damages.

26. United States Patent No. 7,610,714, entitled “Fishing Lure,” was duly and legally issued by the United States Patent and Trademark Office on November 3, 2009, after full and fair examination. McNaughton is the owner of all rights, title, and interest in and to the '714 patent, and possesses all rights of recovery under the '714 patent, including the right to sue for infringement and recover past damages.

27. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Strike King Lure Company has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “Rage Shad” and “Rage Eliminator”.

28. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Strike King Lure Company has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Strike King Lure Company knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Rage Shad" and "Rage Eliminator" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

29. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Strike King Lure Company has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Strike King Lure Company did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

30. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Northland Fishing Tackle, LLC has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering

to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “Slurpies Brush Beaver.”

31. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Northland Fishing Tackle, LLC has actively induced others to infringe one or more claims of the ‘773 and ‘714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Northland Fishing Tackle, LLC knowingly induced infringement and possessed specific intent to encourage another’s infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing “Slurpies Brush Beaver” products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

32. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Northland Fishing Tackle, LLC has contributed to the infringement of one or more claims of the ‘773 and ‘714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the “leg” component of the patented invention disclosed in the ‘773 and ‘714 patents that constitutes a material part of the invention. Defendant Northland Fishing Tackle, LLC did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the ‘773 and ‘714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

33. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Pure Fishing, Inc. d/b/a Berkley has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a "Sabertail Burly Bug", "Crazy Legs Chigger Craw", "Chigger Chunk", "Chigger Craw", "Punch Craw", and "Sabertail Tube".

34. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Pure Fishing Inc. d/b/a Berkley has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Pure Fishing, Inc. d/b/a Berkley knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Sabertail Burly Bug", "Crazy Legs Chigger Craw", "Chigger Chunk", "Chigger Craw", "Punch Craw", and "Sabertail Tube" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

35. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Pure Fishing, Inc. d/b/a Berkley has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Pure Fishing, Inc. d/b/a Berkley did so knowing

that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

36. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Big Bite Baits, Inc. has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as "BioBait Yo Mama."

37. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Big Bite Baits, Inc. has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Big Bite Baits, Inc. knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "BioBait Yo Mama" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

38. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Big Bite Baits, Inc. has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part

of the invention. Defendant Big Bite Baits, Inc. did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

39. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Venom Manufacturing & Distributing Company, Inc. d/b/a Venom Lures ("Venom") has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a "Dream Crow."

40. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Venom has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Venom knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Dream Crow" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

41. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Venom has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented

invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Venom did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

42. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Mizmo, Inc. has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a "Swamp Monster" and "Baby Swamp Monster."

43. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Mizmo, Inc. has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Mizmo, Inc. knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Swamp Monster" and "Baby Swamp Monster" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

44. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Mizmo, Inc. has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or

consumers in this district and elsewhere in the United States the “leg” component of the patented invention disclosed in the ‘773 and ‘714 patents that constitutes a material part of the invention. Defendant Mizmo, Inc. did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the ‘773 and ‘714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

45. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Jackall, LLC has infringed and continues to infringe one or more claims of the ‘773 and ‘714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “Sasuteki Craw 4.”

46. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Jackall, LLC has actively induced others to infringe one or more claims of the ‘773 and ‘714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Jackall, LLC knowingly induced infringement and possessed specific intent to encourage another’s infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing “Sasuteki Craw 4” products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

47. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Jackall, LLC has contributed to the infringement of one or more claims of the ‘773 and ‘714 patents by offering to sell or selling to distributors, retailers, and/or

consumers in this district and elsewhere in the United States the “leg” component of the patented invention disclosed in the ‘773 and ‘714 patents that constitutes a material part of the invention. Defendant Jackall, LLC did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the ‘773 and ‘714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

48. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Plastic Research and Development Corporation (“PRADCO”) has infringed and continues to infringe one or more claims of the ‘773 and ‘714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “Craw Papi” and “Chunk.”

49. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant PRADCO has actively induced others to infringe one or more claims of the ‘773 and ‘714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant PRADCO knowingly induced infringement and possessed specific intent to encourage another’s infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing “Craw Papi” and “Chunk” products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

50. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant PRADCO has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant PRADCO did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

51. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Jann's Netcraft, LLC has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a "Sweet Craw."

52. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Jann's Netcraft, LLC has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Jann's Netcraft, LLC knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Sweet Craw" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

53. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Jann's Netcraft, LLC has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Jann's Netcraft, LLC did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

54. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Outkast Tackle, Inc. has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a "Naughty Bug."

55. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Outkast Tackle, Inc. has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Outkast Tackle, Inc. knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Naughty Bug" products in this

district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

56. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Outkast Tackle, Inc. has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the “leg” component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Outkast Tackle, Inc. did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

57. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Classic Fishing Products, Inc. d/b/a Culprit (“Culprit”) has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “Foxy Craw” and “Tail Gate Special.”

58. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Culprit has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Culprit knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by

soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing “Foxy Craw” and “Tail Gate Special” products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

59. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Culprit has contributed to the infringement of one or more claims of the ‘773 and ‘714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the “leg” component of the patented invention disclosed in the ‘773 and ‘714 patents that constitutes a material part of the invention. Defendant Culprit did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the ‘773 and ‘714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

60. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Poor Boy’s Baits, Inc. has infringed and continues to infringe one or more claims of the ‘773 and ‘714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “K.I.S.S. Craw.”

61. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Poor Boy’s Baits, Inc. has actively induced others to infringe one or more claims of the ‘773 and ‘714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Poor Boy’s Baits, Inc. knowingly induced infringement and possessed specific intent to encourage another’s infringement which led to direct

infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing “K.I.S.S. Craw” products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

62. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Poor Boy’s Baits, Inc. has contributed to the infringement of one or more claims of the ‘773 and ‘714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the “leg” component of the patented invention disclosed in the ‘773 and ‘714 patents that constitutes a material part of the invention. Defendant Poor Boy’s Baits, Inc. did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the ‘773 and ‘714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

63. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Xcite Baits, LLC has infringed and continues to infringe one or more claims of the ‘773 and ‘714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a “Flap Jack Craw.”

64. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Xcite Baits, LLC has actively induced others to infringe one or more claims of the ‘773 and ‘714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Xcite Baits, LLC knowingly induced infringement and

possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Flap Jack Craw" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

65. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Xcite Baits, LLC has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Xcite Baits, LLC did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

66. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Alluring Baits has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States fishing lure products marketed generally as a "Beaver Craw" and "Chunk T."

67. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Alluring Baits has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information

and belief, Defendant Alluring Baits knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, and by soliciting consumers to use, the infringing "Beaver Craw" and "Chunk T" products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

68. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Alluring Baits has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, retailers, and/or consumers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Alluring Baits did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

69. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant D&J Plastics, Inc. has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States numerous infringing fishing lure products to various distributors and/or retailers, whether or not named herein separately as a defendant, such as Defendant Big Bite Baits, Inc.'s "BioBait Yo Mama" products.

70. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant D&J Plastics, Inc. has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant D&J Plastics, Inc. knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, the infringing fishing lure products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

71. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant D&J Plastics, Inc. has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, and/or retailers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant D&J Plastics, Inc. did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

72. Upon information and belief, and in violation of 35 U.S.C. § 271(a), Defendant Prowler Pro Pitch Lures, Inc. ("Prowler") has infringed and continues to infringe one or more claims of the '773 and '714 patents by making, importing, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States numerous infringing fishing lure products to various distributors and/or

retailers, whether or not named herein separately as a defendant, such as Defendant Xcite Baits, LLC's "Flap Jack Craw" products.

73. Upon information and belief, and in violation of 35 U.S.C. § 271(b), Defendant Prowler has actively induced others to infringe one or more claims of the '773 and '714 patents in this district and elsewhere in the United States. Upon information and belief, Defendant Prowler knowingly induced infringement and possessed specific intent to encourage another's infringement which led to direct infringement by a third party by soliciting distributors and/or retailers to offer for sale, and/or sell, the infringing fishing lure products in this district and elsewhere in the United States within the six (6) years preceding the filing of this Complaint.

74. Upon information and belief, and in violation of 35 U.S.C. § 271(c), Defendant Prowler has contributed to the infringement of one or more claims of the '773 and '714 patents by offering to sell or selling to distributors, and/or retailers in this district and elsewhere in the United States the "leg" component of the patented invention disclosed in the '773 and '714 patents that constitutes a material part of the invention. Defendant Prowler did so knowing that this component of the patented invention was to be especially made or especially adapted for use in an infringement of the '773 and '714 patents by distributors, retailers, and/or consumers in this district and elsewhere in the United States and was not suitable for substantial noninfringing use.

75. The Defendants' aforesaid activities have been without authority and/or license from McNaughton.

76. The Plaintiff marked the patented articles it manufactures, markets, offers to sell, and/or sells with the '773 and/or '714 patent numbers, pursuant to 35 U.S.C. § 287(a), and/or has provided Defendants with actual notice of the claims in the '773 and '714 patents before and after the patents were issued. The Defendants' infringement has been willful.

77. McNaughton is entitled to recover from the Defendants the damages sustained by McNaughton as a result of the Defendants' wrongful acts in an amount subject to proof at trial.

78. The Defendants' infringement of McNaughton's exclusive rights under the '773 and '714 patents will continue to damage McNaughton, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II- FALSE MARKING

79. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-78 above.

80. Defendant Venom Manufacturing & Distributing Company, Inc. d/b/a Venom Lures ("Venom") has in the past manufactured and/or marketed (or caused to be manufactured and/or marketed) a fishing lure product marketed generally as "Dream Craw". This product and/or its packaging was/is marked with United States Patent No. 4,530,179 ("the '179 patent").

81. The '179 patent was expired, but Defendant Venom chose to continue using the improper patent markings on the "Dream Craw" and/or its packaging with the intent to deceive the public and to gain a competitive advantage in the market.

82. When a patent expires, all monopoly rights in the patent terminate irrevocably. Therefore, a product marked with an expired patent is not currently patented by such expired patent. In other words, the product, and/or any features thereof, is unpatented.

83. Defendant Venom knew that the '179 patent marked on the "Dream Crow" product and/or its packaging was expired.

84. After the '179 patent expired, Defendant Venom marked, or caused to be marked, the aforementioned product and/or its packaging with the expired patent number.

85. Because all monopoly rights in an expired patent have terminated, Defendant Venom cannot have any reasonable belief that the product identified herein is patented or covered by the expired patent marked on the product and/or its packaging.

86. By marking the "Dream Crow" product and/or its packaging with an expired patent, Defendant Venom committed numerous violations of 35 U.S.C. § 292(a).

87. Defendant Venom committed such violations of 35 U.S.C. § 292(a) with an intent to deceive competitors and the public.

88. Plaintiff seeks an award of monetary damages against Defendant Venom, one half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

PRAYER FOR RELIEF

Plaintiff Braxton McNaughton respectfully requests the following relief:

- A. An adjudication that the Defendants have infringed and continue to infringe claims of the '773 and '714 patents;
- B. Declare that Defendants indirectly infringed claims of the '773 and '714 patents, in violation of 35 U.S.C. §§ 271(b) and/or (c);
- C. Declare that Defendant Venom Manufacturing & Distributing Company, Inc. d/b/a Venom Lures falsely marked its "Dream Craw" product and/or its packaging as patented in violation of 35 U.S.C. § 292(a);
- D. An award to McNaughton of damages adequate to compensate McNaughton for the Defendants' acts of infringement, including damages dating back to the publication of the applications of the '773 and '714 patents, together with prejudgment interest;
- E. Order Defendant Venom to pay a civil monetary fine of up to \$500 per false marking "offense," one-half of which shall be paid to the United States;
- F. An award to McNaughton of treble damages;
- G. A declaration by the Court that this action constitutes an exceptional case pursuant to 35 U.S.C. § 285 and award McNaughton reasonable attorney's fees and costs;
- H. A grant of permanent injunction pursuant to 35 U.S.C. § 283 and all other applicable federal and state law, enjoining the Defendant from further acts of (1) infringement, (2) contributory infringement, and/or (3) actively

inducing infringement with respect to the claims of the '773 and '714 patents;

- I. A grant of permanent injunction pursuant to 35 U.S.C. § 283 and all other applicable federal and state law, enjoining Defendant Venom from further acts of false marking in violation of 35 U.S.C. § 292(a); and
- J. Any further relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Fed. R. Civ. P., Plaintiff demands a trial by jury on all issues so triable.

s/ Brian D. Hancock
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PLEASE SERVE THE FOLLOWING DEFENDANTS BY CERTIFIED MAIL AT:

Plastic Research and Development Corporation
c/o David J. Walker
5724 Highway 280 East
Birmingham, Alabama 35242

Prowler Pro Pitch Lures, Inc.
c/o Sherbert J. Vanmeter
293 Quarry Road
Leitchfield, Kentucky 42754

Venom Manufacturing & Distributing Company, Inc.
d/b/a Venom Lures
3083 Wallace Court #B
Lancaster, Ohio 43130-8075

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon the following by the CM/ECF electronic filing system, this the 20th day of May, 2010:

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Attorneys for Defendant Jackall, LLC

and I hereby certify that I have served the following non-CM/ECF participants by placing a copy of the foregoing in the United States mail, first-class postage prepaid and properly addressed:

Mizmo, Inc.
c/o Jimmy W. Cox
3221 Shelby Drive
Jonesboro, Arkansas 72401

Outkast Tackle, Inc.
c/o Mike Dahl
940 Minnesota Avenue
Duluth, Minnesota 55802

Classic Fishing Products, Inc. d/b/a Culprit
c/o Louie W. Gibbs
13518 Granville Avenue
Clermont, Florida 34711

Poor Boy's Baits, Inc.
c/o Kim Straley
513 West Central Avenue
LaGrange, Indiana 46761

Xcite Baits, LLC
c/o Lloyd Walker
902 Summer Trail Court
Highland Village, Texas 75077

Alluring Baits
c/o Brent Bollinger
6724 8th Street
Lubbock, Texas 79416

s/ Brian D. Hancock
Brian D. Hancock