

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

HomeTeam Pest Defense, LLC,  
Plaintiff,

v.

Platinum Pest Services, Inc., and  
William Douglas Triplett,  
Defendants.

Case No. 6:04-cv-689-Orl-28JGG

**FIRST AMENDED COMPLAINT**

(Injunctive Relief Sought)

Plaintiff HomeTeam Pest Defense, LLC (“HomeTeam”), in its first amended complaint against Defendants Platinum Pest Services, Inc. (“Platinum”) and William Douglas Triplett (“Triplett”) (collectively, “Defendants”), alleges as follows:

**PARTIES AND JURISDICTION**

1. HomeTeam is a Delaware limited liability company doing business in 32 markets throughout the United States, including the greater Orlando, Florida area. HomeTeam’s headquarters and principal place of business are in Dallas, Texas.

2. On information and belief, Platinum is a Florida corporation whose principal place of business is in Winter Garden, Florida.

3. On information and belief, Triplett owns and controls Platinum and directs its activities as alleged herein.

4. This action involves federal claims of patent infringement under 35 U.S.C. § 271 with trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* This action also involves state law claims

of unfair competition, breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference, intentional tortious conduct, and unjust enrichment.

5. This Court has jurisdiction over HomeTeam's federal law claims by virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over HomeTeam's state law claims by virtue of 28 U.S.C. §§ 1338 and 1367.

6. This Court has personal jurisdiction over Defendants because, among other reasons, they operate and do business in this District and they engaged in the wrongful acts described herein in this District.

7. HomeTeam provides pest control systems to homeowners. These systems consist of perforated tubes installed in the walls and/or under the foundation slabs of new homes. HomeTeam secures and maintains ownership of portions of these systems and contracts with homeowners to provide pest control services by injecting insecticide into the systems through external service ports.

8. HomeTeam is the licensee and owner of all substantial rights in United States Patent No. 5,347,749 ("the '749 Patent"), which covers a termiticide delivery system.

9. HomeTeam is the licensee of all right, title, interest, and goodwill in the mark HOMETEAM as used in the provision of pest control systems and services. By virtue of its licensor's use in commerce of the HOMETEAM mark since as early as 1996, HomeTeam owns common law rights in the HOMETEAM mark. HomeTeam's rights in that mark are evidenced by, among other things, United States Registration No. 2,237,136, in International Class 19, for "systems for extermination and control of pests composed of a network of polyethylene

tubing which is installed in interior and exterior wall voids,” and in International Class 37, for, among other things, “pest extermination and control services.” The HOMETEAM mark is very valuable and famous in the pest control industry, both in Florida and nationally.

10. HomeTeam is the licensee of all right, title, interest, and goodwill in the mark HOMETEAM SERVICES as used in the provision of pest control systems and services. By virtue of its licensor’s use in commerce of the HOMETEAM SERVICES mark since as early as 1996, HomeTeam owns common law rights in the HOMETEAM SERVICES mark. HomeTeam’s rights in that mark are evidenced by, among other things, United States Registration No. 2,258,154 in International Class 19, for “systems for extermination and control of pests composed of a network of polyethylene tubing which is installed in interior and exterior wall voids,” and in International Class 37, for, among other things, “termite and pest control services” and “installation services in the field of termite and pest control systems.” The HOMETEAM SERVICES mark is very valuable and famous in the pest control industry, both in Florida and nationally.

11. HomeTeam is the licensee of all right, title, interest, and goodwill in the mark HOMETEAM PEST CONTROL as used in the provision of pest control systems and services. By virtue of its licensor’s use in commerce of the HOMETEAM PEST CONTROL mark since as early as 1998, HomeTeam owns common law rights in the HOMETEAM PEST CONTROL mark. HomeTeam’s rights in that mark are evidenced by, among other things, United States Registration No. 2,386,597 in International Class 37, for “termite and pest control services” and “installation services in the field of termite and pest control

systems.” The HOMETEAM PEST CONTROL mark is very valuable and famous in the pest control industry, both in Florida and nationally.

12. HomeTeam is the licensee of all right, title, interest, and goodwill in the mark HOMETEAM PEST MANAGEMENT as used in the provision of pest control systems and services. By virtue of its licensor’s use in commerce of the HOMETEAM PEST MANAGEMENT mark since as early as 2000, HomeTeam owns common law rights in the HOMETEAM PEST MANAGEMENT mark. HomeTeam’s rights in that mark are evidenced by, among other things, United States Registration No. 2,678,883 in International Class 37, for “termite and pest control services” and “installation services in the field of termite and pest control systems.” The HOMETEAM PEST MANAGEMENT mark is very valuable and famous in the pest control industry, both in Florida and nationally.

13. HomeTeam is the licensee of all right, title, interest, and goodwill in the mark TUBES IN THE WALL as used in the provision of pest control systems and services. By virtue of its licensor’s, and its licensor’s predecessor-in-interest’s, use in commerce of the TUBES IN THE WALL mark since as early as 1988, HomeTeam owns common law rights in the TUBES IN THE WALL mark. HomeTeam’s rights in that mark are evidenced by, among other things, United States Registration No. 2,460,992, in International Class 19 for “[s]ystems for extermination and control of pests composed of a network of polyethylene tubing which is installed in interior and exterior wall voids,” and in International Class 37 for “[t]ermite and pest control services, installation services in the field of termite and pest control systems.” The TUBES IN THE WALL mark is very valuable and famous in the pest control industry, both in Florida and nationally.

14. HomeTeam is the licensee of all right, title, interest, and goodwill in the mark TUBES UNDER THE SLAB as used in the provision of pest control systems and services. By virtue of its licensor's, and its licensor's predecessor-in-interest's, use in commerce of the TUBES UNDER THE SLAB mark since as early as 1992, HomeTeam owns common law rights in the TUBES UNDER THE SLAB mark. HomeTeam's rights in that mark are evidenced by, among other things, United States Registration No. 2,581,228, in International Class 19, for "pest control services, namely installing, servicing and maintaining a termiticide delivery system composed of a network of tubing that is installed under and through the foundation slab of a building." The TUBES UNDER THE SLAB mark is very valuable and famous in the pest control industry, both in Florida and nationally.

15. Together, HomeTeam's HOMETEAM, HOMETEAM SERVICES, HOMETEAM PEST CONTROL, HOMETEAM PEST MANAGEMENT, TUBES IN THE WALL, and TUBES UNDER THE SLAB marks are sometimes referred to as "HomeTeam's Marks" in this Complaint.

### **COUNT ONE**

#### **FEDERAL UNFAIR COMPETITION AND TRADEMARK**

#### **INFRINGEMENT**

16. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

17. HomeTeam has common law and federal registration rights in HomeTeam's Marks. HomeTeam's rights to those marks are valid, enforceable, and widely recognized in the pest control systems and service industry and by the general public.

18. Upon information and belief, Defendants have used and plan to continue to use HomeTeam's Marks, or confusingly similar marks, in connection with the advertising, promotion, and sale of Defendants' services in the pest control and termite control service industry.

19. Upon information and belief, Defendants have willfully and maliciously, with evil mind and intent to injure, engaged in improper commercial activity toward HomeTeam. This improper activity includes using at least one of HomeTeam's Marks to confuse consumers and abscond with the goodwill embodied in those marks and to otherwise compete unfairly.

20. Specifically, upon information and belief, Defendants advertised or promoted their competing pest control services using Triplett's old HomeTeam business card and represented to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems, which they did not.

21. On information and belief, Defendants' actions are likely to deceive, confuse, or cause a mistake about the Defendants' affiliation, connection, or association with HomeTeam, or about the origin, sponsorship, or approval of their commercial activities by HomeTeam. Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

22. Defendants' actions in commercial advertising and promotion misrepresent the nature, characteristics, and qualities of their goods and commercial activities.

23. HomeTeam has suffered irreparable injury as a direct and proximate consequence of Defendants' actions. Such damage will continue and increase unless Defendants are enjoined from their unlawful conduct.

24. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) a permanent injunction barring Defendants from using HomeTeam's Marks, or any confusingly similar marks, in any commercial activity relating in any way to pest control or termite control systems or services; (2) a permanent injunction barring Defendants from using HomeTeam's Marks in any confusing, misleading, deceptive, or dilutive manner; (3) punitive or exemplary damages, including treble damages under the federal trademark laws; (4) its reasonable costs and attorneys' fees; (5) compensatory damages and lost profits; and (6) all other legal, equitable, and monetary relief the Court deems just under the circumstances.

## **COUNT TWO**

### **COMMON LAW UNFAIR COMPETITION**

25. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

26. HomeTeam has common law and federal registration rights in HomeTeam's Marks. HomeTeam's rights to those marks are valid, enforceable, and widely recognized in the pest control systems and service industry, and by the general public.

27. Upon information and belief, Defendants have used and plan to continue to use HomeTeam's Marks, or confusingly similar marks, in connection with the advertising, promotion, and sale of Defendants' services in the pest control and termite control service industry.

28. Upon information and belief, Defendants have willfully and maliciously, with evil mind and intent to injure, engaged in improper commercial activity toward HomeTeam. This improper activity includes using at least one of HomeTeam's Marks to confuse consumers and abscond with the goodwill embodied in those marks and to otherwise compete unfairly.

29. Specifically, upon information and belief, Defendants advertised or promoted their competing pest control services using Triplett's old HomeTeam business card and represented to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems, which they did not. On information and belief, Defendants identified those customers through confidential information acquired by Triplett when he worked for HomeTeam's predecessor, Radar Exterminating, Inc. d/b/a/ HomeTeam Environmental Services ("HTES"), in breach of a confidentiality and non-compete agreement ("the Confidentiality Agreement"). On information and belief, Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

30. Upon information and belief, Defendants are aware of the contractual relationship between HomeTeam and homeowners who use HomeTeam's pest control and termite control services. On information and belief, Defendants have actively induced one or more of those homeowners to use Defendants' pest control and termite control services instead, which injured HomeTeam.

31. Upon information and belief, Defendants' actions are likely to deceive, confuse, or cause a mistake about the Defendants' affiliation, connection,



or association with HomeTeam, or about the origin, sponsorship, or approval of their commercial activities by HomeTeam.

32. Defendants' actions in commercial advertising and promotion misrepresent the nature, characteristics, and qualities of their goods and commercial activities.

33. Defendants' actions described above violate HomeTeam's common law rights and constitute unfair competition.

34. Upon information and belief, Defendants committed these acts of unfair competition fraudulently and maliciously and in conscious disregard of HomeTeam's rights, with intent to injure HomeTeam.

35. As a direct and proximate consequence of Defendants' actions, HomeTeam has suffered irreparable injury. Such damage will continue and increase unless Defendants are enjoined from their unlawful conduct.

36. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) a permanent injunction barring Defendants from using HomeTeam's Marks, or any confusingly similar marks, in any commercial activity relating in any way to pest control or termite control systems or services; (2) a permanent injunction barring Defendants from using HomeTeam's Marks in any confusing, misleading, deceptive, or dilutive manner; (3) punitive or exemplary damages; (4) its reasonable costs and attorneys' fees; (5) compensatory damages and lost profits; and (6) all other legal, equitable, and monetary relief the Court deems just under the circumstances.

### **COUNT THREE**

#### **PATENT INFRINGEMENT**

37. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

38. HomeTeam provides pest control systems to homeowners. These systems consist of perforated tubes installed in the walls, and/or under the foundation slabs, of new homes. HomeTeam secures and maintains ownership of portions of these systems, and HomeTeam contracts with homeowners to provide pest control services by injecting insecticide into the systems through external service ports.

39. HomeTeam is the licensee and owner of all substantial rights in the '749 Patent, which covers a termiticide delivery system.

40. Defendants compete with HomeTeam in the provision of pest control services. Defendants are acutely aware of HomeTeam's rights in HomeTeam's Marks as used in the provision of pest control and termite control systems and services and, on information and belief, are aware that HomeTeam has rights under the '749 Patent and have willfully infringed it. Among other reasons, Triplett was an employee of HTES, from February 11, 1997 through September 10, 1999, and was sued by that company for, among other things, breach of the Confidentiality Agreement. HomeTeam's parent separately sued Triplett for infringing the '749 Patent. On January 24, 2001, Triplett signed a settlement agreement (the "Settlement Agreement") in which he agreed, among other things, not to infringe the '749 Patent. HomeTeam owns, by assignment, all enforcement rights in the Confidentiality Agreement and the Settlement Agreement.

41. Defendants are liable to HomeTeam, under 35 U.S.C. § 271, for infringement of the '749 Patent. Defendants have used the invention covered by that patent by servicing HomeTeam's Tubes under the Slab systems. On information and belief, Defendants have actively induced the patent's infringement. On information and belief, Defendants have offered to sell or sold a component of the combination covered by that patent which constitutes a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of the patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

42. As a direct and proximate consequence of Defendants' actions, HomeTeam has suffered irreparable injury. Such damage will continue and increase unless Defendants are enjoined from their unlawful conduct.

43. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) a permanent injunction barring Defendants from infringing the '749 Patent; (2) punitive or exemplary damages, including treble damages under the federal patent laws; (3) its reasonable costs and attorneys' fees; (4) compensatory damages; and (5) all other legal, equitable, and monetary relief the Court deems just under the circumstances.

#### **COUNT FOUR**

#### **BREACH OF CONTRACT**

44. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

45. Defendants compete with HomeTeam in the provision of pest control services. Defendants are acutely aware of HomeTeam's rights in HomeTeam's Marks as used in the provision of pest control and termite control

systems and services. On information and belief, Defendants are aware that HomeTeam has rights under the '749 Patent.

46. Triplett was an employee of HomeTeam's predecessor, Radar Exterminating, Inc. d/b/a HTES, from February 11, 1997 through September 10, 1999, and was sued by that company for, among other things, breach of the Confidentiality Agreement. HomeTeam's parent separately sued Triplett for infringing the '749 Patent. On January 24, 2001, Triplett signed the Settlement Agreement in which he agreed, among other things, not to infringe the '749 Patent. HomeTeam owns, by assignment, all enforcement rights in the Confidentiality Agreement and the Settlement Agreement.

47. Triplett agreed to the terms of the Confidentiality Agreement and the Settlement Agreement.

48. Upon information and belief, Defendants have advertised or promoted their competing pest control services using Triplett's old HomeTeam business card, representing to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems when, in fact, they do not. On information and belief, Defendants identified those customers through confidential information acquired by Triplett when he worked for HTES, in breach of the Confidentiality Agreement. On information and belief, Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

49. Upon information and belief, Defendants are aware of the contractual relationship between HomeTeam and homeowners who use HomeTeam's pest control and termite control services. On information and belief,

Defendants have actively induced one or more of those homeowners to use Defendants' pest control and termite control services instead, which injured HomeTeam.

50. Upon information and belief, Defendant's breach of the Confidentiality Agreement and Settlement Agreement was willful, malicious and with an evil mind and intent to injure HomeTeam.

51. As a direct and proximate consequence of Defendants' breach of the Confidentiality Agreement and the Settlement Agreement, HomeTeam has suffered damages.

52. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) compensatory damages in an amount to be proven at trial; (2) its reasonable costs and attorneys' fees; and (3) all other legal, equitable, and monetary relief the Court deems just under the circumstances, including punitive damages.

#### **COUNT FIVE**

#### **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

53. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

54. Defendants compete with HomeTeam in the provision of pest control services. Defendants are acutely aware of HomeTeam's rights in HomeTeam's Marks as used in the provision of pest control and termite control systems and services. On information and belief, Defendants are aware that HomeTeam has rights under the '749 Patent.

55. Triplett was an employee of HomeTeam's predecessor, Radar Exterminating, Inc. d/b/a HTES, from February 11, 1997 through September 10, 1999, and was sued by that company for, among other things, breach of the Confidentiality Agreement. HomeTeam's parent separately sued Triplett for infringing the '749 Patent. On January 24, 2001, Triplett signed the Settlement Agreement in which he agreed, among other things, not to infringe the '749 Patent. HomeTeam owns, by assignment, all enforcement rights in the Confidentiality Agreement and the Settlement Agreement.

56. Defendants have advertised or promoted their competing pest control services using Triplett's old HomeTeam business card, representing to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems when, in fact, they do not. On information and belief, Defendants identified those customers through confidential information acquired by Triplett when he worked for HTES, in breach of the Confidentiality Agreement. On information and belief, Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

57. Upon information and belief, Defendants are aware of the contractual relationship between HomeTeam and homeowners who use HomeTeam's pest control and termite control services. On information and belief, Defendants have actively induced one or more of those homeowners to use Defendants' pest control and termite control services instead, which injured HomeTeam.

58. Every contract contains an implied covenant of good faith and fair dealing.

59. Triplett breached the implied covenant of good faith and fair dealing forming part of the Confidentiality Agreement.

60. Triplett also breached the implied covenant of good faith and fair dealing forming part of the Settlement Agreement.

61. Upon information and belief, Defendant's breach of the covenant of good faith and fair dealing was willful, malicious and with an evil mind and intent to injure HomeTeam.

62. As a direct and proximate consequence of Defendants' breaches, HomeTeam has suffered damages.

63. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) compensatory damages in an amount to be proven at trial; (2) its reasonable costs and attorneys' fees; and (3) all other legal, equitable, and monetary relief the Court deems just under the circumstances, including punitive damages.

### **COUNT SIX**

#### **TORTIOUS INTERFERENCE**

64. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

65. HomeTeam had valid contracts for pest control and termite control services and valid business expectancies for future sales of pest control and termite control services.

66. Defendants compete with HomeTeam in the provision of pest control services. Defendants are acutely aware of HomeTeam's rights in

HomeTeam's Marks as used in the provision of pest control and termite control systems and services and, on information and belief, are aware that HomeTeam has rights under the '749 Patent. Among other reasons, Triplett was an employee of HomeTeam's predecessor, Radar Exterminating, Inc. d/b/a HTES, from February 11, 1997 through September 10, 1999, and was sued by that company for, among other things, breach of the Confidentiality Agreement. HomeTeam's parent separately sued Triplett for infringing the '749 Patent.

67. Upon information and belief, Defendants have willfully and maliciously, with evil mind and intent to injure, engaged in improper commercial activity toward HomeTeam. This improper activity includes using at least one of HomeTeam's Marks to confuse consumers and abscond with the goodwill embodied in those marks and to otherwise compete unfairly.

68. Upon information and belief, Defendants have advertised or promoted their competing pest control services using Triplett's old HomeTeam business card, representing to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems when, in fact, they do not. On information and belief, Defendants identified those customers through confidential information acquired by Triplett when he worked for HTES, in breach of the Confidentiality Agreement. On information and belief, Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

69. On information and belief, Defendants are aware of the contractual relationship between HomeTeam and homeowners who use HomeTeam's pest control and termite control services. On information and belief, Defendants have



actively induced one or more of those homeowners to use Defendants' pest control and termite control services instead, causing injury to HomeTeam. Moreover, on information and belief, when Defendants provide services to those homeowners, it exercises control over HomeTeam's personal property in a manner inconsistent with HomeTeam's rights.

70. On information and belief, Defendants had knowledge of those contracts and expectancies. On information and belief, Defendants intentionally and improperly interfered with them, causing injury to HomeTeam.

71. As a direct and proximate consequence of Defendants' actions, HomeTeam has suffered damages.

72. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) compensatory damages in an amount to be proven at trial and lost profits; (2) its reasonable costs and attorneys' fees; (3) all other legal, equitable, and monetary relief the Court deems just under the circumstances, including punitive damages.

### **COUNT SEVEN**

#### **INTENTIONAL TORTIOUS CONDUCT**

73. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

74. Defendants owed a duty to HomeTeam.

75. Defendants compete with HomeTeam in the provision of pest control services. Defendants are acutely aware of HomeTeam's rights in HomeTeam's Marks as used in the provision of pest control and termite control systems and services and, on information and belief, are aware that HomeTeam has rights under the '749 Patent. Among other reasons, Triplett was an employee

of HomeTeam's predecessor, Radar Exterminating, Inc. d/b/a HTES, from February 11, 1997 through September 10, 1999, and was sued by that company for, among other things, breach of the Confidentiality Agreement

76. Upon information and belief, Defendants have willfully and maliciously, with evil mind and intent to injure, engaged in improper commercial activity toward HomeTeam. This improper activity includes using at least one of HomeTeam's Marks to confuse consumers and abscond with the goodwill embodied in those marks and to otherwise compete unfairly.

77. Upon information and belief, Defendants have advertised or promoted their competing pest control services using Triplett's old HomeTeam business card, representing to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems when, in fact, they do not. On information and belief, Defendants identified those customers through confidential information acquired by Triplett when he worked for HTES, in breach of the Confidentiality Agreement. On information and belief, Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

78. On information and belief, Defendants are aware of the contractual relationship between HomeTeam and homeowners who use HomeTeam's pest control and termite control services. On information and belief, Defendants have actively induced one or more of those homeowners to use Defendants' pest control and termite control services instead, causing injury to HomeTeam. Moreover, on information and belief, when Defendants provide services to those homeowners, it

exercises control over HomeTeam's personal property in a manner inconsistent with HomeTeam's rights.

79. On information and belief, Defendants had knowledge of those contracts and expectancies. On information and belief, Defendants intentionally and improperly interfered with them, causing economic injury to HomeTeam.

80. As a direct and proximate consequence of Defendants' breach, HomeTeam suffered damages.

81. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) compensatory damages in an amount to be proven at trial and lost profits; (2) its reasonable costs and attorneys' fees; (3) all other legal, equitable, and monetary relief the Court deems just under the circumstances, including punitive damages.

### **COUNT EIGHT**

#### **UNJUST ENRICHMENT**

82. HomeTeam alleges and adopts paragraphs 1 through 15 as if fully set forth herein.

83. Defendants were enriched, and HomeTeam was impoverished, by Defendants' unjustified and unauthorized actions.

84. Defendants compete with HomeTeam in the provision of pest control services. Defendants are acutely aware of HomeTeam's rights in HomeTeam's Marks as used in the provision of pest control and termite control systems and services and, on information and belief, are aware that HomeTeam has rights under the '749 Patent. Among other reasons, Triplett was an employee of HomeTeam's predecessor, Radar Exterminating, Inc. d/b/a HTES, from February 11, 1997 through September 10, 1999, and was sued by that company

for, among other things, breach of the Confidentiality Agreement. HomeTeam's parent separately sued Triplett for infringing the '749 Patent. On January 24, 2001, Triplett signed the Settlement Agreement in which he agreed, among other things, not to infringe the '749 Patent. HomeTeam owns, by assignment, all enforcement rights in the Confidentiality Agreement and the Settlement Agreement.

85. Upon information and belief, Defendants have willfully and maliciously, with evil mind and intent to injure, engaged in improper commercial activity toward HomeTeam. This improper activity includes using at least one of HomeTeam's Marks so as to confuse consumers and abscond with the goodwill embodied in those marks and to otherwise compete unfairly.

86. Specifically, upon information and belief, Defendants have advertised or promoted their competing pest control services using Triplett's old HomeTeam business card, representing to HomeTeam's customers and, on information and belief, potential customers that Defendants have HomeTeam's approval to service HomeTeam's Tubes under the Slab termiticide delivery systems when, in fact, they do not. On information and belief, Defendants identified those customers through confidential information acquired by Triplett when he worked for HTES, in breach of the Confidentiality Agreement. On information and belief, Defendants' conduct confuses consumers and falsely suggests that HomeTeam endorses or is affiliated with Defendants and their services.

87. Defendants were unjustly enriched by its actions, which damaged HomeTeam.

88. WHEREFORE, HomeTeam demands judgment against Defendants awarding HomeTeam: (1) compensatory damages in an amount to be proven at trial and lost profits; (2) its reasonable costs and attorneys' fees; (3) all other legal, equitable, and monetary relief the Court deems just under the circumstances, including punitive damages.

**DEMAND**

HomeTeam demands judgment against Defendants based upon Counts One through Eight alleged above and requests all legal, equitable, and monetary relief, including punitive damages, as requested above.

DATED this 22<sup>nd</sup> day of October, 2004.

/s/Alexander Muszynski, III

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### **Certificate of Service**

I hereby certify that on October 22, 2004, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system that will also send a notice of the electronic filing to Marc P. Ossinsky, OSSINSKY & CATHCART, P.A., 210 North Wymore Rd., Winter Park, Florida 32789 as Attorney for Defendants Triplett and Platinum Pest Services, Inc. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following: Marc P. Ossinsky, OSSINSKY & CATHCART, P.A., 210 North Wymore Rd., Winter Park, Florida 32789 as Attorney for Defendants Triplett and Platinum Pest Services, Inc.

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