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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 PRO-TROLL, a California corporation,)

11 Plaintiff,)

12 vs.)

13 PROKING SPOON LLC, a Michigan limited)
14 liability company, and KMDA, Inc., a)
15 Minnesota corporation,)

16 Defendants.)
17)
18)

CASE NO.:

**VERIFIED COMPLAINT FOR
TEMPORARY AND PERMANENT
INJUNCTION AND DAMAGES:**

1. **DESIGN PATENT
INFRINGEMENT; AND**
2. **TORTIOUS INTERFERENCE
WITH PROSPECTIVE
ECONOMIC RELATIONSHIPS**

JURY TRIAL DEMANDED

19 **COMPLAINT**

20 COMES NOW plaintiff PRO-TROLL, a California corporation (“Plaintiff”), by and
21 through its attorneys Antero Tormey & Petrin LLP, and files this Complaint against PROKING
22 SPOON LLC, a Michigan limited liability company (“PROKING”); and KMDA, Inc., a
23 Minnesota corporation (“KMDA”) (Collectively, “Defendants”), and alleges as follows:
24

25 **THE PARTIES**

26 1. Plaintiff PRO-TROLL is a corporation organized and existing under the laws of the
27 State of California, having its principal place of business in the City of Lafayette, County of
28 Contra Costa, State of California. Plaintiff does business in the Northern District of California.

1 11. United States Design Patent No. D516,663, entitled “FISHING LURE” (“the ‘663”).
2 The ‘663 Design Patent was duly and legally issued on March 7, 2006 to Plaintiff as the Assignee
3 of inventors Richard B. Pool and Cecil R. Spurgeon. A copy of the ‘663 Design Patent is attached
4 hereto as **Exhibit A**.

5 12. The ‘663 Design Patent has been in full force and effect since its issuance.

6 13. Defendants are competitors in the industry that manufacture, distribute and/or sell
7 fishing products. Defendants’ fishing products include flashers sold under the name “Pro King
8 Double Rudder Salmon Flasher” and flashers sold under KMDA’s “Inticer” product line.
9 Defendants sell these fishing products through a website at www.allseasonssports.com and through
10 KMDA’s website at www.kmdainc.com.

11 14. On information and belief, KMDA manufactures and supplies the Inticer products
12 to PROKING. PROKING further modifies or repackages the products for resale.

13 15. Defendants’ KMDA Inticer flasher incorporates all non-functional features of the
14 ‘663 Design Patent.

15 16. Defendants’ Pro King Double Rudder Salmon Flasher incorporates all non-
16 functional features of the ‘663 Design Patent.

17 17. On August 28, 2017, Plaintiff sent to PROKING, and PROKING thereafter
18 received, a cease-and-desist letter which identified the ‘663 Design Patent. This letter stated that
19 Plaintiff owns the ‘663 Design Patent, and that the Pro King Double Rudder Salmon Flasher
20 infringes one or more of Plaintiff’s patents. A copy of this letter is attached hereto as **Exhibit B**.

21 18. On October 5, 2017, Plaintiff sent to KMDA, and KMDA thereafter received, a
22 cease-and-desist letter which identified the ‘663 Design Patent. This letter stated that Plaintiff
23 owns the ‘663 Design Patent, and that the Pro King Double Rudder Salmon Flasher infringes one
24 or more of Plaintiff’s patents. A copy of this letter is attached hereto as **Exhibit C**.

25 19. Upon information and belief, since receiving actual notice that the PROKING
26 Double Rudder Salmon flasher and the KMDA Inticer flasher infringes the ‘663 Design Patent,
27 Defendants have continued to infringe the ‘663 Design Patent by making, using, selling, and/or
28 offering to sell the PROKING Double Rudder Salmon flasher and the Inticer flasher.

1 **COUNT I – DEFENDANTS’ INFRINGEMENT**

2 **OF THE ‘663 DESIGN PATENT**

3 20. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1
4 through 17 above and incorporates them by reference.

5 21. Plaintiff has provided and Defendants have received actual notice of the ‘663
6 Design Patent.

7 22. Defendants have directly infringed, and/or have induced others to infringe, and/or
8 have committed acts of contributory infringement of the claims of the ‘663 Design Patent in
9 violation of 35 U.S.C. § 271, *et seq.* Upon information and belief, Defendants have committed acts
10 of infringement by making, using, selling, and/or offering to sell products within the United States,
11 and/or importing products into the United States, including but not limited to fishing products
12 under the name Pro King Double Rudder Salmon Flasher and KMDA Inticer.

13 23. Upon information and belief, Defendants will continue to infringe the ‘663 Design
14 Patent unless enjoined by this Court. As a result of the infringing conduct of Defendants, Plaintiff
15 has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at
16 law. Accordingly, Plaintiff is entitled to temporary, preliminary, and/or permanent injunctive relief
17 against such infringement pursuant to 35 U.S.C. § 283.

18 24. As a result of Defendants’ infringement of the ‘663 Design Patent, Plaintiff has
19 been damaged, and will be further damaged, and is entitled to be compensated for such damages
20 pursuant to 35 U.S.C. § 284 in an amount that presently cannot be ascertained but that will be
21 determined at trial.

22 25. Because Defendants have continued their activities after receiving actual notice of
23 the ‘663 Design Patent from Plaintiff, Defendants’ infringement is willful. As a result, Plaintiff is
24 further entitled to trebling of damages pursuant to 35 U.S.C. § 284, and to the designation of this
25 case as exceptional pursuant to 35 U.S.C. § 285, whereby Plaintiff is entitled to an award of its
26 attorneys’ fees.

27 **COUNT II – TORTIOUS INTERFERENCE**

28 **WITH PROSPECTIVE ECONOMIC RELATIONSHIPS**

1 Complaint, together with interest thereon;

2 F. Based on Defendants' willful infringement of the '663 Design Patent, ordering that
3 Plaintiff be awarded treble damages pursuant to 35 U.S.C. § 284;

4 G. Ordering Defendants to pay Plaintiff the costs of this action and Plaintiff's
5 reasonable attorneys' fees pursuant to the statutes cited herein;

6 H. Based on Defendants' willful and deliberate conduct, and to deter such conduct in
7 the future, awarding punitive damages; and

8 I. Granting any such further relief in Plaintiff's favor as the Court deems just and
9 appropriate.

10 **JURY DEMAND**

11 Plaintiff hereby demands a trial by jury on all issues so triable.

12
13 Dated: February 1, 2018

ANTERO TORMEY & PETRIN LLP

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16 By: 

Peter J. Tormey
Aaron M. Davis
Attorneys for Plaintiff
PRO-TROLL


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VERIFICATION

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2 Plaintiff PRO-TROLL, a California corporation ("Plaintiff") is a party to this action. I,
3 Richard B. Pool, verify that I am an Officer in Plaintiff herein, that I am authorized to make this
4 verification on behalf of Plaintiff, and that I have read the foregoing Complaint and know the
5 contents thereof. I verify that the factual matters stated in the foregoing Complaint are true based
6 on my own knowledge except as to those matters which are stated on information and belief, and
7 as to those matters I believe them to be true.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed February 1, 2018, at Pleasant Hill, CA.

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14 Richard B. Pool

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