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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 CALVERT RACING  
14 SUSPENSIONS, a sole  
15 proprietorship

16 Plaintiff,

17 v.

18 SMITH RACE CRAFT, LLC, a  
19 Texas limited liability corporation;  
20 and DOES 1 to 10

21 Defendants.

22 No.: 07CV07855 JSL(CTx)

23 COMPLAINT FOR PATENT  
24 INFRINGEMENT, FEDERAL  
25 TRADEMARK INFRINGEMENT,  
26 FALSE DESIGNATION OF ORIGIN  
27 AND CALIFORNIA UNFAIR  
28 COMPETITION

and

DEMAND FOR JURY TRIAL

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1 Plaintiff Calvert Racing Suspensions hereby pleads its claim for Patent  
2 Infringement, Trademark Infringement, False Designation of Origin and Unfair  
3 Competition against Defendant Smith Race Craft, LLC, as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a complaint for patent infringement, trademark  
6 infringement, false designation of origin and unfair competition. The Court  
7 has jurisdiction over the parties and the subject matter of the first cause of  
8 action pursuant to 28 U.S.C. § 1338(a) and 35 U.S.C. § 271, and the second  
9 and third causes of action pursuant to 28 U.S.C. § 1338(a) and (b) and 15  
10 U.S.C. §1125(a), as well as pendent and supplemental jurisdiction over the  
11 subject matter of the fourth cause of action pursuant to 28 U.S.C. §1367.

12 2. Venue is proper in this judicial district for the first cause of action  
13 pursuant to the provisions of 28 U.S.C. § 1400 for the second through fourth  
14 causes of action pursuant to 28 U.S.C. § 1391(b).

15 **THE PARTIES**

16 3. Plaintiff Calvert Racing Suspensions (“Calvert” or “Plaintiff”) is a  
17 sole proprietorship having a principal place of business at 4530 Runway  
18 Drive, Lancaster, CA 93536.

19 4. Defendant Smith Race Craft, LLC (“SRC” or “Defendant”) is a  
20 limited liability corporation organized and existing under the laws of the state  
21 of Texas and having a principal place of business at 4201 W. Ledbetter,  
22 Dallas, Texas 75233. SRC conducts business within this judicial district.

23 5. Plaintiff does not know the true names and capacities of the  
24 defendants sued herein as DOES 1 through 10, inclusive, and therefore sues  
25 these defendants by such fictitious names. Plaintiff will seek to amend this  
26 complaint to allege such names and identities as soon as they are  
27 ascertained.

28

1 6. Plaintiff is informed and believes, and based thereon alleges that  
2 each of the fictitiously-named defendants is in some manner responsible,  
3 liable and/or obligated to Plaintiff in connection with the acts alleged herein.

4 7. Plaintiff is informed and believes, and based thereon alleges that  
5 at all times mentioned herein, each of the Defendants was the agent, servant,  
6 representative, employee, partner, and/or controlling person of the other  
7 Defendants named herein, and in doing the acts herein alleged were acting  
8 as the agents for each other.

9 8. Plaintiff is currently engaged in the manufacture and sale of  
10 traction devices for motor vehicles under the trademark CALTRACS.

11 9. Plaintiff is informed and believes and based thereon alleges that  
12 Defendant manufactures and sells traction devices for motor vehicles under  
13 the name MAX-TRAX.

14  
15 **FIRST CAUSE OF ACTION**

16 (Patent Infringement)

17 10. Plaintiff incorporates by reference as part of this cause of action  
18 the allegations contained in ¶¶1 thru 9.

19 11. Plaintiff is the owner by assignment of United States Patent No.  
20 5,354,092 (“the ‘092 Patent”) for a traction device for motor vehicles, issued  
21 on October 11, 1994. This patent is presumed valid under 35 U.S.C. § 282.  
22 A copy of the above described ‘092 patent is attached to this Complaint and  
23 identified as Exhibit A.

24 12. The ‘092 patent is a valid and enforceable patent.

25 13. Plaintiff is the owner of the ‘092 patent and possesses the sole  
26 right and obligation to assert and enforce infringement claims against alleged  
27 infringers.

28 14. Past, present and future manufacture, use, sale and/or offers for

1 sale by Defendant of traction devices for motor vehicles of the type described  
2 above constitutes infringement of Plaintiff's '092 patent under the U.S. patent  
3 laws. 35 U.S.C. § 271(a).

4 15. Plaintiff is informed and believes and based thereon alleges that  
5 Defendant's acts of infringement have been willful.

6 16. Plaintiff is entitled to a full range of injunctive and monetary relief  
7 and remedies under the U.S. patent laws. 35 U.S.C. § 281 et seq.

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9 **SECOND CAUSE OF ACTION**

10 (Federal Trademark Infringement)

11 17. Plaintiff incorporates by reference as part of this cause of action  
12 the allegations contained in ¶¶1 thru 9.

13 18. Plaintiff is the owner by assignment of U.S. Trademark Reg. No.  
14 2,517,179 for CALTRACS, granted December 11, 2001, used for automotive  
15 vehicle parts, namely traction bars, leaf spring eye bushings, and leaf spring  
16 eye inserts/Int. Cl. 12 ("the CALTRACS Mark"). A copy of the above  
17 described CALTRACS Mark is attached to this Complaint and identified as  
18 Exhibit B.

19 19. Plaintiff possesses the sole right and obligation to assert and  
20 enforce infringement claims against alleged infringers of the CALTRACS  
21 Mark.

22 20. Subsequent adoption and commercial usage by Defendant of  
23 MAX-TRAX in connection with distributing its goods and services, namely its  
24 traction devices for motor vehicles - is likely to cause confusion, mistake and  
25 deception in the minds of purchasers, members of the trade and the general  
26 public relative to Plaintiff, the federally registered CALTRACS Mark identified  
27 above and the correct source of Defendant's goods/services.

28 21. Past, present and future commercial usage by Defendant of MAX-

1 TRAX constitutes infringement of Plaintiff's rights under the CALTRACS Mark  
2 pursuant to the U.S. trademark laws. 15 U.S.C. §1051 et seq., 15 U.S.C.  
3 §1114(1).

4 22. Plaintiff is entitled to a full range of injunctive and monetary relief  
5 and remedies under the U.S. trademark laws. 15 U.S.C. §1116, §1117 &  
6 §1118.

7 **THIRD CAUSE OF ACTION**  
8 (FALSE DESIGNATION OF ORIGIN)

9 23. Plaintiff incorporates by reference as part of this cause of action  
10 the allegations contained in ¶¶1 thru 9.

11 24. The name CALTRACS as used by Plaintiff for its goods/services  
12 are designations of origin that identify Plaintiff as an exclusive source and  
13 distinguish Plaintiff's goods/services in the marketplace.

14 25. The designation of origin CALTRACS used by Plaintiff as a mark  
15 and source indicator was either inherently distinctive when first used or  
16 acquired a secondary meaning and distinctiveness long prior to Defendant's  
17 entry into the marketplace using the closely similar designation MAX-TRAX  
18 on identical goods/services.

19 26. The designation of origin CALTRACS used by Plaintiff as a mark  
20 and source indicator is readily recognized among customers, members of the  
21 trade and the general public by reason of Plaintiff's extensive use of this  
22 designation of origin in connection with selling, promoting and advertising its  
23 traction devices for motor vehicles and related goods/services.

24 27. Commercial usage by Defendant's of MAX-TRAX is likely to cause  
25 confusion, mistake and deception in the minds of purchasers, members of the  
26 trade and the general public - relative to Plaintiff, Plaintiff's goods/services,  
27 Plaintiff's commercial activities and the correct source of Defendant's  
28 goods/services.

1           28. Existing and potential customers, members of the trade, as well  
2 as members of the general public will, upon observing or reacting to  
3 Defendant's usage of MAX-TRAX will likely believe there is a sponsorship,  
4 affiliation, licensing and/or other business connection between Plaintiff and  
5 Defendant.

6           29. Defendant's unauthorized usage of MAX-TRAX is likely to cause  
7 initial interest confusion and post-sale confusion between Plaintiff and the  
8 correct source of Defendant's goods/services.

9           30. Defendant either knew or should have known that the selection  
10 and use of MAX-TRAX as its designation of origin - would fool purchasers and  
11 members of the trade into mistakenly believing that Defendant's traction  
12 devices for motor vehicles and related goods/services were produced,  
13 sponsored, approved or licensed by Plaintiff.

14           31. By using the above-described false designations of origin MAX-  
15 TRAX - Defendant has intended to pass off and in fact has passed off its  
16 goods/services as Plaintiff's goods/services.

17           32. Plaintiff has no plain, speedy or adequate remedy at law and will  
18 continue to suffer great and irreparable injury to its trade identity rights for  
19 which it cannot be fully compensated in damages - unless the Court enjoins  
20 Defendant from further usage of its confusingly similar and false designation  
21 of origin MAX-TRAX.

22           33. Past, present and future commercial usage by Defendant of MAX-  
23 TRAX constitute infringement, false designation of origin, false representation  
24 and violation of Plaintiff's trade identity rights and the general public's right to  
25 be free from confusion and misrepresentation under the U.S. trademark laws.  
26 15 U.S.C. §1051 et seq., §1125(a).

27           34. Plaintiff is entitled to a full range of injunctive and monetary relief  
28 and remedies under the provisions of The Lanham Act and the U.S. laws

1 relating to trademarks and unfair competition. 15 U.S.C. §1116, §1117 &  
2 §1118.

3 **FOURTH CAUSE OF ACTION**

4 (UNFAIR COMPETITION - CALIFORNIA LAW)

5 35. Plaintiff incorporates by reference as part of this cause of action  
6 the allegations contained in ¶¶1 thru 9, 11-16, 18-22 and 24-34.

7 36. Defendant's above-described conduct constitutes unfair  
8 competition under the common law and statutory laws of the State of  
9 California. California Business & Professions Code §17200, §17203 and  
10 §17500.

11 37. Defendant has misappropriated the good will symbolized by  
12 Plaintiff's distinctive marks CALTRACS.

13 38. Upon information and belief, Defendant had prior awareness of  
14 and imitated Plaintiff's established mark CALTRACS - and has unjustly  
15 enriched itself at Plaintiff's expense.

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17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff Calvert Racing Suspensions prays that this  
19 Court enter judgement as follows:

- 20 I. That Defendant be adjudged to have infringed the '092 patent;
- 21 II. That Defendant be adjudged to have infringed Plaintiff's
- 22 CALTRACS trademark;
- 23 III. Judgment for preliminary and permanent injunctions enjoining
- 24 Defendant, all of its officers, directors, owners, partners, employees, servants
- 25 and agents -and- all those persons in active concert or participation with
- 26 Defendant from violating Plaintiff's rights by way of:
- 27 (a) directly or indirectly infringing the '092 patent;
- 28 (b) using the name CALTRACS or MAX-TRAXS in connection with

1 selling, marketing, advertising, promoting and/or distributing traction devices  
2 for motor vehicles and related goods/services.

3 (c) using any word, name, mark, designation, logo, or other material  
4 for or in connection with selling, marketing, advertising, promoting and/or  
5 distributing traction devices for motor vehicles and related goods/services -  
6 which is likely to cause confusion, mistake or deception as to source relative  
7 to Plaintiff's names, marks, designations of origin and logos including the  
8 name CAL-TRACS.

9 (d) passing off Defendant's goods/services as Plaintiff's  
10 goods/services.

11 (e) practicing unfair competition, unfair trade practices, false  
12 advertising and misappropriation against Plaintiff.

13 (f) practicing any conduct aimed at or likely to result in diverting  
14 business intended for Plaintiff or injuring Plaintiff's good will and business  
15 reputation by way of imitation, misrepresentation, false statements, fraud,  
16 advertising and/or deception.

17 IV. An Order from the Court commanding Defendant to mail notice  
18 letters at its expense to all customers, accounts, distributors, dealers, jobbers,  
19 salesmen, sales reps and suppliers - informing that Defendant has committed  
20 trademark infringement and unfair competition against Plaintiff and that  
21 Defendant has no affiliation, connection or other business relationship with  
22 Plaintiff.

23 V. An Order from the Court commanding that Defendant deliver to  
24 Plaintiff for destruction all advertising, labeling, packaging, sales literature,  
25 promotional literature, posters, marketing materials and other trade pieces  
26 within their possession or control which use or display MAX-TRACS.

27 FOR PATENT INFRINGEMENT

28 VI. That Defendant accounts for damages to Plaintiff by virtue of



1 Defendant's infringement of the '092 patent;

2 VII. That a judgment be entered against Defendants awarding Plaintiff  
3 all damages, in such amounts as are proved at trial, and in no event in an  
4 amount less than a reasonable royalty, resulting from Defendants'  
5 infringement of the '092 patent, pursuant to 35 U.S.C. §284;

6 VIII. That Defendant be adjudged to have willfully and deliberately  
7 infringed the '092 patent;

8 IX. That the present case be judged an exceptional case within the  
9 meaning of 35 U.S.C. §285 and that Plaintiff be awarded its reasonable  
10 attorneys' fees and costs pursuant thereto;

11 X. That Plaintiff be awarded damages in an amount equal to three  
12 times the amount of damages found or accessed, to compensate Plaintiff for  
13 the willful and deliberate acts of infringement by Defendant, pursuant to 35  
14 U.S.C. §284;

15

16 FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

17 XI. An accounting for all profits of Defendant.

18 XII. Money damages and treble damages suffered by Plaintiff in an  
19 amount to be ascertained.

20 XIII. Exemplary and punitive damages for Defendant's intentional use  
21 of Plaintiff's distinctive name CALTRACS.

22 XIV. Reasonable attorneys' fees and costs of this civil action. 15 U.S.C.  
23 §1117(a).

24 XV. All other injunctive and monetary relief which the Court deems  
25 justifiable.

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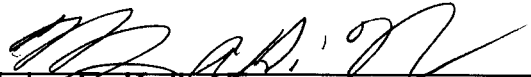
**DEMAND FOR JURY TRIAL**

Plaintiff Calvert Racing Suspensions hereby demands a trial by jury.

Dated: December 10, 2007

Respectfully submitted:

KELLY LOWRY & KELLEY, LLP

By:   
John E. Kelly, Esq.  
Scott W. Kelley, Esq.  
Michael A. DiNardo, Esq.

Attorneys for Plaintiff