

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

RED DOG MOBILE SHELTERS, LLC,

Plaintiff,

v.

RISING S COMPANY LLC AND
RIG SAFE COMPANY

Defendants.

Case No. 3:13-CV-3757

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT

Plaintiff Red Dog Mobile Shelters, LLC (“Plaintiff” or “Red Dog”) files this Complaint against Defendants Rising S Company LLC and Rig Safe Company 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, Rising S Company LLC is a corporation organized and existing under the laws of Texas, with a place of business at 15500 Turner Line Rd., Kemp, Texas 75143. Rising S Company, LLC may be served with process by serving its registered agent Clyde W. Scott, 15500 Turner Line Rd., Kemp, Texas 75143.
3. Upon information and belief, Rig Safe Company is an unincorporated association with a place of business at 15500 Turner Line Rd., Kemp, Texas 75143. On information and belief, Rig Safe Company may be served with process at 15500 Turner Line Rd., Kemp, Texas 75143.

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, trade dress infringement, 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 are residents of this District and have sufficient minimum contacts with the forum as a result of business conducted 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 patents-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 a regular and established place of 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, trade dress infringement, 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. United States Design Patent No. D685,921 (the “‘921 Patent”) entitled “Shelter” was duly and legally issued by the United States Patent and Trademark Office on July 9, 2013 after full and fair examination. A true and correct copy of the ‘921 Patent is attached hereto as Exhibit B.

14. Red Dog was previously assigned the ‘921 Patent and continues to hold all rights, title and interest in the ‘921 Patent.

15. On information and belief, Rising S Company LLC (hereinafter “Rising S Company”) makes, manufactures, fabricates, designs, uses, sells, offers to sell, and/or imports within or into the United States steel bunkers, NBC fallout shelters, storm shelters, tornado shelters, safe rooms, panic rooms, blast doors, vault doors, and oil field shelters. On information and belief, Rising S Company has a place of business in this District located at 15500 Turner Line Rd., Kemp, Texas 75143.

16. On information and belief, Rising S Company makes, manufactures, fabricates, designs, uses, sells, offers to sell, and/or imports within or into the United States a variety of bunkers and shelters, including “oil field” tornado or storm shelters and/or above ground mobile shelters. Rising S Company advertises its “oil field” tornado shelters and/or above ground mobile shelters on its website <http://www.risingsbunkers.com/>. On its website, <http://www.risingsbunkers.com/>, Rising S Company claims: (i) to “offer services to oil field sites to provide the workers a safe

place to shelter during storms or tornados;” (ii) its tornado shelters are mobile and “can be installed and left in place during construction, drilling, and processing;” (iii) to “build these shelters 8’ x 14’ standard with a 4” x 4” torque tube placed down the center since these shelters are intended to be moved from site to site,” which “increases the collapse rate from ~32 tons all the way up to ~64 tons;” (iv) “Rising S tornado shelters exceed every FEMA requirement set fourth [sic] in the 320 & 361 guidelines as well as the 2008 standards from ICC500/FEMA;” (v) “The shelter’s specially engineered design uses the high winds to it’s [sic] advantage by allowing nature’s force to increase it’s [sic] virtual weight,” claiming that the shelter effectively “weighs 110,000+ pounds in 350+ mph winds” and stating that “no matter how violent the winds - the shelter will not budge;” (vi) “This greatly exceeds the 250 mph minimum required by FEMA as well as the American Society of Civil Engineers wind loads on structures guidelines;” (vii) its “tornado shelter’s design not only increases it’s stability, but it adds significant structural strength as well;” and (viii) its shelters are “engineered to withstand impacts by even the heaviest wind-borne objects.”

17. On information and belief, Rig Safe Company is an unincorporated association of persons with a place of business in this District located at 15500 Turner Line Rd., Kemp, Texas 75143. Rig Safe Company advertises products, including above ground storm shelters, on its website <http://www.rigsafe.com/>. On its website <http://www.rigsafe.com/>, Rig Safe Company claims: (i) “Rig Safe is a leader in tornado shelter technology. We specialize in steel shelters; above-ground and below. Our steel shelters come with a lifetime guarantee on all craftsmanship, they are delivered and installed all over the world and can be customized to order. There is nothing better, nothing stronger than a RIG SAFE shelter!” (ii) that its above ground mobile shelters come in different sizes “10ft - (holds 15-20) - PURCHASE: \$47,400 LEASE: \$185/day

(6 month terms)” and “20ft - (holds 40-50) - PURCHASE: \$67,400 LEASE: \$240/day (6 month terms);” (iii) features of its anchor-less above ground tornado shelters include “Constructed from quarter inch plate-steel and reinforced steel arch & ribbing, Dual Entry/Exit design, Rated for wind speeds exceeding the 250mph minimum required by FEMA, Solar powered lighting and air-conditioning, Available in 2 sizes: 10ft shelter (holds about 10-15) & 20ft shelter (holds about 20-30), Certified FEMA compliant shelters, Guaranteed to be free of manufacturing defects and damaged units are repaired on site.” On its website <http://www.rigsafe.com/>, Rig Safe Company claims under the heading “How does it work” that: “In fluid dynamics, Bernoulli’s principle says that for an inviscid flow (no viscosity), an increase in the speed of the fluid occurs simultaneously with a decrease in pressure or a decrease in the fluid’s potential energy. So this basically means that an object of a particular shape and mass weighing a half-million pounds can be lifted by a wind moving at 150mph. So the same low pressure that was used as a lifting force can be made to push an object down. This downward force anchors the shelter to the earth’s surface and prevents the Rig Safe from being moved by the high winds of a tornado.”

18. On information and belief a YouTube video was published on September 9, 2013 by Clyde Scott entitled “RigSafe Above Ground Tornado Shelter” which includes the following description: “Above-ground tornado shelters are perfect solutions for oil fields or work sites that are constantly relocating. In this video we explain how these shelters work without any anchoring but provide superior protection compared to the traditional method of ground anchors. www.rigsafe.com.” On information and belief this YouTube video states: (i) “Completely FEMA compliant, rated for wind speeds exceeding the 250 MPH minimum required by FEMA;” (ii) “Available in 2 sizes: 10ft model (holds 20-30 people) 20 ft model (holds 40-50 people);”

(iii) “Rig Safe units are available for lease or purchase with flexible volume pricing options;”
(iv) “Bernoulli’s Principle ‘states that for an inviscid flow (without viscosity), an increase of the speed of the fluid (wind) occurs simultaneously with a decrease in pressure or a decrease in the fluid’s potential energy;” (v) “Bernoulli’s Principle ‘WHICH MEANS the wind moves much faster across the top of the shelter because of its arch design. This in turn creates compressed wind and a downward force on the shelter;” and (vi) “Bernoulli’s Principle ‘The faster the wind blows the more virtual weigh is applied in a downward force. The unit basically becomes heavier in high winds!””

19. Upon information and belief, in April 2013 agents, representatives, employees and/or officers of Rising S Company wrongfully entered property located in Athens, Texas unescorted and unauthorized and inspected a Red Dog shelter.

20. On information and belief, Defendants have been and now are 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, Defendants have infringed directly and indirectly (by inducement and/or contributory infringement) and continue 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 “oil field” tornado or storm shelters and/or above ground mobile shelters and similar products.

21. On information and belief, Defendants have been and now are infringing the '921 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 in the eye of the ordinary observer giving such attention as a purchaser usually gives are designed substantially the same as Red Dog's mobile shelters.

22. 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.

23. 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

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

25. 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 "oil field" tornado or storm shelters and/or above ground mobile shelters and similar products.

26. 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). On information and belief, 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.

27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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 – INFRINGEMENT OF UNITED STATES
DESIGN PATENT NO. D685,921**

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

34. Plaintiff alleges that Defendants have infringed directly and indirectly (by inducement and/or contributory infringement) and continue to infringe directly and indirectly United States Design Patent No. D685,921 (the "'921 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 "oil field" tornado or storm shelters and/or above ground mobile shelters and similar products.

35. Plaintiff alleges that at least as of the filing of this complaint, Defendants indirectly infringe the '921 Patent by active inducement under 35 U.S.C. § 271(b). On information and belief, 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 the '921 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.

36. Plaintiff alleges that Defendants indirectly infringe the '921 Patent by contributory infringement under 35 U.S.C. § 271(c).

37. Pleading in the alternative, upon information and belief, Plaintiff alleges Defendants, without license, apply the patented design of the '921 Patent, or a colorable imitation thereof, to articles of manufacture for the purpose of sale, or sell articles of manufacture to which such design or colorable imitation has been applied, specifically in regards to their "oil field" tornado or storm shelters and/or above ground mobile shelters and similar products, and are therefore liable to Plaintiff to the extent of their total profit pursuant to 35 U.S.C. § 289.

38. Defendants do not have a license or other authorization to practice the '921 Patent.

39. As a direct and proximate consequence of the acts of infringement and/or inducing the infringement the '921 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.

40. As a direct and proximate consequence of the acts of infringement and/or inducing the infringement of the '921 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.

41. 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.

42. Pleading in the alternative, as a direct and proximate consequence of the acts of infringement of the '921 Patent by Defendants, Plaintiff is entitled to Defendants' total profit pursuant to 35 U.S.C. § 289.

43. 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 '921 Patent.

COUNT THREE – VIOLATION OF SECTION 43 OF THE LANHAM ACT
(15 U.S.C. § 1125)
UNFAIR COMPETITION: TRADE DRESS INFRINGEMENT

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

45. On information and belief, Defendants have appropriated non-functional, distinguishing design features compromising the unique look of Plaintiff Red Dog's tornado shelters. The protected elements of trade dress are the total image and overall appearance of a product and may include features such as the size, shape, color, color combinations, textures, graphics, and even sales techniques that characterize a particular product. The distinctive features of Red Dog's mobile shelters create a total image and overall appearance that serves to identify them as Red Dog products.

46. On information and belief Defendants have intentionally and deliberately advertised, manufactured, distributed, and/or used (and continue to advertise, manufacture, distribute and/or use) in commerce a storm shelter that is substantially similar in the design, presentation, size, shape, text, graphics, combination of text and graphics, placement, order and/or technique to Plaintiff's storm shelters and which infringes upon Plaintiff's rights and is causing and/or is likely to cause confusion as to the source, sponsorship, affiliation, connection or association of

Red Dog's products and services with that of Defendants' products and services. The photographs below depict Rising S Company's product, Rig Safe Company's product, and Red Dog's product by way of example.



Rising S Company's shelter



Red Dog's shelter



Rig Safe Company's shelter

47. This conduct by Defendants constitutes an infringement of Plaintiff's trade dress rights under the Lanham Act, 15 U.S.C. § 1125.

48. There is substantial likelihood that Plaintiff will prevail on its claims against Defendants, Defendants' violation of Plaintiff's rights under 15 U.S.C. § 1125 has 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.

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

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

51. 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).

52. 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.

53. 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. Such statements include but are not limited to: (i) Defendants' claim to "build these shelters 8' x 14' standard with a 4" x 4" torque tube placed down the center since these shelters are intended to be moved from site to site," which "increases the collapse rate from ~32 tons all the way up to ~64 tons;" (ii) "Rising S tornado shelters exceed every FEMA requirement set fourth [sic] in the 320 & 361 guidelines as well as the 2008 standards from ICC500/FEMA;" (iii) "The shelter's specially engineered design uses the high winds to it's [sic] advantage by allowing nature's force to increase it's [sic] virtual weight," claiming that the shelter effectively "weighs 110,000+ pounds in 350+ mph winds" and stating that "no matter how violent the winds - the shelter will not budge;" (iv) "This greatly exceeds the 250 mph minimum required by FEMA as well as the American Society of Civil Engineers wind loads on structures guidelines;" (v) its "tornado shelter's design not only increases it's stability, but it adds significant structural strength as well;" and (vi) its shelters are "engineered to withstand impacts by even the heaviest wind-borne objects;" (vii) that its above ground mobile shelters come in different sizes "10ft - (holds 15-20) - PURCHASE: \$47,400 LEASE: \$185/day (6 month terms)" and "20ft - (holds 40-50) - PURCHASE: \$67,400 LEASE: \$240/day (6 month terms);" (viii) features of its anchor-less above ground tornado shelters include "Constructed from quarter inch plate-steel and reinforced steel arch & ribbing, Dual Entry/Exit design, Rated for wind speeds exceeding the 250mph minimum required by FEMA, Solar powered lighting and air-conditioning, Available in 2 sizes: 10ft shelter (holds about 10-15) & 20ft shelter (holds about 20-30), Certified FEMA compliant

shelters, Guaranteed to be free of manufacturing defects and damaged units are repaired on site;” (ix) claims under the heading “How does it work” that: “In fluid dynamics, Bernoulli’s principle says that for an inviscid flow (no viscosity), an increase in the speed of the fluid occurs simultaneously with a decrease in pressure or a decrease in the fluid’s potential energy. So this basically means that an object of a particular shape and mass weighing a half-million pounds can be lifted by a wind moving at 150mph. So the same low pressure that was used as a lifting force can be made to push an object down. This downward force anchors the shelter to the earth’s surface and prevents the Rig Safe from being moved by the high winds of a tornado;” (x) “Completely FEMA compliant, rated for wind speeds exceeding the 250 MPH minimum required by FEMA;” (xi) “Available in 2 sizes: 10ft model (holds 20-30 people) 20 ft model (holds 40-50 people);” (xii) “Bernoulli’s Principle ‘states that for an inviscid flow (without viscosity), an increase of the speed of the fluid (wind) occurs simultaneously with a decrease in pressure or a decrease in the fluid’s potential energy;” (xiii) “Bernoulli’s Principle ‘WHICH MEANS the wind moves much faster across the top of the shelter because of its arch design. This in turn creates compressed wind and a downward force on the shelter;” and (xiv) “Bernoulli’s Principle ‘The faster the wind blows the more virtual weigh is applied in a downward force. The unit basically becomes heavier in high winds!’”

54. On information and belief, Defendants’ statement that their shelters are “Certified FEMA compliant shelters” and/or similar statements regarding FEMA certifying, approving, or endorsing Defendants’ products are literally false.

55. Additionally, and in the alternative, on information and belief, Defendants have represented through commissions and omissions, express and implied, that their “oil field” tornado or storm shelters and/or above ground mobile shelters 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 "oil field" tornado or storm shelters and/or above ground mobile shelters 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.

56. 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.

57. On information and belief, Defendants' products and false and misleading statements are in interstate commerce.

58. 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.

59. 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).

60. 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.

61. 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 FIVE – VIOLATION OF TEXAS LAW
UNFAIR COMPETITION, TRADE DRESS INFRINGEMENT,
AND FALSE ADVERTISING

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

63. 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.

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

65. Defendants have violated Texas law by engaging in the aforesaid conduct including but not limited to intentionally and deliberately advertising, manufacturing, distributing, and/or using in commerce a storm shelter that is substantially similar in the design, presentation, size, shape,

text, graphics, combination of text and graphics, placement, order and/or technique to Plaintiff's storm shelters and which infringes upon Plaintiff's rights and is causing and/or is likely to cause confusion as to the source, sponsorship, affiliation, connection or association of Red Dog's products and services with that of Defendants' products and services

66. 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.

67. 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 that Defendants have infringed, directly and indirectly, United States Design Patent No. D685,921;
- D. 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 Design Patent No. D685,921;
- E. 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;
- F. An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- G. 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 prohibiting: (1) any and all use of Plaintiff's trade dress or any derivation thereof, directly or indirectly, by Defendants or anyone acting on their behalf, and (2) 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 (3) requiring Defendants to undertake corrective advertising to remedy their false and misleading advertising;
- H. 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;

- I. An award of attorneys' fees pursuant to 15 U.S.C. § 1117 or as otherwise permitted by law;
- J. 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;
- K. Actual, statutory, additional and punitive damages to which Plaintiff may be entitled under the causes of action asserted in this Complaint;
- L. An award of costs of this action;
- M. Pre-judgment and post-judgment interest to the extent allowed by law; and
- N. 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.

s/ Clyde M. Siebman
CLYDE M. SIEBMAN
Texas State Bar No. 18341600
STEPHANIE R. BARNES
Texas State Bar No. 24045696
Federal Courthouse Square
300 North Travis Street
Sherman, Texas 75090
Telephone: 903-870-0070
Facsimile: 903-870-0066
clydesiebman@siebman.com
stephaniebarnes@siebman.com

LAW OFFICES OF ELVIN E. SMITH, III PLLC

ELVIN E. SMITH III
Texas State Bar No. 00784995
307 Dartbrook
Rockwall, Texas 75087
Telephone: 972-722-2475
Facsimile: 972-722-3332
esmith@EESLAW.COM

YUDELL ISIDORE NG RUSSELL PLLC

BRIAN F. RUSSELL
Texas State Bar No. 00791583
8911 N. Capital of Texas Hwy.
Suite 2110
Austin, Texas 78759
Telephone: 512-617-5535
Facsimile: 512-610-8758
Russell@yudellisidore.com

**ATTORNEYS FOR PLAINTIFF RED DOG MOBILE
SHELTERS, LLC**