

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

SHOCK ALERT LLC,	)	
	)	
Plaintiff,	)	Case No.: 2:17-cv-00231-UA-MRM
	)	
vs.	)	
	)	
SAFEWATER SYSTEMS, INC.,	)	

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT,  
OR IN THE ALTERNATIVE, UNFAIR COMPETITION/FALSE ADVERTISING**

COMES NOW Plaintiff Shock Alert LLC (“Shock Alert”) and for its Amended Complaint for Patent Infringement, or pursuant to Federal Rule of Civil Procedure 8(d)(2), in the Alternative, for Unfair Competition and/or False Advertising against Defendant Safe Water Systems, Inc. (“Defendant” or “Safe Water”), states as follows:

**PARTIES**

1. Shock Alert is a limited liability company organized and existing under Missouri law (formerly known as “Birchtree LLC”), with a place of business at 50 North Central Drive, O’Fallon, Missouri 63366.

2. On information and belief, Defendant Safe Water is a corporation organized and existing under Florida law, with a place of business at 24333 Penhollow Court, Punta Gorda, Florida 33955.

**JURISDICTION AND VENUE**

3. This is a civil action brought by Shock Alert for patent infringement committed by Defendant and arising under the patent laws of the United States, specifically, Title 35 of the United States Code, or in the alternative, for unfair competition and/or false advertising

committed by Defendant and arising under the Lanham Act, specifically, Title 15 of the United States Code.

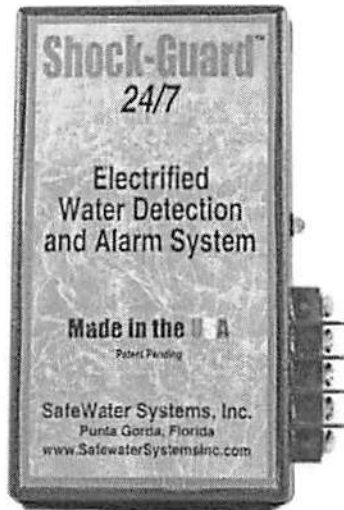
4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

6. A substantial part of the events giving rise to Shock Alert's claims occurred in this District.

7. Defendants may be found and/or reside in this District by virtue of its activities and place of business in this District.

8. Directly and/or through intermediaries, Defendant sells and distributes devices for detecting the presence of electricity in bodies of water. More specifically, Defendant makes, uses, sells, offers for sale, and/or imports into the United States products and systems advertised as the "Shock-Guard 24/7" devices and systems, and further described on its website at [www.safewatersystemsinc.com](http://www.safewatersystemsinc.com), with an example shown below (hereinafter "the Shock-Guard products"):



9. The Shock-Guard products have been sold in, offered for sale in, and/or imported into the United States and/or in this District by Defendant or an authorized agent thereof.

10. Defendant's products, such as the Shock-Guard products, are available for purchase or offered for sale on Defendant's website ([www.safewatersystemsinc.com](http://www.safewatersystemsinc.com)) and in this District.

11. Defendants advertises its products, such as the Shock-Guard products, in the United States and in this District.

12. Defendants' products, such as the Shock-Guard products, are intended to operate as advertised on Defendant's website ([www.safewatersystemsinc.com](http://www.safewatersystemsinc.com)) and as described in its associated marketing materials.

13. Defendant has committed acts of patent infringement in this District.

14. Defendant, directly and/or through intermediaries, has for a time past, and still is, purposefully shipping, selling, and/or offering for sale, whether alone or as part of an end product, the Shock-Guard products in the United States and the State of Florida, and, more specifically, in this District, and in competition with Shock Alert's products.

15. In the alternative, and to the extent Defendant's products do not operate as advertised on Defendant's website ([www.safewatersystemsinc.com](http://www.safewatersystemsinc.com)) and as described in its associated marketing materials such that Defendant has not committed acts of patent infringement, Defendant has committed acts of unfair competition and/or false advertising in this District.

### **BACKGROUND**

16. United States Patent No. 9,285,396 B2 ("the '396 patent") issued on March 15, 2016, bearing the title "SHOCK DETECTOR" and naming L. Herbert King, Jr., James Keeven, Justin McKinney, Nathan C. Burns, and Frank Vlasaty as inventors. A copy of the '396 patent is attached hereto as Exhibit A.

17. Shock Alert is the owner by assignment of all right, title and interest in and to the '396 patent and has full and exclusive right to bring suit and enforce the '396 patent and to collect damages for infringement. Shock Alert thus has standing to sue for infringement of the '396 patent.


18. The '396 patent claims the invention of a shock detector for detecting a hazardous water condition having particular features and methods utilizing the same, as set forth in columns 8 through 10 of the '396 patent.

19. The Shock-Guard products are a shock detector for detecting a hazardous water condition in a body of water that could injure or kill a person entering the body of water. Defendant specifically advertises the Shock-Guard products to "solv[e] the problem" of "life-threatening electricity" and "loss of life from Electric Shock Drowning or Electrocution..." as follows:

**SHOCK-GUARD™ 24/7**  
"ELECTRIFIED WATER ALARM"

- Avoid a Family Tragedy  
- Protect Boats Against Marine Corrosion

**POOLS                      DOCKS                      MARINAS**



Shock-Guard 24/7 has been tested with a sustained, continuous voltage of 240 volts for a period of 9 hours without damage to the unit. [WHY IS THIS IMPORTANT? CLICK HERE](#)

**THE PROBLEM**

Life-threatening electricity can enter the water of pools, spas, marinas or around a dock from many different sources without anybody knowing that it's there... a lurking invisible and silent killer. This can result in loss of life from **Electric Shock Drowning or Electrocutation** and cause rapid corrosion (electrolysis) of a boat's exposed metal parts and resulting expensive repairs.

**THE SOLUTION**

Install a system that monitors the water 24/7, sounds a warning alarm and trips a GFI circuit, shutting off the power-SOLVING THE PROBLEM

**THE ANSWER**

Shock-Guard 24/7 "Electrified Water Detection and Alarm System".

20. The Shock-Guard products have an electrical detector for determination of the presence of an electrical condition, including a voltage level that is sufficiently great so as to injure or kill the person entering the body of water.

21. The Shock-Guard products have a ground electrode for engaging with soil proximate the body of water.

22. The Shock-Guard products have an electrical conductor connecting said ground electrode to said electrical detector.

23. The Shock-Guard products have a water electrode for immersing in the body of water.

24. The Shock-Guard products have a second electrical conductor connecting said water electrode to said electrical detector.

25. The Shock-Guard product have an alarm for alerting a person that the electrical condition in the body of water has exceeded a dangerous threshold that would injure or electrocute a person who entered the body of water.

26. Defendant Safe Water makes the Shock-Guard products for persons to use in the United States.

27. Defendant Safe Water uses the Shock-Guard products in the United States.

28. Defendant Safe Water sells the Shock-Guard products to persons for use in the United States.

29. Defendant Safe Water offers to sell the Shock-Guard products to persons for use in the United States.

30. Defendant Safe Water imports and/or otherwise provides the Shock-Guard products to persons for use in the United States.

**COUNT I**  
**(Infringement of U.S. Patent No. 9,285,396 B2 by Defendant Safe Water)**

31. Shock Alert hereby incorporates, as though fully set forth herein, the allegations of paragraphs 1 through 30 of this Amended Complaint.

32. Defendant Safe Water has infringed and continues to infringe the '396 patent by making, using, selling, and/or offering for sale within the United States or importing into the United States products and systems that embody one or more of the claims of the '396 patent, including at least claim 19 of the '396 patent, and/or by contributing to infringement, inducing others to infringe the '396 patent, and/or carrying acts constituting infringement under 35 U.S.C. § 271(f).

33. Defendant Safe Water has known of the '396 patent since at least July 2016, before the initiation of the present action, and therefore Defendant's actions have been both willful and deliberate.

34. Defendant Safe Water will continue to willfully infringe the '396 patent unless enjoined by this Court, which has resulted and will continue to result in irreparable harm to Shock Alert.

35. As a direct and proximate result of the infringement by Defendant Safe Water of the '396 patent, Shock Alert has been and continues to be damaged in an amount yet to be determined.

**COUNT II**  
**(In the Alternative to Patent Infringement,**  
**Unfair Competition and/or False Advertising by Defendant Safe Water)**

36. Shock Alert hereby incorporates, as though fully set forth herein, the allegations of paragraphs 1 through 35 of this Amended Complaint.

37. Defendant Safe Water has made and distributed in interstate commerce and in this District advertisements concerning the Shock-Guard products, and, specifically, Defendant advertises the Shock-Guard product to "solv[e] the problem" of "life-threatening electricity" and "loss of life from Electric Shock Drowning or Electrocution..."

38. Defendant Safe Water nonetheless denies for purposes of patent infringement that the Shock-Guard products are a shock detector for detecting a hazardous water condition in a body of water that could injure or kill a person entering the body of water.

39. To the extent Defendant prevails that the Shock-Guard products are not a shock detector for detecting a hazardous water condition in a body of water that could injure or kill a person entering the body of water, then Defendant Safe Water's advertising of the Shock-Guard

products as “solv[ing] the problem” of “life-threatening electricity” and “loss of life from Electric Shock Drowning or Electrocution...” is literally false and/or at least deceptively misleading.

40. Defendant Safe Water’s advertising, if false as described herein, actually deceives, or has a tendency to deceive, a substantial segment of its customers and potential customers and is material in that it concerns the inherent quality and characteristic of Defendant Safe Water’s product and is likely to influence the purchasing decisions of consumers.

41. Defendant Safe Water’s false and misleading advertising injures both consumers and Plaintiff, and violates the Lanham Act, 15 U.S.C. § 1125(a).

42. By its false and misleading advertising, Defendant Safe Water is causing and will continue to cause immediate and irreparable injury to Plaintiff. Plaintiff is therefore entitled to an injunction restraining Defendant Safe Water from engaging in future acts of false advertising.

43. Defendant Safe Water’s advertising, if false as set forth herein, is willful and has granted Defendant Safe Water unfair advantages, profits, and gains that are not presently ascertainable, entitling Plaintiff to recover from Defendant Safe Water damages, costs, and additional damages and reasonable attorneys’ fees as an exceptional case.

#### **REQUEST FOR RELIEF**

WHEREFORE, Shock Alert respectfully prays for judgment against Defendant Safe Water as follows:

- A. For a judgment holding Defendant Safe Water liable for infringement of the ‘396 patent;
- B. For an award of damages adequate to compensate Shock Alert for Defendant Safe Water’s infringement of the ‘396 patent, including treble damages and other damages allowed by 35 U.S.C. § 284;

- C. For injunctive relief enjoining Defendant Safe Water, their officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them as follows:
- (i) from manufacturing any products falling within the scope of the claims of the '396 patent;
  - (ii) from using any product falling within the scope of any of the claims of the '396 patent;
  - (iii) from selling, offering to sell, licensing or purporting to license any product falling within the scope of any of the claims of the '396 patent;
  - (iv) from importing any product into the United States which falls within the scope of the '396 patent;
  - (v) from actively inducing others to infringe any of the claims of the '396 patent;
  - (vi) from engaging in acts constituting contributory infringement of any of the claims of the '396 patent; and
  - (vii) from all other acts of infringement of any of the claims of the '396 patent;
- D. That Defendant Safe Water be ordered to deliver up for destruction all infringing products in their possession;
- E. That this be declared an exceptional case and that Shock Alert be awarded its attorneys' fees against Defendant Safe Water pursuant to 35 U.S.C. § 285;
- F. Or alternatively, based upon unfair competition and/or false advertising, for:
- (i) preliminary and permanent injunctive relief prohibiting Defendant Safe Water, its agents or anyone in concert with them, from engaging in false or misleading advertising with respect to the ability to detect any hazardous water condition that could injure or kill a person in the water;
  - (ii) an order requiring Defendant Safe Water correct any erroneous impression persons may have derived concerning the nature, characteristics or qualities of its Shock-Guard products' ability to detect any hazardous water condition that could injure or kill a person in the water;

- (iii) a declaration that Defendant Safe Water has violated 15 U.S.C. § 1125(a) by unfairly competing against Plaintiff by using false, deceptive or misleading statements of fact that misrepresent the nature, quality and characteristics of the Shock-Guard products;
  - (iv) damages sustained, an award of Defendant Safe Water's profits, and an award of attorneys' fees and costs for Defendant Safe Water's willful conduct as a consequence of Defendant Safe Water's unfair competition and false advertising pursuant to 15 U.S.C. § 1117;
  - (v) an order requiring all misleading and deceptive materials be removed and destroyed pursuant to 15 U.S.C. § 1118; and
  - (vi) an award of pre-judgment and post-judgment interest.
- G. For such further relief as this Court deems Shock Alert may be entitled to in law and in equity.

#### **JURY DEMAND**

Plaintiff Shock Alert demands a trial by jury as to all claims and all issues properly triable thereby.

Dated: September 29, 2017

Respectfully submitted,

By: /s/ Daniel J. Barsky  
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Attorneys for Plaintiff Shock Alert LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served upon counsel of record this 29th day of September, 2017, via the Court's electronic filing system to the following:

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