

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RED DOG MOBILE SHELTERS, LLC,

Plaintiff,

v.

KAT INDUSTRIES, INC. AND
KAT MACHINE, INCORPORATED

Defendants.

Case No. 3:13-CV-3756

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT

Plaintiff Red Dog Mobile Shelters, LLC (“Plaintiff” or “Red Dog”) files this Complaint against Defendants KAT Industries, Inc. and KAT Machine, Incorporated (collectively referred to herein as “Defendants” or “KAT”) and alleges as follows:

PARTIES

1. Plaintiff Red Dog Mobile Shelters, LLC is a Limited Liability Company organized and existing under the laws of Texas, with a place of business at 4604 Greenwich Place, Amarillo, Texas 79119.
2. Upon information and belief, Defendant KAT Industries, Inc. is a corporation organized and existing under the laws of Oklahoma, with a place of business at 5209 S W 23rd Street, Oklahoma City, Oklahoma 73128. KAT Industries, Inc. may be served with process by serving its registered agent Keith A. Thompson, 1400 NE 5th, Moore, Oklahoma 73160.
3. Upon information and belief, KAT Machine, Incorporated is a corporation organized and existing under the laws of Oklahoma, with a place of business at 5209 S W 23rd Street, Oklahoma City, Oklahoma 73128. KAT Machine, Incorporated may be served with process by

serving its registered agent Keith Thompson, 9721 NW 4TH ST, Oklahoma City, Oklahoma 73127.

JURISDICTION AND VENUE

4. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth in their entirety.

5. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et seq.* This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a). This Court also has jurisdiction over the claims in this Complaint under the Lanham Act, 15 U.S.C. § 1121.

6. Plaintiff also brings claims under Texas law for unfair competition and false advertising pursuant to this Court's ancillary and supplemental jurisdiction under 28 U.S.C. § 1367.

7. Personal jurisdiction exists over Defendants because they have sufficient minimum contacts with the forum as a result of conducting business activities within the State of Texas and within the Northern District of Texas. Personal jurisdiction also exists specifically over Defendants as they, directly or through subsidiaries or intermediaries, make, use, offer for sale, sell, import, advertise, make available and/or market products and services within the State of Texas, and more particularly, within the Northern District of Texas, that infringe the patent-in-suit, as described more particularly below.

8. Venue is proper in the Northern District of Texas under 28 U.S.C. §§ 1391(b) – (c) and 1400(b) in that: (1) a substantial part of the events or omissions giving rise to the claims occurred in this District; and (2) Defendants have done business in this District, have committed acts of infringement in this District, and continue to commit acts of infringement in this District,

entitling Plaintiff to relief. Further, Defendants have engaged in false advertising and unfair competition in Texas, and in this District.

FACTUAL BACKGROUND

9. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth in their entirety.

10. Red Dog designs and manufacturers mobile storm shelters which it rents to various companies throughout the United States primarily engaged in the oil and gas industry. Red Dog initially developed its mobile storm shelters in response to a request from oil and gas companies to find a way to protect their drilling rig crews from tornados and rapidly moving prairie fires while working in remote areas. All of Red Dog's mobile shelters, including its CREWSAFE-30™ "Osage Model" and "Apache Model" Multipurpose Safe Rooms ("CREWSAFE Shelters"), are covered by various United States patents which Red Dog owns, including United States Patent Numbers 8,136,303; 8,375,642; 8,245,450; D685,921; and 8,534,001. Red Dog's CREWSAFE Shelters are mobile and anchorless. Their patented design turns the destructive force of the wind into a stabilizing "anchor." The faster the wind, the more stable the Red Dog mobile shelter. Red Dog's CREWSAFE Shelters meet or exceed the requirements of various governmental and industry guidelines and standards, including FEMA guidelines, the American Society of Civil Engineers wind loads on structures calculation guidelines, the International Code Council (ICC/500) and the National Storm Shelter Association Standards, and have been examined and tested by various experts including those from Texas Tech Department of Construction Engineering and Texas Tech Wind Science and Engineering Research Center. Additionally, Red Dog shelters are registered with and issued serial numbers and tracked by the National Storm Shelter Association.

11. United States Patent No. 8,534,001 (the “‘001 Patent”) entitled “Re-Deployable Mobile Above Ground Shelter” was duly and legally issued by the United States Patent and Trademark Office on September 17, 2013 after full and fair examination. A true and correct copy of the ‘001 Patent is attached hereto as Exhibit A.

12. Red Dog was previously assigned the ‘001 Patent and continues to hold all rights, title and interest in the ‘001 Patent.

13. On information and belief, KAT Industries, Inc. and KAT Machine, Incorporated (collectively referred to as “KAT”) are a fabrication and machine shop that fabricate oil rigs and other related systems.

14. Upon information and belief, KAT makes, manufactures, fabricates, designs, uses, sells, offers to sell, and/or imports within or into the United States a product known as the “Tuffy”™ Mobile Storm Shelter to persons in this District and elsewhere, including without limitation persons in the oil and gas industry by various methods and means including its website <http://www.katmachine.com/> and <http://www.katmachine.com/mobile-storm-shelter.html>. On its website KAT claims: (i) that its products are registered with the National Storm Shelter Association, designed to FEMA Specifications, are “FEMA Approved,” are “NSSA Approved,” PE Stamped, Texas Tech Impact Tested, 15 Person Rated, and “35+ person tested;” (ii) that its shelters are mobile, anchorless and have a concrete filled base; (iii) that pursuant to International Building Code, 2006 edition, including local supplements and ASCE 7-05, its shelters are classified as an occupancy category II (all occupants assumed to be able-bodied); (iv) that its shelters have been “structurally designed in accordance with the FEMA P-361 design and construction guidance for community site rooms (2nd edition, 2008), FEMA P-320 taking shelter from the storm (3rd edition, 2008), and ICC/NSSA 500-2008 standard for the design and

construction of storm shelters;” (v) that its shelters are made with structural steel that meets the requirements of various codes, and have been designed in accordance with the building code and the AISC “manual of steel construction: allowable stress design, ninth edition;” and (vi) that it offers the most economical option on the market and economical pricing. KAT also claims that it has a patent pending on its shelters.

15. On information and belief, KAT has been and now is infringing the ‘001 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling, or offering to sell protective shelters which include a floor, a sidewall, a door, and a roof wherein the protective shelter has a first and second axis which are both parallel to a plane including the floor; is supported on a substrate by rails or elongated members; contains first and second deck sections which extend substantially symmetrically from the enclosure along the first axis; and includes a ballast disposed in one or more locations. Upon information and belief, KAT has infringed directly and indirectly (by inducement and/or contributory infringement) and continues to infringe directly and indirectly one or more claims of the ‘001 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing within or into the United States, without authority, its “Tuffy”™ Mobile Storm Shelter and similar products.

16. On information and belief, the Federal Emergency Management Agency (“FEMA”) does not endorse, approve, certify, or recommend any contractors, individuals, firms or any storm shelter product.

17. On information and belief, the National Storm Shelter Association (“NSSA”) does not certify or approve storm shelters.

COUNT ONE – INFRINGEMENT OF UNITED STATES PATENT NO. 8,534,001

18. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth in their entirety.

19. Plaintiff alleges that Defendants have infringed directly and indirectly (by inducement and/or contributory infringement) and continue to infringe directly and indirectly one or more claims of United States Patent No. 8,534,001 (the “‘001 Patent”) in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing within or into the United States, without authority, their “Tuffy”™ Mobile Storm Shelter and similar products.

20. Plaintiff alleges that at least as of the filing of this complaint, Defendants indirectly infringe one or more claims of the ‘001 Patent by active inducement under 35 U.S.C. § 271(b). Plaintiff alleges that Defendants have induced, caused, urged, encouraged, aided and abetted their direct and indirect customers and others to make, use, sell, offer for sale and/or import products which directly infringe one or more claims of the ‘001 Patent. Such conduct by Defendants is intended to and actually resulted in direct infringement, including the making, using, selling, offering for sale and/or importation of infringing products in the United States.

21. Plaintiff alleges that Defendants indirectly infringe one or more claims of the ‘001 Patent by contributory infringement under 35 U.S.C. § 271(c) by providing for transportation of protective shelters which include a floor, a sidewall, a door, and a roof wherein the protective shelter has a first and second axis which are both parallel to a plane including the floor; is supported on a substrate by rails or elongated members; contains first and second deck sections which extend substantially symmetrically from the enclosure along the first axis; and includes a ballast disposed in one or more locations.

22. Defendants do not have a license or other authorization to practice the claims of the '001 Patent.

23. As a direct and proximate consequence of the acts of infringement and/or inducing the infringement of one or more claims of the '001 Patent by Defendants, Plaintiff has been and is being damaged and injured, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury and damages to its business and property rights.

24. As a direct and proximate consequence of the acts of infringement and/or inducing the infringement of one or more claims of the '001 Patent by Defendants, Plaintiff has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

25. In addition, the infringing acts and practices of Defendants have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiff for which there is no adequate remedy at law, and for which Plaintiff is entitled to injunctive relief under 35 U.S.C. § 283. Additionally, the injury and damage to Plaintiff outweighs any hypothetical damage that an injunction may cause Defendants and the public interest favors the issuance of an injunction in this case.

26. Plaintiff intends to seek discovery on the issue of willfulness and reserves the right to seek a willfulness finding relative to pre-suit infringement and/or post-suit infringement of the '001 Patent.

COUNT TWO – VIOLATION OF SECTION 43 OF THE LANHAM ACT
(15 U.S.C. § 1125)
UNFAIR COMPETITION: FALSE ADVERTISING

27. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth in their entirety.

28. Additionally, Plaintiff brings claims and causes of action against Defendants for unfair competition, false designations and false advertising under the Lanham Act including 15 U.S.C. § 1125 (Section 43 of the Lanham Act).

29. In connection with goods or services, Defendants have and continue to use in commerce words, terms, names, symbols or devices, and/or combinations thereof, and false and misleading descriptions of fact and/or false or misleading representations of fact, which are likely to cause confusion, or to cause mistake, or to deceive as to the approval of their goods, services or commercial activities by another person; and/or in commercial advertising or promotion, misrepresented the nature, characteristics, or qualities of their or another's goods, services or commercial activities.

30. On information and belief, Defendants have made multiple false or misleading statements about their storm shelters. On information and belief, these statements include, but are not limited to statements regarding the levels of certification and/or approval which said shelters have been granted, the amount and extent of testing, and/or evaluation and analysis which they have undergone and/or their sufficiency as a substitute for the shelters rented by Plaintiff.

31. On information and belief Defendants' statements that their shelters are "FEMA Approved," "NSSA Approved," and/or similar statements regarding FEMA or NSSA certifying, approving, or endorsing Defendants' products and/or their statement that their shelters are "35+ person tested" are literally false.

32. Additionally, and in the alternative, on information and belief, Defendants have represented through commissions and omissions, express and implied, that their "Tuffy"TM Mobile Storm Shelter and similar products are equivalent to Plaintiff's CREWSAFE Shelters. In fact, while copying key components of the trade dress, including the look, and certain patented

features of the CREWSAFE Shelters in their “Tuffy”™ Mobile Storm Shelter and similar products, Defendants have, on information and belief, also omitted certain features which omissions make Defendants’ shelters inferior to Plaintiff’s CREWSAFE Shelters. Defendants’ favorable comparison of their shelters to those of Plaintiff, coupled with Defendants’ failure to disclose the omissions made with respect to their shelters, constitutes false and misleading representations.

33. On information and belief, Defendants’ false and misleading representations: (1) have the capacity to deceive a substantial segment of potential consumers; and (2) are material, in that they are likely to influence the consumer’s purchasing decision. Additionally, but not by way of limitation, on information and belief, such representations have and continue to in fact deceive a substantial segment of potential customers, and are material, in that they are likely to influence consumers’ purchasing decisions.

34. On information and belief, Defendants’ products and false and misleading statements are in interstate commerce.

35. Plaintiff has been or is likely to be injured and damaged as a result of the statements at issue. Defendants’ false or misleading claims usurp a competitive advantage that should legitimately be held by Plaintiff.

36. Defendants’ false and misleading statements constitute a false advertising violation of the Lanham Act including 15 U.S.C. § 1125 (Section 43 of the Lanham Act).

37. There is substantial likelihood that Plaintiff will prevail on its claims against Defendants, Defendants’ false and misleading representations have injured and will continue to cause immediate and irreparable injury and damage to Plaintiff (including to its business reputation and goodwill), and Plaintiff has no adequate remedy at law for these injuries. Such immediate and

irreparable damage will continue unless and until Defendants are enjoined by this Court. The injury and damage to Plaintiff outweighs any hypothetical damage that an injunction may cause Defendants and the public interest favors the issuance of an injunction in this case. Accordingly, Plaintiff is entitled to an injunction under 15 U.S.C. § 1116, prohibiting Defendants from further actions in violation of the Lanham Act.

38. Plaintiff is entitled to recover from Defendants: (1) any gains, profits and advantages obtained by Defendants as a result of Defendants' acts alleged herein, (2) any actual and statutory damages that Plaintiff has sustained and will sustain, including treble damages, together with prejudgment and post-judgment interest, and (3) the costs of the action pursuant to applicable law including 15 U.S.C. § 1117.

COUNT THREE – VIOLATION OF TEXAS LAW
UNFAIR COMPETITION AND FALSE ADVERTISING

39. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth in their entirety.

40. The conduct of Defendants as described herein violates Texas's unfair competition law. Such Defendants' conduct is illegal and/or tortious and has interfered and continues to interfere with Plaintiff's ability to conduct its business.

41. Defendants engaged in business conduct which is contrary to honest practice in industrial or commercial matters.

42. Defendants violated Texas law by engaging in the aforesaid conduct including but not limited to sending literally false as well as misleading advertisements into Texas with the purposeful intent of gaining Texas customers through such wrongful conduct. Defendants' wrongful conduct in competition with Plaintiff wrongfully provides Defendants a special and unfair advantage in competition. On information and belief, Defendants have committed one or

more of the foregoing wrongful acts and practices in Texas through Defendants' employees and/or agents.

43. Plaintiff has sustained damages and continues to sustain damages in an amount to be determined at trial.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. A judgment that Defendants have infringed, directly and indirectly, one or more claims of United States Patent No. 8,534,001;
- B. A judgment and order preliminarily and permanently enjoining Defendants, their employees and agents, and any other person(s) in active concert or participation with them from infringing, directly or indirectly, United States Patent No. 8,534,001;
- C. A judgment and order requiring Defendants to pay Plaintiff's damages, including enhanced damages under 35 U.S.C. § 284 and supplemental damages for any continuing post-verdict infringement up until entry of final judgment with an accounting as needed together with prejudgment and post-judgment interest;
- D. An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- E. A judgment and order preliminarily and permanently enjoining Defendants, their employees and agents, and any other person(s) in active concert or participation with them from further actions in violation of the Lanham Act, pursuant to 15 U.S.C. § 1116,

including but not limited to: (1) prohibiting Defendants from, directly or indirectly, using any false or misleading description, statement and/or representation of fact in connection with Defendants' products or services; and (2) requiring Defendants to undertake corrective advertising to remedy their false and misleading advertising;

- F. A judgment and order requiring Defendants to pay: (1) Plaintiff's damages, including any gains, profits and advantages obtained by Defendants as a result of Defendants' acts, (2) any actual and statutory damages that Plaintiff has sustained and will sustain, including treble damages, together with prejudgment and post-judgment interest, and (3) the costs of the action pursuant to applicable law including 15 U.S.C. § 1117;
- G. An award of attorneys' fees pursuant to 15 U.S.C. § 1117 or as otherwise permitted by law;
- H. A determination that this is an "exceptional case" pursuant to applicable law including without limitation 35 U.S.C. § 285 and 15 U.S.C. § 1117;
- I. Actual, statutory, additional and punitive damages to which Plaintiff may be entitled under the causes of action asserted in this Complaint;
- J. An award of costs of this action;
- K. Pre-judgment and post-judgment interest to the extent allowed by law; and
- L. Such other and further relief, in law and in equity, as the Court deems just and equitable.

Dated: September 17, 2013

Respectfully submitted,

SIEBMAN, BURG, PHILLIPS & SMITH, L.L.P.

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