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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SAFETY LINK INTERNATIONAL, INC. §
Plaintiff §

VS. §

CASE NO. 4:08CV415

BRUCE BOYCE/MANUFACTURER §
DIRECT, LTD., Individually, and §
MANUFACTURER DIRECT, LTD. §
Defendants §

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes, SAFETY LINK INTERNATIONAL, INC., Plaintiff (hereinafter referred to as "Safety Link"), complaining of Defendants BRUCE BOYCE/MANUFACTURER DIRECT, LTD., individually, and MANUFACTURER DIRECT, LTD. and for cause of action will show the Court as follows:

Pursuant to FRCP 15, Plaintiff may amend its petition/complaint once as a matter of course before the Defendants file any responsive pleading, without seeking the permission of the Court. At the time of this filing, the Defendants have filed only a Motion to Dismiss and no other responsive pleading.

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

Safety Link International vs. Bruce Boyce/Manufacturer Direct, Ltd. and Manufacturer Direct, Ltd.; Case No. 4:08cv415

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Jurisdiction

1. This Court has jurisdiction of this matter as the Plaintiff, Safety Link International, Inc., is a Texas corporation, doing business within the State of Texas as well as internationally. Defendant, Bruce Boyce/Manufacturer Direct, Ltd., is an individual who resides in Canada and Defendant, Manufacturer Direct, Ltd., is a Canadian corporation, whose principal place of business is in Canada. Plaintiff and Defendants engaged in a business relationship that crossed international boundaries, with the matters being handled and originated within the State of Texas and being delivered to various locations in the United States and Canada.

2. This case rests in the jurisdiction of the United States District Court, as Congress has vested federal courts with exclusive jurisdiction over certain actions, one of which is patent and copyright causes under 28 U.S.C. §1338.

3. Any federal court may exercise personal jurisdiction over any defendant against whom a claim arising under federal law is made if that defendant is not subject to personal jurisdiction in any state. FRCP 4(k)(2). *See Adams v. Unione Mediterranea Di Sicurta*, 364 F.3d 646, 650 (5th Cir. 2004). The purpose of FRCP 4(k)(2) is to permit a court to consider, in federal-question cases, a defendant's national, rather than state, contacts. *See Submersible Sys. V. Perforadora Cent.*, 249 F.3d 413, 420 (5th Cir. 2001). The purpose of FRCP 4(k)(2) is to permit a court to consider, in federal-question cases, a defendant's national, rather than state, contacts. *See Submersible Sys. V. Perforadora Cent.*, 249 F.3d 413, 420 (5th Cir. 2001). In *U.S. v. Swiss Am. Bank, Ltd*, 191 F.3d 30, 41 (1st Cir. 1999), the First Circuit rejected the traditional approach that the plaintiff must negate the availability of jurisdiction in all 50 states, and instead crafted a simplified test whereby the plaintiff must allege only that the defendant is not subject to the jurisdiction of any one state and show that the defendant's contacts with the nation as a

whole satisfy constitutional requirements. See *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 215 (4th Cir. 2002); *ISI Int'l v. Borden Ladner Gervais LLP*, 256 F.3d 548, 552 (7th Cir. 2001); See also *Adams*, 364 F.3d at 651 (as long as Defendant does not concede jurisdiction in another state, court may use FRCP 4(k)(2) to confer jurisdiction).

4. A court has personal jurisdiction over a defendant who is served according to a federal statute. FRCP 4(k)(1)(C). The Defendants herein were served pursuant to the Hague Convention for service of Defendants from a foreign jurisdiction. When a federal court attempts to exercise personal jurisdiction over a defendant in a suit based on a federal statute providing for nationwide service of process, the relevant inquiry is whether the defendant has sufficient contacts with the United States as a whole. *Adams*, 364 F.3d 646, 650 (5th Cir. 2004).

5. Specific jurisdiction may be based on Internet contacts when the defendant-website operator (1) directly targets the website to the forum state, (2) knowingly conducts business with the forum state's residents through the website, or (3) has sufficient related non-Internet contact with the forum state's residents. *Toys "R" Us., Inc. v. Step Two, S.A.*, 318 F.3d 445, 454 (3d Cir. 2003); see *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890-91 (6th Cir. 2002); see also *AST Sports SWCI, Inc. v. CLF Distrib., Ltd.*, 514 F.3d 1054, 1059 (10th Cir. 2008) (modern communications can eliminate need for physical presence in forum). Many courts have held that a court's ability to exercise personal jurisdiction is directly proportional to the nature and quality of the commercial activity the defendant conducts on the Internet, adopting the flexible "sliding-scale" approach first set out in *Zippo Mfg. v. Zippo Dot Com., Inc.*, 952 F.Supp. 1119, 1124 (W.D. Pa. 1997). Under *Zippo*, the more interactive a website is, the more it weighs in favor of the exercise of jurisdiction. See *Zippo*, 952 F.Supp. at 1124.

6. Plaintiff, Safety Link, will show this Court that Defendants have misappropriated the trade secrets of Plaintiff; infringed upon the pending patent of Plaintiff; attempted to misappropriate and infringe on Plaintiff's trademark; interfered with Plaintiff's customers by tortious interference with Plaintiff's relations with such customers; and breached the fiduciary duty owed by Defendants to Plaintiff. All such actions have caused damage and injury to the Plaintiff in which the Plaintiff is entitled to seek relief.

7. Plaintiff, Safety Link, seeks the judgment of this Court for payment of damages equal to the profits and/or benefits Defendants have gained through their activity; and injunction to prevent the further injury to Plaintiff by the Defendants continued activities; exemplary damages because of the intentional and willful conduct of the Defendants; attorney's fees, interest and costs of court.

General Factual Background

8. The relationship between Safety Link International, Inc. and Bruce Boyce/Manufacturer Direct, Ltd. began in August of 2004, when Bruce Boyce/Manufacturer Direct, Ltd. initially contacted Safety Link through a telephone call believed to be from Houston, Texas to set up a face-to-face meeting in Dallas. The contacts continued through additional telephone calls and e-mails. Bruce Boyce/Manufacturer Direct, Ltd. was seeking information on the Wheel Nut Management System that Safety Link was selling. Bruce Boyce/Manufacturer Direct, Ltd. had a sales brochure from Safety Link that he was showing to some of his clients. Not all of the contacts in Canada were customers of Manufacturer Direct, Ltd. Many contacts originated from customers wishing to purchase Safety Link products. Safety Link provided them with information on how to obtain information on the Safety Link products. Safety Link made

initial contacts with Coca Cola and Fort Gary Industries before Bruce Boyce/Manufacturer Direct, Ltd. began selling Safety Link products. Bruce Boyce/Manufacturer Direct, Ltd. further had contact with Greyhound in Dallas concerning the Safety Link clips, and requested copies of the European size clips to assist him in securing Greyhound's business. During the initial inquiries, Bruce Boyce/Manufacturer Direct, Ltd. asked about the warranty on the product and asked if and when he could acquire samples of the product. After Bruce Boyce/Manufacturer Direct, Ltd. received the samples and other preliminary information, he began to suggest that the product be manufactured in Canada. On or about September 30, 2004, Bruce Boyce/Manufacturer Direct, Ltd. began to push the issue, strongly suggesting that Western Polymers be used to manufacture the product in Canada.

9. During December 2004 and January 2005, Bruce Boyce/Manufacturer Direct, Ltd. requested additional materials on the product. Safety Link provided Bruce Boyce/Manufacturer Direct, Ltd. with a CD that contained product information, as well as materials that could be presented to customers showing them how the system worked. As the relationship continued to develop, Safety Link shipped product samples and flyers to Bruce Boyce/Manufacturer Direct, Ltd. in April 2005. At this point, Bruce Boyce/Manufacturer Direct, Ltd. tells Safety Link that they estimate that they can sell 250,000 clips each month. Bruce Boyce/Manufacturer Direct, Ltd. appeared to be excited about selling the product for Safety Link. In April 2005, Bruce Boyce/Manufacturer Direct, Ltd. sold 2,000 white clips to Ace International Truck & Engine Company in Calgary, and requested white samples be shipped to Manufacturer Direct. In May 2005, at Bruce Boyce/Manufacturer Direct, Ltd.'s request 20 white samples were shipped to Coca Cola Bottling Company in Arizona and 10,000 clips were shipped to Ace.

10. Sometime in September or October 2005, Bruce Boyce/Manufacturer Direct, Ltd. began getting quotes for manufacturing the product in Canada. Trevor Wardle of Safety Link and Bruce Boyce/Manufacturer Direct, Ltd. met with Dynamic Moulded Products to discuss the possibility of manufacturing clips for Safety Link. Bruce Boyce/Manufacturer Direct, Ltd. begins setting the stage for misappropriating the trade secrets, trademark and the impending patent of Safety Link. At this point Bruce Boyce/Manufacturer Direct, Ltd. moves forward with his plans to implement the takeover of the product, its manufacture, the trademark and all the advertising materials that Safety Link had shared with him. Bruce Boyce/Manufacturer Direct, Ltd. feels confident that because he is in Canada that he can “steal” the invention without incurring any penalty or ramifications.

11. On November 29, 2005 Safety Link International, Inc. registers “Safety Link” as a Trademark with the U.S. Patent & Trademark Office, under the registration number 3,020,382. On February 21, 2008, the trade mark is registered in Canada.

12. In May 2006, Bruce Boyce/Manufacturer Direct, Ltd. contacts Fort Gary Industries and provides them with a cost/pricing list for the product. In the communication, he includes a catalog of all the different products that Manufacturer Direct, Ltd. wants to sell to various clients. Included in this catalog on page 11 of a 24 page catalog, is the picture of Safety Link’s wheel nut management system and the narrative states “Safety Link wheel nut management system is a patented advancement in wheel nut safety . . .” This revelation indicates that Bruce Boyce/Manufacturer Direct, Ltd. was aware of the status or impending status of the Safety Link product.

13. Later in May 2006, Bruce Boyce/Manufacturer Direct, Ltd. delivers an advertising video to Safety Link that he had been helping them develop. After weeks of work,

the final advertising video is placed on the Safety Link website with the approval and knowledge of Bruce Boyce/Manufacturer Direct, Ltd. This same video is currently featured on the Manufacturer Direct website with any reference to Safety Link deleted.

14. In October 2006 and January 2007, Bruce Boyce/Manufacturer Direct, Ltd. confirms its representation of Safety Link through its sale to Fort Gary Industries and through communications to Challenger Motor Freight, Inc. In February, 2007, Bruce Boyce/Manufacturer Direct, Ltd. advised Safety Link that he had hired Alan Klassen to present the Safety Link wheel nut management system to a fleet managers' conference and paid Alan Klassen a commission. Bruce Boyce/Manufacturer Direct, Ltd. subsequently sought to have Safety Link pay Klassen's commission. Later Bruce Boyce/Manufacturer Direct, Ltd. asked to be compensated for a \$10,000 "hit" that he took on the Bison order. Safety Link shipped 20,000 units to Manufacturer Direct and an agreement was reached covering the terms for handling, billing and shipping of small and large orders.

15. In April 2007 a dispute arose over the commissions due to Bruce Boyce/Manufacturer Direct, Ltd., as well the amount of the commission that had been paid to Alan Klassen. Safety Link gave Bruce Boyce/Manufacturer Direct, Ltd., a credit against its account for the commission that they allegedly paid to Alan Klassen. Safety Link later learned that Alan Klassen was never paid a commission by Bruce Boyce/Manufacturer Direct, Ltd. Safety Link agrees to maintain a constant stock level of 100,000 clips to prevent back orders on product sold by Bruce Boyce/Manufacturer Direct, Ltd.. Orders continue to come in, including an order from Yanke.

16. On or about April 27, 2007, Bruce Boyce attempts to register "Safety Link" as a Canadian Trademark for his own use. Safety Link discovered this and filed an opposition to the

filing. The attempt failed. Not being able to use “Safety Link,” Bruce Boyce filed to register a trademark for “Safe-T-Loc.” This trademark was approved by the Canadian Trademark Office.

17. The beginning of May 2007 brought a new customer, Transpel. Then at the end of May, Bruce Boyce/Manufacturer Direct, Ltd. canceled the order and sent a reversing purchase order. Bruce Boyce/Manufacturer Direct, Ltd. also placed an order for West End Tire, which was subsequently cancelled. Following this plan, Bruce Boyce/Manufacturer Direct, Ltd. delayed other orders that were to be directed to Safety Link and later filled the orders from their own “pirated” manufactured product. Bruce Boyce/Manufacturer Direct, Ltd. further sent a letter to all established customers that advised them that the production of Safety Link products was being transferred from Texas to Canada.

18. On August 7, 2007 Safety Link received a letter from Bruce Boyce/Manufacturer Direct, Ltd. wherein he confirmed the “Safety Link” trademark and confirmed that he would not use it in the future. He also claimed that there was no patent protection for the wheel nut management system, that the broken relationship was the fault of Safety Link and that 25,000 of the clips sold to Bison were defective. On August 8, 2007 Safety Link replied to Bruce Boyce/Manufacturer Direct, Ltd.’s letter and addressed the “pirated” product.

19. On August 17, 2007, Safety Link sent a letter to all of its customers advising them that Bruce Boyce/Manufacturer Direct, Ltd. had misappropriated information from Safety Link, had set up its own manufacturing of Safety Link’s product, and was selling the product under the name of Safe-T-Loc to all of Safety Link’s customers.

20. On August 27, 2007, Safety Link filed a patent application with the U.S. Patent Office under confirmation number 2124 (dated 9/14/07). A foreign filing license was granted on

9/13/07. The Patent application was filed on 3/6/08 under patent pending number US11/895,578 on the wheel lug nut management system.

21. On April 15, 2008, Bruce Boyce/Manufacturer Direct, Ltd. again claims that Bison has 25,000 defective clips and that he has turned over this information to the Canadian Mounted Police for investigation. On June 17, 2008, Safety Link confirmed that Bison did not have any defective clips and never did have any.

22. In the June 2008, Bruce Boyce/Manufacturer Direct, Ltd. participated in the Las Vegas Truck Show through Super Dolly Pad. At the show Bruce Boyce/Manufacturer Direct, Ltd. presented the Safe-T-Loc products, which included the "pirated" wheel nut management system and offered the wheel nut management system to Canadian and U.S. buyers.

23. In continuing to sell the Safety Link wheel nut management system under the name Safe-T-Loc, Bruce Boyce/Manufacturer Direct, Ltd. have established a interactive Internet store that is accessible through any number of search engines. The website has information about the company Manufacturer Direct, Ltd., distributors throughout the United States, including a local Texas distributor, and an online catalog. One of the items included in the catalog is the "wheel nut management system." This section provides a flyer for the system and a video that tells you all about how the system works, and includes a warning label that is included with each shipment. This activity demonstrates the Defendants intention to further interfere with Plaintiff's business contacts within the United States, and shows that he has not limited his product sales to Canadian businesses. Attached hereto are copies of website pages from the Internet store located at www.mdLtd.ca.

Count I – Trade Secret Misappropriation

24. Plaintiff incorporates the General Factual Background set forth hereinabove, and would show the Court that Defendants have misappropriated the trade secrets of Safety Link International, Inc.

25. A trade secret is any formula, pattern, devise, or compilation of information (“proprietary information”) used in the plaintiff’s trade or business that gives the holders of the information a competitive advantage over those who do not know or use it and that is in fact a secret. The proprietary information must have a modicum of originality to separate it from everyday knowledge. However, the proprietary information does not need to be novel in the sense required by the patent laws.

26. Some of the information and/or subject matter qualifying for protection as a trade secret includes: business methods, chemical formulas and ingredients; customer information and lists; know-how; manufacturing processes and procedures; marketing information; molds; pricing data; product designs and manufacturing information, supplier and vendor lists, technical information, and technical drawings.

27. To be legally protectable, the proprietary information must be used in the plaintiff’s trade or business. The term “used” does not mean that the plaintiff must currently be using the proprietary information, but only that the plaintiff has the right to use the information. *See Bertotti*, 752 S.W.2d at 653 (mere fact that company is not presently using information does not prevent it from being trade secret); *Elcor Chem.*, 494 S.W.2d at 213 (mere fact that trade-secret owner is not presently using information does not allow wrongdoers to appropriate and use secret for their profit and gain).

28. Further, to be legally protectable, the proprietary information must give the holder of the information a competitive advantage over those who do not know or use it. Competitive advantage can be established by testimony showing how the proprietary information gave the plaintiff an actual or potential economic advantage over others in the industry.

29. Additionally, to be legally protectable, the proprietary information must be substantially secret. The secrecy does not have to be absolute, but it must be substantial. The word “secret” implies the plaintiff’s proprietary information is not generally known or readily available to the public. For example, information that is generally known in the industry, readily ascertainable by inspection or independent investigation, or publicly disclosed is generally not considered a secret. To determine whether proprietary information is secret, the court could address the following six factors, as set forth in Restatement (3d) of Unfair Competition §39 reporter’s note cmt.d.: (1) information known outside business; (2) employees’ knowledge of information; (3) measures taken to ensure secrecy of information; (4) value of information; (5) costs to develop information; and (6) level of difficulty to duplicate information.

30. “Use” means commercial use, that is, a use by which a party seeks to profit. Most courts will not hold a defendant liable for misappropriation unless there is evidence the defendant actually attempted to profit financially from the use of the trade secret.

31. “Disclosure” simply means making something known or public.

32. The use or disclosure of a trade secret acquired during a confidential relationship is actionable if the use or disclosure constitutes a breach of that relationship. A confidential relationship may arise from a moral, social, domestic, or purely personal relationship of trust and confidence. It is not necessary that the Plaintiff and the Defendant enter into an express agreement establishing such a relationship. However, the trust and confidence the Plaintiff

placed in the defendant must be manifested by the words or acts of the parties or by the whole picture of their relationship. Confidential relationships have been found to exist between employers and employees; licensors and licensees; joint venturers; and parties to negotiations for the sale of a business.

33. Defendant Bruce Boyce, by and through his company Manufacture Direct, Ltd., willfully and knowingly, solicited a manufacturer's representative position with Plaintiff for the sole purpose of securing as much information as he could about the Plaintiff's product and its manufacture. With this information he could circumvent the system, retain a Canadian manufacturer, produce the product in Canada and eliminate the competition by selling the pirated product to the client base that he had established for Safety Link International.

34. When Bruce Boyce/Manufacturer Direct, Ltd. saw Plaintiff's wheel nut management system, he contacted Plaintiff and began, as early as August 2004 to gather information and work himself into a position that would allow him access to Plaintiff's trade secret information on the product and its manufacture. As early as September 2004 Bruce Boyce/Manufacturer Direct, Ltd. began suggesting and working to obtain manufacture of the product in Canada.

35. As time allowed, he obtained samples of the wheel nut management system, brochures, and began to perform the work of a manufacturer's sales representative. He solicited sales from various companies, presenting the product and as interest increased, he sought to obtain additional information from the Plaintiff. As sales prospects increased, Bruce Boyce/Manufacturer Direct, Ltd. requested additional samples and information to present to the prospective buyers on how the system worked. Plaintiff's provided him with a sales and training

CD that would help the buyers learn how to properly install and use the wheel nut management system so as not to void the warranty.

36. Again in September and October 2005, Bruce Boyce/Manufacturer Direct, Ltd. began soliciting quotes for the manufacture of the wheel nut management system in Canada. Bruce Boyce/Manufacturer Direct, Ltd. and Trevor Wardle of Safety Link International met with Dynamic Moulded Products to discuss the possibility of manufacturing the clips for Safety Link. When the discussions did not materialize into a contract, Bruce Boyce/Manufacturer Direct, Ltd. began to implement his plans to appropriate the product from Plaintiff.

37. In May 2006 Bruce Boyce/Manufacturer Direct, Ltd. delivers an advertising video to Safety Link and that Bruce Boyce was helping them develop. This allowed Bruce Boyce access to more information on Plaintiff's products and firmly established his status as a person who has a fiduciary relationship with the Plaintiff. He continues in his sales representative capacity and confirms his relationship with Plaintiff through communications with Fort Gary Industries and Challenger Motor Freight, Inc., in which Bruce Boyce/Manufacturer Direct, Ltd. confirms they are a representative of Plaintiff.

38. In February 2007, Bruce Boyce/Manufacturer Direct, Ltd. advises Safety Link that he has hired Alan Klassen to present the Safety Link wheel nut management system to the Fleet Managers Conference, and that he paid Klassen a commission for his work. Bruce Boyce/Manufacturer Direct, Ltd. subsequently sought to have Safety Link pay Klassen's commission. Later Bruce Boyce/Manufacturer Direct, Ltd. asks to be compensated for a \$10,000 "hit" he took on an order from Bison.

39. During this time, an agreement was reached between Plaintiff and Bruce Boyce/Manufacturer Direct, Ltd. covering the terms for billing and shipping of orders.

Additionally, the advertising and training video was completed, and was posted on Safety Link's website, with the knowledge and approval of Bruce Boyce/Manufacturer Direct, Ltd.

40. In April 2007, Bruce Boyce/Manufacturer Direct, Ltd. began to implement his appropriation plan. He attempted to register "Safety Link" as a Canadian Trademark. Plaintiff learned of the attempt and was able to block this registration. When he could not file "Safety Link," Bruce Boyce/Manufacturer Direct, Ltd. filed and received approval to register the name "Safe-T-Loc."

41. In August 2007, Plaintiff received a letter from Bruce Boyce/Manufacturer Direct, Ltd. wherein it confirmed the "Safety Link" trademark and claimed that there was no patent protection for the wheel nut management system. He further claimed that the relationship between him and Plaintiff was broken. Safety Link responded by advising all of its customers that Bruce Boyce and Manufacturer Direct, Ltd. no longer represented Plaintiff and that he had misappropriated confidential trade secret information and had set up his own manufacturing facility, selling Plaintiff's product under the name of Safe-T-Loc.

42. On August 27, 2007, Plaintiff filed a patent application with the U.S. Patent Office under confirmation number 2124 (dated 9/14/07). A foreign filing license was granted on 9/13/07. The patent application was filed on 3/6/08 under patent pending number US11/85,578 on the wheel nut management system and the advance changes that were not part of the original system.

43. As a result of Bruce Boyce/Manufacturer Direct, Ltd.'s activities, Plaintiff has been damaged. Plaintiff had a relationship with Defendants that allowed the Defendants to obtain confidential, trade secrets. Defendants knew that the trade secret information received from the Plaintiff was revealed in confidence. As a sales representative for Plaintiff, Defendant

Bruce Boyce/Manufacturer Direct, Ltd. was under a duty not to use or disclose the trade secret information in a manner adverse to Plaintiff, both during the time of employment and afterwards. Defendants took advantage of that relationship, and used the information secured from Plaintiff to copy, manufacture, and sell Plaintiff's product. Defendants used the trade secrets without paying for them and to produce a design for which a patent application was later filed.

44. Defendant Bruce Boyce/Manufacturer Direct, Ltd. entered into a contractual/fiduciary relationship with the Plaintiff for the sole purpose of obtaining Plaintiff's confidential information. Defendant Bruce Boyce/Manufacturer Direct, Ltd. actively solicited information from the Plaintiff concerning the wheel nut management system, solely to appropriate the design and manufacture information so that he could use it to his own purposes, which were to manufacture and sell the produce under and through his company, Manufacturer Direct, Ltd. The Defendants have profited by their activities to the injury and damage of the Plaintiff.

45. Plaintiff seeks injunctive relief herein, wherein the Defendants are enjoined from continuing the enterprise of manufacturing and selling the Plaintiff's wheel nut management system. The Plaintiff at this point cannot determine the extent of the damages it has suffered because of Defendants actions. Determining such damages are difficult at the least and impossible at the worse. Enjoining the activities of the Defendants will stop the increasing damages and allow the Plaintiff to attempt to determine the amount of profits that the Defendants have made from the sale of Plaintiff's wheel nut management system.

46. Defendants have committed a wrongful act in misappropriating the trade secrets of the Plaintiff, manufacturing Plaintiff's product without authorization, or purchasing a license to do so, and has advertised and offered to sell the product within the United States to Plaintiff's

customers and potential customers. There is imminent harm in the Defendants actions, due to the impact upon Plaintiff's business. There is the potential for harm in that certain of Plaintiff's customers, after purchasing Plaintiff's product, purchase Defendants' produce, and if failure in the product occurs, law suits over warranty and other damages can ensue, exposing the Plaintiffs to unknown monetary losses. The foregoing possibilities would cause irreparable injury to which Plaintiff has no adequate remedy at law.

47. Plaintiff further seeks exemplary damages for trade-secret misappropriation. The Plaintiff and Defendants did not have a written contract, but did have an oral understanding that Defendant Bruce Boyce/Manufacturer Direct, Ltd. was a sales representative for Plaintiff. However, because of Defendant Bruce Boyce/Manufacturer Direct, Ltd.'s actions in obtaining Plaintiff's trade secrets, his attempts to steal Plaintiff's trademark, his blatant advertisement and offers to sell Plaintiff's product under his own trademark, have caused Plaintiff's damages. Defendant Bruce Boyce/Manufacturer Direct, Ltd.'s actions were willful, and deliberate. Bruce Boyce/Manufacturer Direct, Ltd. knew that he was misappropriating trade secrets and his intent was to profit from the efforts of others without purchasing the right to do so.

Count II – Patent Infringement

48. Pleading in the alternative to Count I above, and in association with Count I, Safety Link International, Inc. complains of Bruce Boyce, individually, and Manufacturer Direct, Ltd., and alleges Defendants' infringement of Safety Link's patent rights. Safety Link International, Inc. is the owner and holder of the pending patent, U.S. Patent No. US11/895,578, for an advanced wheel nut management system.

49. To gain a patent for its wheel nut management system, Safety Link had to prove to the U.S. Patent Office that it had a “new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof” in order to be granted a utility patent. (35 USC §101) The invention must be new; useful; and non-obvious to a person who has ordinary skill in “the art” (i.e., the type of technology for which the patent has been issued).

50. A design patent covers an object’s non-functional visual and tactile characteristics (e.g., the shape and decoration of a table lamp, but not the way its wiring or bulb works). The design must be new, original, and ornamental. Novelty is tested on the basis of whether an average observer would consider it a new design; changing finish, color, or workmanship of an existing design is not sufficient. The design patent term is 14 years. (35 USA §171).

51. Pursuant to 35 U.S.C. § 271, anyone, without authority, who makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent, infringes the patent. Further, whoever actively induces infringement of a patent shall be liable as an infringer.

52. Further, whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use, shall be liable as a contributory infringer.

53. Plaintiff seeks the finding of this Court that Plaintiff has filed and currently holds a pending patent under US11/895,578 for an advanced wheel nut management system. Plaintiff

made application for such patent on August 27, 2007 and was granted the patent pending number on March 6, 2008. Plaintiff would show this Court that the Defendants have taken trade secret information, which was part and parcel of the patent application, and have misappropriated that information. Defendants have taken the designs, manufacture information, composition and other information from the Plaintiff and have appropriated such designs, etc. to its own benefit. Plaintiff asks the Court to review the pictures, advertising, drawings, etc. and compare Defendants design, advertising and drawings to determine if the Defendants have infringed upon Plaintiff's product.

54. Defendant Bruce Boyce/Manufacturer Direct, Ltd. appropriated Plaintiff's designs and made the decision to develop and manufacture, sell and compete with the Plaintiff while working with the Plaintiff as a sales representative. Bruce Boyce/Manufacturer Direct, Ltd. continues to infringe upon Safety Links' patent. At the present time, Bruce Boyce/Manufacturer Direct, Ltd. is offering for sale to customers within the United States the "wheel nut management system" through its interactive Internet store (www.mdltd.ca), and through distributors located within the United States.

55. Pursuant to 35 U.S.C. §284, the court shall award the claimant damages adequate to compensate for infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

56. Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for the sale any article of manufacture to which such design or colorable imitation has been applied, shall be liable to the owner to the extent of

his total profit, but not less than \$250, recoverable in any United States district court having jurisdiction of the parties.

57. Plaintiff does not know what Defendants' total profit has been for its sale of Plaintiff's patented wheel nut management system. Plaintiff seeks discovery of information from the Defendants as to what the profit has been for its infringement of Plaintiff's product. Plaintiff seeks damages equal to the profits made by the Defendants for the infringement, sales of the infringed product and damages for the confusion caused to Plaintiff's customers.

Count III – Trademark Infringement

58. In addition to the foregoing counts, Plaintiff would show the Court that Defendant, Bruce Boyce/Manufacturer Direct, Ltd. used and attempted to hijack Plaintiff's trademark "Safety Link" as part and parcel of his scheme to appropriate the wheel nut management system that Plaintiff designed, manufactured and sold in the United States and Canada.

59. A trademark protects words, names, symbols, sounds or colors that distinguish goods and services from those manufactured or sold by others. Pursuant to 15 U.S.C. § 1114, any person who shall, without the consent of the registrant (a) use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, or (b) reproduce, counterfeit, copy or colorably imitate a registered mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for

sale, distribution, or advertising of goods, or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

60. Defendants attempted to register Plaintiff's registered trademark in Canada, but Plaintiff was able to successfully block such registration. However, the Defendants did register a trademark in Canada that if used within advertisement, or placed upon products that are sold and shipped to the United States would cause confusion. Defendants' use of "Safe-T-Loc" is deceptively close to Petitioner's registered trademark of "Safety Link."

61. Attorneys fees can be awarded for the willful conduct of the Defendants, pursuant to the Lanham Act §35. Defendants willfully and knowingly created confusion with Plaintiff's customers and to future purchasers by indicating that the manufacturing of the wheel nut management system had moved from Texas to Canada, and is currently being produced under the "Safe-T-Loc" trademark, when in fact Plaintiff's business has not moved and is not being manufactured and sold under the "Safe-T-Loc" trademark. Plaintiff continues to manufacture the wheel nut management system in Texas under the trademark name of "Safety Link."

Count IV – Tortious Interference With A Contract

62. In addition to the foregoing counts, Plaintiff would show the Court Defendants have knowingly and intentionally interfered with Plaintiff's relationship to its clients and has interfered with sales to certain clients.

63. Defendants entered into an agreement with the Plaintiff to manufacture and retain a stock of 100,000 clips for shipment to fill orders that Defendant solicited from Plaintiff's clients. Defendants, through the intentional and willful misappropriation of Plaintiff's trade secrets and patent infringement, interfered with the sale of the stock held by Plaintiff. The Defendants manufactured the wheel nut management system at a Canadian manufacturing facility and sold those clips to Plaintiff's clients, instead of placing the orders through Plaintiff and Plaintiff shipping from its agreed stock of clips.

64. In May 2007, Defendant Bruce Boyce/Manufacturer Direct, Ltd. sold Plaintiff's product to a new customer, Transpel. He submitted the order to Plaintiff and before the order could be filled and shipped, Defendant Bruce Boyce/Manufacturer Direct, Ltd. canceled the order and sent Plaintiff a reversing purchaser order. Bruce Boyce/Manufacturer Direct, Ltd. also placed an order for West End Tire, which was subsequently cancelled. Following this plan, other orders that were to be directed to Safety Link were either cancelled or deferred and filled from Manufacturer Direct, Ltd.'s own manufactured stock. Other clients have confirmed to Plaintiff that they have been doing business with Bruce Boyce/Manufacturer Direct, Ltd. and not Plaintiff. All of these clients were customers that Bruce Boyce/Manufacturer Direct, Ltd. solicited and brought to Plaintiff while he was acting as a sales representative for the Plaintiff.

65. Defendant acknowledged his status with Plaintiff in communications with Fort Gary Industries and Challenger Motor Freight, Inc. during 2006 and 2007. Defendant, Bruce Boyce/Manufacturer Direct, Ltd. had actual knowledge of the facts and circumstances involving these contracts. His knowledge was such that would lead a reasonable person to believe that there was a contract in which the Plaintiff had an interest.

66. By canceling orders for new business and/or soliciting customers that he had sold Plaintiff's product, Defendant willfully and knowingly interfered with Plaintiff's business customers. Knowledge of the customer list and solicitation of such customers was an intentional act of the Defendants. Defendant Bruce Boyce/Manufacturer Direct, Ltd.'s actions caused damage to Plaintiff, and the consequences of Defendants' actions were exactly what the Defendant intended to occur.

67. Plaintiff alleges that Defendant intentionally and knowingly induced at least one customer to cancel its order with Plaintiff. Plaintiff further contends that other clients have purchased additional product from Defendant, because Defendant has solicited there business and has convinced them to purchase from him directly, either by failing to tell them that he is not longer affiliated with Plaintiff, or through some other inducement.

68. Plaintiff has suffered actual damages through the loss of business from Transpel and others. The amount of actual damages cannot be determined at this point, as discovery will need to be conducted to determine how many of Plaintiff's clients the Defendants has enticed away from Plaintiff.

Count V – Tortious Interference with Prospective Relations

69. In addition to the foregoing counts, Plaintiff would show the Court that Defendant Bruce Boyce/Manufacturer Direct, Ltd. has interfered with Plaintiff's prospective business relations.

70. Through the expansion of the interactive Internet Store, and the retention of U.S. distributors by Bruce Boyce/Manufacturer Direct, Ltd., Defendants are operating within the United States, selling the Plaintiff's "wheel nut management system" to U.S. customers. Each

and every distributor and/or each and every customer obtained and/or serviced by the Defendants through their distributors are prospective customers of the Plaintiff.

71. The Defendants have induced prior Canadian clients, as well as unknown Canadian and US customers into believing that Safe-T-Loc™ has replaced Safety Link™ and that he is the current owner and manufacturer of the “wheel nut management system.” Until further discovery is conducted in this case, Plaintiff has no detailed information on how many new customers that Defendants have taken, nor how many prior customers that Defendants have redirected to themselves. Defendants have tortuously interfered with relations leading to potentially profitable contracts, and options to renew or extend contracts with customers.

72. The Defendant intentionally interfered with the formation of prospective business relationships, including the renewal and/or extension of existing contracts. On August 17, 2007, Bruce Boyce/Manufacturer Direct, Ltd. sent a letter to the client base that extended at that time, including those that were Safety Link customers. In the subject letter states; “We are pleased to inform you that our ‘Wheel Nut Management System’ presently supplied to you under the brand name ‘Safety Link’ manufactured and delivered to you from Frisco, Texas @ \$0.95/each will now be supplied to you under the trade marked name ‘SAFE-T-LOC’. The product is now being manufactured and delivered to you from Calgary, Alberta, Canada and your new costing will be \$0.85/each.” The “wheel nut management system” that Defendants are manufacturing and selling, not only in Canada, but also in the United States, was a trade secret of the Plaintiff and was misappropriated by the Defendants. Bruce Boyce purposefully acquired information and product samples from the Plaintiff, attempted to establish a manufacturing facility in Canada during the early relationship with Plaintiff, and then attempted to register Plaintiff’s trademark in

Canada as its own. All of this was done with the intention of illegally acquiring the product, copying the product and passing it off to customers as the product produced by Plaintiff.

73. Defendants have continued to interfere with potential customers through the interactive Internet store, which offers all of the products that Defendants offer for sale. Included in this product list is the “wheel nut management system” that was originally designed and manufactured by Plaintiff. All of the information contained in the presentation of this product was develop from the initial information provided to Defendants by the Plaintiff, and is the exact same material, with slight alterations in removing references to Plaintiff, used by Plaintiff in its advertising.

Court VI – Breach of Fiduciary Duty

74. In addition to the foregoing counts, Plaintiff would show the Court that Defendant Bruce Boyce/Manufacturer Direct, Ltd. breached his fiduciary duty to Plaintiff.

75. Defendant, Bruce Boyce/Manufacturer Direct, Ltd., solicited information from the Plaintiff concerning its products. Through the negotiations and exchange of information, Defendant Bruce Boyce/Manufacturer Direct, Ltd. began to work as a sales representative for Plaintiff. This relationship was confirmed to clients through correspondence and other communications, which specifically indicated that Defendant Bruce Boyce/Manufacturer Direct, Ltd. was working for Plaintiff as a sales representative.

76. As a sales representative, whether as an employee or as an independent contractor, Bruce Boyce/Manufacturer Direct, Ltd. owed a duty to the Plaintiff to act with loyalty and utmost good faith; to refrain from self-dealing; to act with integrity of the strictest kind; to be fair and honest in his dealings with Plaintiff and a duty to fully disclose any activities

that would adversely affect Plaintiff. Defendant Bruce Boyce/Manufacturer Direct, Ltd. worked with Plaintiff from August 2004 through August 2007. Plaintiff and Defendant worked together to develop a sales territory, prepare advertising and develop a training video to present to customers which would show the proper installation of the product and how to prevent violations of the product warranty.

77. Defendant, Bruce Boyce/Manufacturer Direct, Ltd., breached his duties to Plaintiff by his self-dealing activities. Bruce Boyce/Manufacturer Direct, Ltd., misappropriated Plaintiff's trade secrets, attempted to use Plaintiff's trademark and have it trademarked in Canada as his own, interfered with Plaintiff's customers by enticing them to do business with his company and not with Plaintiff, and to appropriate the design of the wheel nut management system and have it manufactured in Canada under his own trademark for sale in the United States and Canada. Defendant, Bruce Boyce/Manufacturer Direct, Ltd., further presented his "pirated" product at a business trade show in Las Vegas in 2008, furthering his solicitation of business. Bruce Boyce/Manufacturer Direct, Ltd. continues his self-dealing activities through the interactive Internet store where he offers Plaintiff's "wheel nut management system" for sale to Canadian and U.S. customers under his trademark.

78. Through Defendants' actions, Plaintiff has been injured and suffered damages that cannot be calculated at this time. Extensive discovery must be conducted to learn of the full extent of damages incurred because of Defendant, Bruce Boyce/Manufacturer Direct, Ltd.'s conduct. Further, because of Defendant's conduct, Bruce Boyce, individually, and Manufacturer Direct, Ltd. have benefited to the same extent that the Plaintiff has been damaged.

79. As a result of the injuries sustained by Plaintiff, it seeks and is entitled to actual damages, including out-of-pocket expenses and lost profits, exemplary damages because of the

intentional breach of Defendant's duties to Plaintiff, reasonable attorney's fees, pre-judgment and post-judgment interest and all costs of court.

Count VII – Common Law Fraud

80. Bruce Boyce committed common law fraud by making material representations to the Plaintiff, which he knew were false when the representations were made. Bruce Boyce made the representations with the intent that the Plaintiff act on them. The Plaintiff relied on the representations and suffered injury and damages as a result. The representations made by Bruce Boyce were material representations.

81. In February 2007 Bruce Boyce represented to Plaintiff that he had retained the services of Alan Klassen to present the Safety Link "wheel nut management system" to the Fleet Managers' Conference. In April 2007 a dispute arose over the payment of the commission that was supposed to be paid to Alan Klassen. To compensation Bruce Boyce/Manufacturer Direct, Ltd. for the commission that was reportedly paid to Alan Klassen, Plaintiff gave Defendants a credit against an outstanding invoice for certain clips. Plaintiff later learned that no commission was paid to Alan Klassen.

82. In April 2007 Bruce Boyce attempted to register Safety Link™ as a Canadian Trademark for Manufacturer Direct, Ltd. Plaintiff's discovered what Defendants were attempting and filed the appropriate paperwork to block the issuance of a Canadian trademark to Defendants. When Defendants learned that their efforts to register the Safety Link trademark in Canada, they registered Safe-T-Loc™ instead. This remains deceptively similar to Plaintiff's trademark.

83. In February 2007, Bruce Boyce claimed that it had sold clips to Bison. Then in April 2007, Bruce Boyce advised Plaintiff that the clips sent to Bison were defective and that he had to replace all of the defective clips from the stock of clips that he was maintaining at his facility. At that time, Bruce Boyce was attempting to obtain additional credit and compensation for the defective clips that had been delivered to Bison from the Plaintiff's stock of clips. In April 2008, Plaintiff's learned that Bison never received any defective clips, and never made a claim that any of the clips they received were defective.

84. Further, in all of the dealings with Bruce Boyce, he represented to Plaintiff that he was interested in developing an ongoing relationship with Plaintiff to sell the Plaintiff's product for the benefit of both the Plaintiff and Manufacturer Direct, Ltd. The representations made by Bruce Boyce were material representations, designed to extract trade secret information from the Plaintiff so that he could appropriate such information and turn it into his own product, cutting the Plaintiff out of the relationship completely. Plaintiff learned, after the relationship with Defendants was dissolved, that Bruce Boyce had done this same thing to someone else.

85. All of Bruce Boyce/Manufacturer Direct, Ltd.'s representations were material and were relied upon by the Plaintiff to the Plaintiff's injury. As a result, the Plaintiff has suffered damages. The total extent of such damages is not known at this time. Plaintiff will not be in a position to determine the total amount of damages until the close of discovery.

Count VIII - Alter Ego Doctrine

86. Plaintiff alleges herein that Bruce Boyce is the alter ego of Manufacturer Direct, Ltd., and vice versa. Bruce Boyce is the founder and CEO of Manufacturer Direct, Ltd.

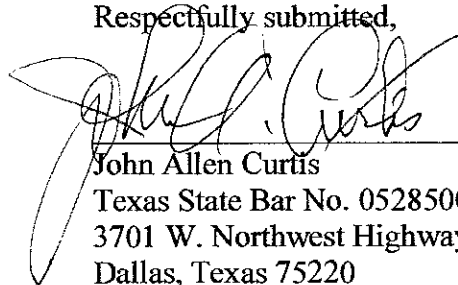
87. An alter ego analysis cannot be reduced to an authoritative list of discrete “elements” which may be tested. *Leon, Ltd. v. Albuquerque Commons P’ship*, 862 S.W.2d 693, 707 (Tex.App. – El Paso 1993, no pet.); *see also Eckardt v. Hardeman*, No. 03-98-00274-CV, 1999 Tex.App. LEXIS 450, *8 (Tex.App. – Austin 1999, pet denied) (memo.op.) (not designated for publication) (providing useful analytical guidelines regarding whether an entity is merely the alter ego of an individual by reviewing the “total dealings of the corporation and the individual, including the degree to which corporate formalities have been followed and corporate and individual property have been kept separately, the amount of financial interest, ownership and control the individual maintains over the corporation, and whether the corporation has been used for personal purposes”).

88. Bruce Boyce purports and advertises that he is the founder and CEO of Manufacturer Direct, Ltd. Further, upon information and belief, Bruce Boyce is the majority shareholder on Manufacturer Direct, Ltd., sharing such stock ownership only with his significant other. On February 1, 2006, Bruce Boyce asked if Trevor Wardle was interested in investing in Manufacturer Direct, Ltd., and then on February 8, 2006, e-mailed Mr. Wardle and told him that he had decided to keep the investment within the family only. Further, upon information and belief, Bruce Boyce runs the business from his home, having a warehouse located elsewhere that is for the storage and shipping of his merchandise. Manufacturer Direct, Ltd. is an extension and tool of Bruce Boyce. Upon information and belief, Manufacturer Direct, Ltd. is the sole source of income and resources for Bruce Boyce, thus making each an alter ego of the other. Plaintiff alleges the foregoing on information and belief only, and will not be in a position to confirm such information until discovery is completed.

Prayer

89. Plaintiff prays that the Court will issue summons herein, commanding that the Defendants appear herein and answer the allegations set forth herein. Plaintiff further prays that the Court review Plaintiff's claims, enter judgment herein for the Plaintiff and grant Plaintiff all relief that it may be entitled herein, whether at law or in equity.

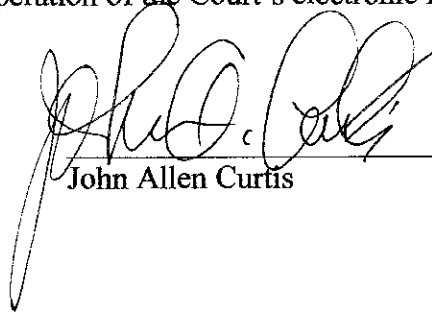
Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on the 14th day of July, 2009, the undersigned electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which shall send notification to all parties of record by operation of the Court's electronic filing system.



John Allen Curtis