

To:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE                  FILING OR DETERMINATION OF AN                  ACTION REGARDING A PATENT OR                  TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court United States District Court for the Western District of Washington on the following: \_\_\_ Patents or X Trademarks:

DOCKET NO.	DATE FILED	US District Court	United States District Court for the Western District of Washington
2:08 cv 01219 TSZ	8/13/08		
PLAINTIFF		DEFENDANT	
SafeWorks LLC		Teupen America LLC	
		et al.	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1. See attached	6.	11.	
2.	7.	12.	
3.	8.	13.	
4.	9.	14.	
5.	10.	15.	

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	Amendment	Answer	Cross Bill Other Pleading
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1. 576, 586	6.	11.	
2. 2406, 166	7. 2, 438, 634	12.	
3.	8.	13.	
4. 577, 536	9.	14.	
5.	10.	15.	

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT
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CLERK	(BY) DEPUTY CLERK	DATE
Bruce Rifkin	DI	8/15/08

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SAFEWORKS, LLC, a Washington limited liability company,

Plaintiff,

v.

TEUPEN AMERICA, LLC, EXTREME ACCESS SOLUTIONS, INC., THE SPIDERLIFT COMPANY, INC., AND LEONARDO POLONSKI,

Defendant.

Cause No.

VERIFIED COMPLAINT FOR:

- (1) FEDERAL TRADEMARK INFRINGEMENT, 15 U.S.C. §1114;
- (2) FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, AND UNFAIR COMPETITION, 15 U.S.C. §§1125(a);
- (3) DILUTION BY BLURRING, 15 U.S.C. 1125(c);
- (4) UNFAIR COMPETITION, RCW 19.86.
- (5) BREACH OF CONTRACT

Plaintiff SafeWorks, LLC ("SafeWorks" or "Plaintiff"), complains and alleges as follows:

VERIFIED COMPLAINT – 1

3249.031 hf110602

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**I. INTRODUCTION**

1.1 This matter concerns the trademark infringement, unfair competition, and breach of contract by Defendants, TEUPEN AMERICA, LLC, EXTREME ACCESS SOLUTIONS, INC., THE SPIDERLIFT COMPANY, INC. AND LEONARDO POLONSKI, (collectively, "Defendants") against the owner of the following registered trademarks: "SPIDER" U.S. Trademark Registration No. 696387; "SPIDER" U.S. Trademark Registration No. 2406766; "SPIDER LINE" U.S. Trademark Registration No. 2438034; and "SPIDER STAGING" U.S. Trademark Registration No. 577536 (collectively the "SPIDER Marks").

1.2 SafeWorks brings this action to secure relief under Federal and Washington State law. SafeWorks seeks: (a) a temporary, preliminary and permanent injunction prohibiting Defendant from further infringement of SafeWorks' SPIDER Marks; (b) an order requiring the seizure and impoundment of all infringing products in Defendant's possession, custody or control pending completion of this action; and (c) money damages for Defendant's past and continuing infringement of the SPIDER Marks and for breach of the parties' contracts.

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**II. THE PARTIES**

2.1 Plaintiff. Plaintiff SafeWorks is a limited liability company duly organized and existing under the laws of the State of Washington with its principal place of business in Tukwila, Washington. SafeWorks is in good standing with the Washington Secretary of State's Office and has done all things necessary and proper to bring this lawsuit.

VERIFIED COMPLAINT – 2

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1           2.2    Defendants. Based on information and belief, Teupen America LLC is a  
2 Massachusetts limited liability company, with headquarters at 14 Chapin Avenue in  
3 Reading, Massachusetts. Teupen America was previously known as “American Spider  
4 Lifts, LLC”, but changed its name to “Teupen America LLC” on April 25, 2005. On  
5 April 17, 2008, Teupen America announced a name change to “The Spider Lift  
6 Company.” On information and belief, Defendant Teupen America offers its lifts for sale  
7 and/or rent on a nationwide basis, including Washington State, via the Internet, a toll-free  
8 telephone number, and registered dealers throughout the United States.

9           2.3    Defendant Extreme Access is a Massachusetts Corporation, with  
10 headquarters at 14 Chapin Avenue in Reading, Massachusetts. On information and  
11 belief, Extreme Access is a sister company of Teupen America and has continuing  
12 business dealings with Teupen America. Defendant Extreme Access offers its lifts for  
13 sale and/or rent on a nationwide basis, including Washington State, via the Internet, a  
14 toll-free telephone number, and registered dealers throughout the United States.

15           2.4    Defendant Leonardo Polonski is the President of Teupen America and of  
16 Extreme Access Solutions.

17           2.5    Defendants have collectively used the term “Spiderlift” to sell lift  
18 machinery in the United States, despite warnings by Plaintiff that it owns the trademark  
19 rights to the SPIDER Marks in the United States.

20           2.6    On information and belief, at all times relevant to this proceeding, one or  
21 more Defendants were the registered owner of the website and domain name “www.  
22 spiderlifts.com.”  
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VERIFIED COMPLAINT – 3

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1 **III. JURISDICTION AND VENUE**

2 3.1 This Court has original jurisdiction over Count I, II and III under 15 U.S.C.  
3 §1121(a)(action arising under the Lanham Act) and 28 U.S.C. §§1331, 1338(a)(federal  
4 question) in that this case arises under the Trademark Laws of the United States, 15  
5 U.S.C. §§1051-1127.

6 3.2 This Court has jurisdiction over Count IV and Count V under 28 U.S.C  
7 §1338(b) in accordance with the principles of pendant jurisdiction in that said claims are  
8 joined with substantial and related claims under the Trademark Laws of the United  
9 States, 15 U.S.C. §§1051-1127.

10 3.3 Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

11 **IV. FACTUAL BACKGROUND**

12 **SafeWorks' Trademark Rights.**

13 14 4.1 Since 1947, SafeWorks' predecessor entities, and now SafeWorks, have  
15 used the trademark SPIDER in connection with safety and access equipment used in the  
16 construction, restoration, and maintenance industries. SafeWorks is based in Tukwila,  
17 Washington, has 24 offices around the U.S. and offices in Canada, China, and Belgium.  
18 SafeWorks' goal is to be the premier global provider of safe and efficient powered access  
19 and fall protection solutions. To this end, SafeWorks carefully guards its intellectual  
20 property rights.

21 4.2 SafeWorks' predecessor first used the mark SPIDER in connection with  
22 "power driven suspended staging and scaffolding, and component parts thereof" on July  
23

VERIFIED COMPLAINT – 4

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1 6, 1948, filed a federal trademark application for this mark on September 21, 1959, and  
2 was granted registration as U.S. Registration No. 696387 on April 19, 1960.

3 4.3 SafeWorks' predecessor first used the mark SPIDER STAGING (and  
4 design) in connection with "power driven scaffolding which may be moved both  
5 vertically and horizontally to permit repairs, painting, cleaning, etc., of the sides of  
6 buildings, bridges and other structures" on July 6, 1948, filed a federal trademark  
7 application for this mark on April 30, 1951, and the mark became registered as U.S.  
8 Registration No. 577536 on July 21, 1953.

9 4.4 SafeWorks' predecessor first used the mark SPIDER (and design) in  
10 connection with "power driven scaffolding, suspended staging, work platforms and  
11 suspended work cages; hoists; and parts for all of the aforementioned goods" and for  
12 "metal accessories for hoists and power driven scaffolding, suspended staging, work  
13 platforms, and suspended work cages, namely, face rollers, rigging hooks, cornice hooks,  
14 wire rope tension holders, cable drum socket hooks, truss outriggers, portable roof  
15 outriggers, transfer chains, channels section rollers, adjustable i-beam clamps, and  
16 walkway bridges made primarily of metal and structural parts therefore" in October of  
17 1998, filed a federal trademark application for this mark on April 20, 1998, and the mark  
18 became registered as U.S. Registration No. 2406766 on November 21, 2000.

19 4.5 SafeWorks' predecessor first used the mark SPIDERLINE in connection  
20 with "metal safety equipment, namely, stanchions and lifelines for attachment to  
21 structures to provide fall protection for individuals on the structure; and metal parts and  
22 accessories for use with such stanchions and lifelines, namely, stanchion mounting  
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VERIFIED COMPLAINT – 5

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1 brackets, chains, cable connectors and shock absorbers” on February 26, 1999, filed a  
2 federal trademark application for this mark on May 10, 1999, and the mark became  
3 registered as U.S. Registration No. 2438034 on March 27, 2001.

4 4.6 SafeWorks applied for registration of the mark (words and logo) “SPIDER;  
5 60 Years Strong” in November 2006, and the Notice of Allowance was issued on March  
6 11, 2008 (serial number 77041520).

7 4.7 Through SafeWorks’ extensive advertising, marketing, participation at  
8 trade shows, and presence on job sites throughout the U.S. and the world, the SPIDER  
9 Marks are distinctive when applied to SafeWorks’ products. SafeWorks’ products sold  
10 under and/or bearing the SPIDER Marks have become well known in the construction,  
11 restoration, and maintenance industries as identifying unique and desirable products of  
12 the highest quality that originate with SafeWorks.

13 4.8 Consequently, SafeWorks’ SPIDER Marks are a very important and  
14 valuable business asset of SafeWorks, and represent significant business goodwill.

15 4.9 As a result of years of use and extensive sales of goods of the highest  
16 quality complemented by extensive advertising, promotion, and press coverage, the  
17 SPIDER marks have come to be recognized by members of the construction industry as  
18 well as by members of the consuming public as exclusively identifying SafeWorks’  
19 goods of the highest quality originating exclusively from SafeWorks.  
20

21 4.10 Moreover, as a result of the above, members of the construction industry  
22 and members of the consuming public have come to recognize any one-word trademark  
23

VERIFIED COMPLAINT – 6

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1 beginning with SPIDER as a name extension of SafeWorks' famous SPIDER marks  
2 designating goods of the highest quality originating exclusively from SafeWorks.

3 **Defendant's Wrongful Acts.**

4 4.11 In approximately 2003, Defendants began using the term "Spiderlift," and  
5 the domain name "spiderlifts.com" (collectively the "Infringing Marks") to promote and  
6 sell boom lifts and other equipment that directly competed with SafeWorks' products  
7 sold under its famous SPIDER Marks.

8 4.12 On or about August 10, 2004, SafeWorks sent a letter to Leonardo  
9 Polonski and American Spider Lifts, demanding they cease and desist all use of the  
10 designation "Spider" or any designation incorporating the term "Spider" in connection  
11 with boom lifts or other products promoted to the building and construction fields, and  
12 that they voluntarily abandon any trademark applications or registrations for marks  
13 incorporating the work "Spider," as well as any Internet domain names incorporating the  
14 term "Spider."

15 4.13 Following extensive communication via letter, e-mail and telephone, and  
16 including attorneys, Defendants agreed to change their corporate name to "Teupen  
17 America," which was confirmed via e-mail on or about January 19, 2005. In reliance on  
18 that Agreement, ("First Agreement") Plaintiff did not file an infringement action against  
19 Defendants.  
20

21 4.14 Despite the First Agreement, Defendants once again began using the  
22 Infringing Marks to promote and sell their products. On or about March 2008,  
23 SafeWorks learned of actual confusion on the part of one or more buyers of a Teupen

VERIFIED COMPLAINT -- 7

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1 America product, who thought they were purchasing a SafeWorks product because of the  
2 confusingly similar marks.

3 4.15 Despite its First Agreement to cease and desist any use of the Infringing  
4 Marks, on or about April 17, 2008, Teupen America announced that it was changing its  
5 name to "The Spiderlift Company." On information and belief, the press release  
6 announcing the name change was published in national and international trade  
7 publications as well as on the Internet.

8 4.16 On or about May 6, 2008, SafeWorks sent Defendants Leonardo Polonski  
9 and Teupen America a letter demanding that it honor its earlier First Agreement and stop  
10 using the Infringing Marks to promote and market its products. At that time, SafeWorks  
11 informed Defendants of the actual confusion suffered by a buyer of their product, who  
12 thought he was buying a SafeWorks product.

13 4.17 On or about May 29, 2008, Teupen America, by and through its attorneys,  
14 wrote to SafeWorks and agreed to the conditions stated in SafeWorks' cease and desist  
15 letter of May 6, 2008, ("Second Agreement").

16 4.18 Because Teupen America had reneged on an earlier promise to cease using  
17 the Infringing Marks to promote and sell its products, on or about June 11, 2008,  
18 SafeWorks requested that Defendants' Second Agreement to cease and desist be  
19 additionally signed by Defendant, rather than just by the attorney.

20 4.19 In reliance on the Second Agreement, SafeWorks did not file a trademark  
21 infringement action against Defendants.  
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VERIFIED COMPLAINT – 8

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1 4.20 On or about July 6, 2008, attorney for Defendants wrote to  
2 SafeWorks to state that his client was renegeing on its settlement and would continue to  
3 use the Infringing Marks to promote and market its products.

4 4.21 On or about August 1, 2008, Defendants filed an action for declaratory  
5 judgment in the Federal District Court for the District of Eastern Massachusetts, asking  
6 that court to rule that SafeWorks be enjoined from bringing trademark litigation against  
7 them for their use of the Infringing Marks and for a determination that the Infringing  
8 Marks are generic.

9 4.22 Defendants continue to advertise, market, and sell their products in the  
10 same industry and through the same channels of trade using its Infringing Marks. In  
11 doing so, Defendants are attempting to use the substantial good will developed under  
12 SafeWorks' SPIDER Marks and have infringed, and continue to infringe, SafeWorks'  
13 trademark rights.

14 4.23 In continuing to advertise, market, and sell their products in the same  
15 industry and through the same channels of trade, using its confusingly similar Infringing  
16 Marks, Defendants are breaching both the First Agreement and the Second Agreement.

17  
18 **V. FIRST CAUSE OF ACTION**  
19 **FEDERAL TRADEMARK INFRINGEMENT**  
(15 U.S.C. §1114)

20 5.1 SafeWorks realleges and incorporates herein by reference the allegations  
21 contained in all preceding paragraphs of this Complaint as part of this cause of action.

22 5.2 SafeWorks holds valid and existing federal registrations for the SPIDER  
23 Marks. SafeWorks has continuously used the SPIDER Marks since as early as 1947.

VERIFIED COMPLAINT – 9

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1 5.3 Defendants have marketed, advertised and sold, and continue to market,  
2 advertise and sell their goods and services using the Infringing Marks, which are  
3 confusingly similar to SafeWorks' SPIDER Marks.

4 5.4 Defendants' activities and use of the Infringing Marks as alleged herein  
5 have caused, and are likely to continue to cause confusion, mistake, or deception of  
6 purchasers to the detriment of SafeWorks.

7 5.5 SafeWorks has no control over the quality of goods sold by Defendants,  
8 and because of the confusion as to the source of the goods engendered by Defendants,  
9 SafeWorks' valuable goodwill in respect to its SPIDER Marks is at the mercy of  
10 Defendants.

11 5.6 The goodwill of SafeWorks' business is of enormous value, and  
12 SafeWorks will suffer irreparable harm should infringement be allowed to continue to the  
13 detriment of its trade reputation and goodwill.

14 5.7 Defendants' use of the Infringing Marks as alleged herein, and marketing,  
15 advertising and sale of products using those Infringing Marks, was done without the  
16 knowledge, consent or permission of SafeWorks and continues without the consent or  
17 permission of SafeWorks.

18 5.8 Defendants have violated the trademark rights of SafeWorks under the  
19 Trademark Act, thereby giving rise to a cause of action under 15 U.S.C. § 1114.

20 5.9 SafeWorks will be irreparably harmed unless Defendants are temporarily,  
21 immediately and permanently enjoined from any further use of the Infringing Marks and  
22 any further marketing, advertising or sale of products using the Infringing Marks.  
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VERIFIED COMPLAINT - 10

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1 5.10 SafeWorks has no adequate remedy at law and serious damage to its  
2 trademark rights will result unless Defendants' wrongful uses of the Infringing Marks are  
3 enjoined by the court.

4 5.11 SafeWorks also is entitled to an order requiring the impoundment of all  
5 infringing products and materials pending the trial of this matter, and the destruction of  
6 all infringing products and materials following trial, including but not limited to products  
7 and materials bearing the Infringing Marks.

8 5.12 Defendants have continued to use the Infringing Marks notwithstanding  
9 that they have actual knowledge of SafeWorks' superior trademark rights as alleged  
10 herein, as well as knowledge of the actual confusion suffered by SafeWorks' customers.  
11 Defendants' infringement of the SafeWorks' SPIDER Marks accordingly constitutes  
12 intentional, willful, knowing and deliberate trademark infringement. Plaintiff therefore  
13 seeks judgment in the amount of three (3) times its damages, together with reasonable  
14 attorney's fees pursuant to 15 U.S.C. § 1117(a).

15 5.13 Defendants' infringement of the SPIDER Marks as alleged herein has  
16 caused, and will continue to cause, SafeWorks to suffer damages in an amount unknown  
17 at this time and has caused, and will continue to cause, Defendants to gain revenues and  
18 profit in an amount unknown at this time. Pursuant to 15 U.S.C. § 1117(a), SafeWorks is  
19 entitled to an award of monetary damages in an amount equal to the losses suffered by  
20 SafeWorks or the revenues and/or profits gained by Defendants, which damages should  
21 be augmented as provided by 15 U.S.C. § 1117(a).  
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VERIFIED COMPLAINT – 11

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1 5.14 Pursuant to 15 U.S.C. § 1117(a), any monetary damages awarded to  
2 SafeWorks should be trebled.

3 5.15 Pursuant to 15 U.S.C. § 1117(a), SafeWorks is entitled to an award of  
4 attorneys fees and costs of suit.

5 **VI. SECOND CAUSE OF ACTION**  
6 **FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING AND UNFAIR**  
7 **COMPETITION UNDER LANHAM ACT SECTION 43(a)**  
(15 U.S.C. § 1125(a))

8 6.1 SafeWorks realleges and incorporates herein by reference the allegations  
9 contained in all preceding paragraphs of this Complaint as part of this cause of action.

10 6.2 The actions of Defendants as alleged herein constitute false designation of  
11 origin, false advertising and unfair competition pursuant to Section 43(a) of the Lanham  
12 Act, 15 U.S.C. § 1125(a).

13 6.3 The actions of Defendants have and are likely to continue to deceive  
14 customers and prospective customers into believing that Defendants' line of products are  
15 that of SafeWorks, and, as a consequence, are likely to divert customers away from  
16 SafeWorks.

17 6.4 SafeWorks has no control over the nature and quality of the goods and  
18 services sold by Defendants. Any failure, neglect, or default by Defendants in providing  
19 such products has and will continue to reflect adversely on SafeWorks as the believed  
20 source of origin thereof, hampering efforts by SafeWorks to continue to protect its  
21 outstanding reputation for high quality products, resulting in loss of sales thereof, all to  
22 the irreparable harm of SafeWorks.  
23

VERIFIED COMPLAINT – 12

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1           6.5 SafeWorks has and will continue to be irreparably harmed unless  
2 Defendants are temporarily, immediately and permanently enjoined from any further use  
3 of the Infringing Marks and any further marketing, advertising or sale of products using  
4 the Infringing Marks.

5           6.6 SafeWorks has no adequate remedy at law and serious damage to its  
6 trademark rights will result unless Defendants' wrongful use of the Infringing Marks is  
7 enjoined by the court.

8           6.7 SafeWorks also is entitled to an order requiring the impoundment of all  
9 infringing products and materials pending the trial of this matter, and the destruction of  
10 all infringing products and materials following trial, including but not limited to products  
11 and materials bearing or advertising the Infringing Marks.

12           6.8 The actions of Defendants as alleged herein constitute intentional, willful,  
13 knowing and deliberate unfair competition and false advertising pursuant to Lanham Act  
14 Section 43(a).

15           6.9 Defendants' acts of unfair competition and false advertising in violation of  
16 the Lanham Act Section 43(a) as alleged herein have caused, and will continue to cause,  
17 SafeWorks to suffer damages in an amount unknown at this time and have caused, and  
18 will continue to cause Defendants to gain revenues and profit in an amount unknown at  
19 this time. Pursuant to 15 U.S.C. §1117(a), SafeWorks is entitled to an award of monetary  
20 damages in an amount equal to the losses suffered by SafeWorks and the revenues and/or  
21 profits gained by Defendants, which damages should be augmented as provided by 15  
22 U.S.C. §1117(a).  
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VERIFIED COMPLAINT – 13

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1 6.10 Pursuant to 15 U.S.C. §1117(a), any monetary damages awarded to  
2 SafeWorks should be trebled.

3 6.11 Pursuant to 15 U.S.C. §1117(a), SafeWorks is entitled to an award of  
4 attorneys fees and costs of suit.

5 **VII. THIRD CAUSE OF ACTION**  
6 **DILUTION BY BLURRING UNDER LANHAM ACT SECTION 43(c)**  
7 **(15 U.S.C. §1125(c))**

8 7.1 SafeWorks realleges and incorporates herein by reference the allegations  
9 contained in all preceding paragraphs of this Complaint as part of this cause of action.

10 7.2 The SPIDER Marks are famous trademarks within the meaning of the  
11 Anti-Dilution Act, 15 USC § 1125(c).

12 7.3 SafeWorks has no control over the quality of Defendants' products,  
13 advertising and other promotional materials and its use of the Infringing Marks. As a  
14 result of such use, the distinctive qualities of SafeWorks' SPIDER marks are being and  
15 will continue to be diluted.

16 7.4 The distinctive SPIDER Marks are of enormous value, and Defendants'  
17 wrongful use of the Infringing Marks constitutes an extreme threat to the distinctiveness  
18 of the SPIDER Marks.

19 7.5 Defendants' use of the Infringing Marks in connection with their business  
20 as aforesaid has injured and will continue to cause injury to SafeWorks' business  
21 reputation and to dilute the distinctive quality of SafeWorks' SPIDER marks pursuant to  
22 15 U.S.C. § 1125(c).

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VERIFIED COMPLAINT – 14

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1 7.6 SafeWorks is entitled to a permanent injunction against Defendants, as  
2 well as all other remedies available under the Lanham Act, including, but not limited to,  
3 compensatory damages, treble damages, disgorgement of profits, and costs and attorney's  
4 fees.

5 **VIII. FOURTH CAUSE OF ACTION**  
6 **WASHINGTON STATE UNFAIR COMPETITION AND**  
7 **CONSUMER PROTECTION ACT**  
(RCW 19.86)

8 8.1 SafeWorks re-alleges and incorporates herein by reference the allegations  
9 contained in all preceding paragraphs as part of this cause of action.

10 8.2 Defendants have engaged in unfair and deceptive acts or practices by  
11 imitating SafeWorks' SPIDER Marks in connection with the sale of their goods and  
12 services in Washington thereby creating a likelihood of public confusion as to the source  
13 of the goods and services.

14 8.3 Defendants' deceptive acts or practices injured SafeWorks.

15 8.4 Defendants' actions offend the public, are unethical, oppressive and  
16 unscrupulous, affecting trade and commerce now and in the future both within  
17 Washington State and elsewhere.

18 8.5 A causal link exists between the deceptive act and the resulting injury.

19 8.6 SafeWorks has suffered damages relating to violation of the Consumer  
20 Protection Act RCW 19.86 by Defendants. The quantum of these damages will be  
21 proven at trial.  
22  
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VERIFIED COMPLAINT – 15

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1 8.7 SafeWorks seeks, and is entitled to recover, its actual damages, together  
2 with the costs of suit, including reasonable attorneys' fees.

3 8.8 SafeWorks seeks and is entitled to recover an award of damages of up to  
4 three times the amount of the actual damages sustained up to the amount permitted by  
5 law.

6 **VI. FOURTH CAUSE OF ACTION**  
7 **BREACH OF CONTRACT**

8 9.1 SafeWorks re-alleges and incorporates herein by reference the allegations  
9 contained in all preceding paragraphs as part of this cause of action.

10 9.2 The First and Second Agreements (collectively the "Agreements") are  
11 valid Agreements entered into by and among the Plaintiffs and one or more Defendants.

12 9.3 Pursuant to both Agreements, and for good and valuable consideration,  
13 Defendants promised to cease and desist using the Infringing Marks to promote and  
14 market its Products.

15 9.4 In reliance on Defendants' promises, Plaintiff did not file a trademark  
16 infringement action against Defendants. Plaintiff performed under the Agreements.

17 9.5 Defendants have continued to use the Infringing Marks in connection with  
18 promotion and marketing of its products in breach of the parties' Agreements.

19 9.6 As a result of Defendants' breach, Plaintiff has suffered and continues to  
20 suffer substantial damages.

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VERIFIED COMPLAINT – 16

3249.031 hfl10602

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**VII. PRAYER FOR RELIEF**

WHEREFORE, SafeWorks prays for relief against Defendants as follows:

1. For a temporary, preliminary and permanent injunction restraining and enjoining Defendants, and their agents, servants, employees, and all others in active concert or participation with them, as follows:

- a. From further infringing SafeWorks' trademark rights;
- b. From further advertising, promoting, distributing, offering for sale, and/or selling any products or services using the Infringing Marks; and
- c. From further acts of false advertising and unfair competition as alleged herein.

2. For an order requiring the impoundment of all products and materials bearing the Infringing Marks pending the trial of this matter, and the destruction of all products and materials bearing the Infringing Mark following trial.

3. For an award of damages suffered by SafeWorks, plus any revenues or profits earned by Defendants as a result of Defendants' trademark infringement, unfair competition and false advertising in an amount to be proven at trial.

4. For an award of augmented and treble damages as alleged herein pursuant to 15 U.S.C. §1117(a) and RCW 19.86.060.

5. For specific performance of the First and Second Agreements;

6. For an award of punitive and exemplary damages in an amount to be proven at trial, but sufficient to punish and deter the Defendants.

VERIFIED COMPLAINT – 17

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7. For an award of attorneys' fees and litigation expenses and costs to the maximum extent allowed by law.

8. For such other and further relief as the court deems just and proper.

DATED August 13, 2008.

INVICTA LAW GROUP, PLLC

By: s/Stacie Foster/  
Stacie Foster, WSBA No. 23397  
Heather M. Morado, WSBA No. 35135  
Steven W. Edmiston, WSBA No. 17136  
Attorneys for Plaintiff

VERIFIED COMPLAINT - 18

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**VERIFICATION**

Phil White declares on this 12<sup>th</sup> day of August 2008, at Tukwila Washington, under penalty of perjury under the laws of the State of Washington that he is the Risk Manager of the Plaintiff, SafeWorks, LLC, named in this Complaint, has read the Complaint and knows its contents, and that the statements made in this Complaint are true and correct to the best of his knowledge.



Phil White  
Risk Manager of SafeWorks, LLC

**VERIFIED COMPLAINT - 19**

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