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Attorneys for Plaintiff FLIR Systems, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

'051010HU

FLIR SYSTEMS, INC.
Plaintiff,

v.

HOMESAFE INSPECTION, INC.
Defendant.

Case No. _____

COMPLAINT FOR OREGON
TRADE LIBEL, OREGON
DEFAMATION, FEDERAL
DILUTION VIOLATION,
OREGON DILUTION
VIOLATION, AND OREGON
INTENTIONAL INTERFERENCE
WITH ECONOMIC RELATIONS

DEMAND FOR JURY TRIAL

4200

Plaintiff FLIR Systems, Inc. alleges, based on actual knowledge with respect to plaintiff and plaintiff's acts, and on information and belief with respect to all other matters, as follows:

NATURE OF THE CASE

1. This is a civil suit for Oregon trade libel, Oregon defamation, federal dilution violation, Oregon dilution violation, and Oregon intentional interference with economic relations.

THE PARTIES

2. Plaintiff FLIR Systems, Inc. ("FLIR Systems") is an Oregon corporation, having a principal place of business and mailing address at 27700A S.W. Parkway Avenue, Wilsonville, OR 97070.

3. Defendant HomeSafe Inspection, Inc. ("HomeSafe") is a Mississippi corporation, having a principal place of business and mailing address at 604 South 16th Street, Oxford Mississippi 38655.

JURISDICTION & VENUE

4. This Court has federal question, diversity, and supplemental jurisdiction of this action. The court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), because of the Federal anti-dilution claim under the U.S. Lanham Trademark Act 15 U.S.C. § 1051 et seq.. The Court has diversity jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states (Oregon and Mississippi), and because

the amount in controversy exceeds \$75,000. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 because of FLIR Systems' claims that HomeSafe has committed trade libel, defamation, dilution, and intentional interference with economic relations under the laws of the state of Oregon.

5. This Court has personal jurisdiction because defendant HomeSafe conducts business in the state of Oregon and elsewhere in the United States in connection with the allegations of this lawsuit, has asserted claims against FLIR Systems throughout the United States in connection with the allegations of this suit, and is causing injury to FLIR Systems in Oregon.

6. Venue in this district is proper under 28 U.S.C. § 1391.

BACKGROUND

7. FLIR Systems is a world leader in the design, manufacturing, and marketing of thermal imaging and stabilized camera systems for a wide variety of thermography and imaging applications, including for home inspection.

8. At least as early as April 28, 2005, HomeSafe (through its attorneys) began sending letters to FLIR Systems' customers. A copy of one of the HomeSafe letters is attached as Exhibit A.

9. The HomeSafe letter represents that HomeSafe is a "home inspection services company which uses infrared and acoustic technology which was developed and

is licensed by HomeSafe Inspection, Inc. from the National Center for Physical Acoustics/University of Mississippi.”

10. The HomeSafe letter also represents that HomeSafe has “patent pending procedures and specially built equipment [that] have provided innovative ways of locating suspicious signs of termite activities and moisture, as well as electrical hot spots, exterior and interior wall moisture, small animals and rodents, structure problems, floor moisture problems, heating and air issues, and mold.”

11. The HomeSafe letter includes at least two warnings (“the Warnings”). First, the letter warns FLIR Systems’ customers that if they are “using infrared equipment for the purpose of home inspection” or “claiming to be performing the same types of services as HomeSafe Inspection, Inc.,” they “may very well be in violation of patent law and could likely be liable for enormous damages to our company for so doing.” The HomeSafe letter further states that “to maintain our patent, we are required to monitor and enforce the patents in every instance and thus we are forced to make contact or settle the matter either through an agreement of some sort of litigation if necessary.” Second, the letter warns that using “inferior” infrared equipment for home inspection purposes, “without HomeSafe’s advanced home inspection training and equipment, will be fraud against the client/consumers for which you work and could be reported to the Consumer Protection Department in your State.”

CLAIM I: OREGON TRADE LIBEL

12. FLIR Systems hereby re-alleges and incorporates by reference the allegations in the foregoing paragraphs, as though fully set forth herein.

13. The Warnings are false statements about FLIR Systems because it is impossible under any circumstances for a party to infringe a pending patent. It is likewise impossible for a party to infringe even an issued patent by claiming to perform certain services. In addition, HomeSafe's statement that it is required to "monitor and enforce the patents in every instance" to "maintain" its patent is a plainly inaccurate statement of fact (because HomeSafe has no patent) and law (because there is no such legal requirement). Finally, HomeSafe's implicit reference to FLIR Systems' products as "inferior equipment" is false and unfounded.

14. HomeSafe published the Warnings about FLIR Systems with malice.

15. As a result of HomeSafe's above acts, FLIR Systems has suffered damages, including special damages and pecuniary harm.

CLAIM II: OREGON DEFAMATION

16. FLIR Systems hereby re-alleges and incorporates by reference the allegations in the foregoing paragraphs, as though fully set forth herein.

17. The Warnings that HomeSafe published constitute defamatory statements about FLIR Systems.

18. HomeSafe published the Warnings in writing to third parties.

19. As a result of HomeSafe's above acts, FLIR Systems has suffered damages including special damages and pecuniary harm.

CLAIM III: FEDERAL ANTI-DILUTION UNDER THE LANHAM ACT






20. FLIR Systems hereby re-alleges and incorporates by reference the allegations in the foregoing paragraphs, as though fully set forth herein.



21. FLIR Systems owns the exclusive right to use the mark **◆FLIR** for infrared cameras, thermal imaging software, and temperature measurement systems for commercial, industrial, and government use ("the Goods"). FLIR Systems commenced usage of the mark FLIR SYSTEMS more than twenty-five years ago, at least as early as January, 1980, and has continuously and exclusively used that mark for the Goods since that date.

22. FLIR Systems owns a pending application for U.S. registration of the mark **◆FLIR** (Application Serial No. 78/254,729). Recognizing the acquired distinctiveness of the mark **◆FLIR**, the United States Patent and Trademark Office ("PTO") has approved the application for publication. The application was published on June 26, 2004.

23. As a result of extensive distribution, marketing, and sales of the Goods under the **◆FLIR** mark, the widespread acclaim the Goods have achieved in the trade and popular press, and the excellent reputation the Goods have earned, the purchasing public recognizes and relies on the distinctive **◆FLIR** mark as exclusively symbolizing the


goodwill and high quality of the Goods, and distinguishing the Goods from those produced by others.

24. The mark  has become famous within the meaning of Section 43(c) of the U.S. Lanham Trademark Act [15 U.S.C. § 1125(c)] as a result of the acquired distinctiveness of the  mark, the duration and extent of exclusive use of the  mark by FLIR Systems for the Goods, the duration and extent of publicity  has received, the widespread distribution of the Goods, and the high degree of recognition of the  mark by consumers and the various industries and markets for infrared cameras, thermal-imaging software, and temperature-measurement systems for commercial, industrial, and government use.

25. HomeSafe sent letters with the Warnings after FLIR Systems' mark  became famous, and HomeSafe is diluting the distinctive quality of FLIR Systems' famous mark , in violation of 15 U.S.C. § 1125(c), severely and irreparably damaging FLIR Systems. FLIR Systems has no adequate remedy at law.

CLAIM IV: OREGON ANTI-DILUTION UNDER ORS § 647.107

26. FLIR Systems hereby re-alleges and incorporates by reference the allegations in the foregoing paragraphs, as though fully set forth herein.

27. The aforesaid acts of HomeSafe violate the laws of the State of Oregon and particularly ORS § 647.107 in that HomeSafe has injured FLIR Systems' business reputation, and diluted the distinctive quality of FLIR Systems' mark .

**CLAIM V: OREGON INTENTIONAL INTERFERENCE
WITH ECONOMIC RELATIONS**

28. FLIR Systems hereby re-alleges and incorporates the allegations of the foregoing paragraphs, as though fully set forth in this paragraph.

29. A business relationship exists between FLIR Systems and its customers.

30. HomeSafe intentionally interfered with that business relationship by publishing the Warnings in the letters that it sent to FLIR Systems' customers.

31. HomeSafe's intentional interference with the relationship between FLIR Systems and its customers was accomplished through improper means or for an improper purpose, namely, to cause problems with or end one, several, or all of the relationships between FLIR Systems and its customers.

32. HomeSafe's intentional interference has caused damage to FLIR Systems' relationships with its customers.

33. FLIR Systems has suffered damages in an amount not yet determined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FLIR Systems prays for judgment as follows:

A. That HomeSafe be found to have made trade libelous statements about FLIR Systems; and that HomeSafe be enjoined preliminarily and permanently from making any trade libelous statements about FLIR Systems in the future, including that HOMESAFE be enjoined from making the Warnings.

B. That HomeSafe be found to have made defamatory statements about FLIR Systems; and that HomeSafe be enjoined preliminarily and permanently from making any defamatory statements about FLIR Systems in the future, including that HomeSafe be enjoined from making the Warnings.

C. That HomeSafe be found to have violated the Federal Anti-dilution Statute, 15 U.S.C. § 1125(c) because HomeSafe diluted the distinctive quality of FLIR Systems' mark **FLIR** by sending letters with the Warnings to FLIR Systems' distributors and customers.

D. That HomeSafe be found to have violated the Oregon Anti-dilution Statute, ORS § 647.107 because HomeSafe caused a likelihood of injury to the business reputation of FLIR Systems by sending letters with the Warnings to FLIR Systems' distributors and customers.

E. That HomeSafe be found to have intentionally interfered with the economic relations of FLIR Systems and its customers.

F. That HomeSafe be enjoined preliminarily and permanently from violating the Federal Anti-dilution Statute, 15 U.S.C. § 1125(c), from violating the Oregon Anti-dilution Statute, ORS § 647.107, and from interfering with the economic relations of FLIR Systems and its customers.

G. That HomeSafe damaged FLIR Systems by its acts alleged above, and that FLIR Systems suffered damages, special damages, and pecuniary harm in an amount that exceeds \$500,000.

H. That FLIR Systems be awarded its costs and attorneys fees.

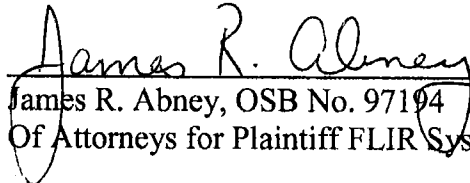
I. That the Court orders such other and further relief as it deems equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

Dated: June 29, 2005


James R. Abney, OSB No. 97194
Of Attorneys for Plaintiff FLIR Systems, Inc.

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April 28, 2005

**VIA FACSIMILE
& U.S. MAIL**

Re: HomeSafe Inspection, Inc.'s pending patent on infrared and acoustic inspection protocols and equipment

Dear

It is our understanding that you have been in contact with or are aware of our company, HomeSafe Inspection, Inc., a home inspection services company which uses infrared and acoustic technology which was developed and is licensed by HomeSafe Inspection, Inc. from the National Center for Physical Acoustics/University of Mississippi. HomeSafe's patent pending combination of traditional home inspection techniques and protocols for utilization of infrared usage for inspection of homes, plus its further implementation of acoustical sensors and patent recognition software, has made a significant impact on how HomeSafe trained and certified inspectors review homes.

HomeSafe's patent pending procedures and specially built equipment have provided innovative ways of locating suspicious signs of termite activities and moisture, as well as electrical hot spots, exterior and interior wall moisture, small animals and rodents, structure problems, floor moisture problems, heating and air issues, and mold. However, without the new inspection techniques, policies, training, equipment, process, design and information, it is highly unlikely that a person using similar equipment would be able to adequately ascertain the problems, at HomeSafe's advanced standards, which need to be detected when inspecting a house.

If you are in fact using infrared equipment for the purposes of home inspection and/or are claiming to be performing the same types of services as HomeSafe Inspection, Inc., you may very well be in violation of patent law and could likely be liable for enormous damages to our company for so doing.

With notice of this letter, we are attempting to peaceably clear up any contention between us. HomeSafe Inspection, Inc. is a franchising company for home inspectors who provides its franchise owners with all the necessary training, certification and equipment to accurately and decisively discover problems in a home dwelling using infrared and acoustic technologies. To use inferior equipment without any training, to attempt to dispute or refute HomeSafe Inspection's services and

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reports is impossible. Any use of said equipment for these purposes and without HomeSafe's advanced home inspection training and equipment, will be fraud against the client/consumers for which you work and could be reported to the Consumer Protection Department in your State.

Our pending patent will likely be upheld on numerous grounds of entitlement - specifically patent claims for our use of infrared technology Appendix A: 1-3; 31-41 and method claims 4-22; 42-53 as it relates to your violation. In addition, as it relates to our termite and moisture claims, most every claim should be upheld as outlined in the pending patent. Once that occurs, we are able to enforce the patent from the time the provisional patent was filed. We are not aware of any claims that you or others have used this type of equipment and protocols prior to our filing a provisional patent for termite detection which was filed in October of 2002, nor prior to the filing of our provisional patent for Infrared Home Inspection, filed in March of 2003. Infringement of our patent requires us to seek any and all legal remedies against any violators including you and/or your company,

We urge you to contact us at your earliest convenience to discuss HomeSafe Inspection, Inc., our franchise services, and the pending patent which we have filed for as a result of our invention. In order to maintain our patent, we are required to monitor and enforce the patents in every instance and thus we are forced to make contact or settle the matter either through an agreement of some sort or litigation if necessary. You can reach me at my office, at the number listed on this letterhead, to have this important discussion.

All the best,

Sincerely,

R. Quentin Whitwell

RQW/sdh

cc: Kevin J. Seddon, President, HomeSafe Inspection, Inc.
Pang Lee, Chief Technology Officer, HomeSafe Inspection, Inc.
L. Lee Tyner, University Attorney, University of Mississippi
Steve Flickinger, Alabama HomeSafe, LLC
Susan B. Fentress, Registered Patent Attorney, Butler Snow O'Mara Stevens & Cannada, PLLC

