

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) A TO Z MACHINING SERVICE, LLC, and	)	
	)	
(2) FLATSAFE SHELTERS, LLC	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. CIV-10-422-C
	)	
(1) NATIONAL STORM SHELTER, LLC,	)	
formerly doing business as,	)	
	)	
(2) TURNER MACHINE CO., INC.; and	)	
	)	
(3) JEFFREY D. TURNER, an individual,	)	
	)	
Defendants.	)	

**COMPLAINT**

1. Plaintiffs file this Complaint against the above-named Defendants for infringement of U.S. Patent No. 7,428,800 (“800 Patent”), attached as Exhibit 1. Defendants are currently manufacturing and selling storm shelters that infringe the ‘800 Patent. Defendants readily admitted that their storm shelters are intentionally copied from Plaintiffs’ and that they have copied documents from Plaintiffs’ web site. The existence of these copies has already caused confusion among potential customers about the affiliation of Defendants with Plaintiffs. The National Storm Shelter Association (“NSSA”) is a trade association of shelter manufacturers and others interested in the storm shelter industry. See its web site at [www.nssa.cc](http://www.nssa.cc). Both Plaintiff A to Z and Defendant National Storm Shelter are members of NSSA. By adopting a name that is a mere shortening of NSSA’s name,

Defendants have wrongfully attempted to capitalize on the association's good name and reputation to advance their own commercial interests as well as to confuse the public, and this amounts to unfair competition and/or a deceptive trade practice. Defendants have admitted to visiting Plaintiffs' web site, copying works therefrom, and now using pirated documents in their business. Copyright applications for the works at issue are being filed.

### **PARTIES**

2. Plaintiff A to Z Machining Service, LLC ("A to Z") is an Oklahoma limited liability company with its primary offices in Ponca City, Oklahoma. A to Z does business under its federally registered trade name, FLATSAFE TORNADO SHELTERS, Reg. No. 3,268,747 (the "Trademark"). A to Z has also applied for copyrights on several works available on its web site. Plaintiff A to Z owns the '800 Patent, the Trademark, and the other intellectual property referenced in ¶1, above. Plaintiff Flatsafe Shelters, LLC is an Oklahoma limited liability company, and a member in good standing of NSSA.

3. Defendants NATIONAL STORM SHELTER, LLC ("NSS"), formerly doing business as TURNER MACHINE CO., INC. ("TMC") are Tennessee entities owned or controlled – legally or equitably – by JEFFREY D. TURNER, an individual ("Turner"). Collectively, these three parties will be referred to as "Defendants." Turner has been the face of the Defendants on news coverage in the Tennessee area. NSS was organized as a Tennessee limited liability company on or about April 15, 2010, having one member, Turner. Turner is the service agent of both NSS and TMC. Defendants operate a web site using their

name, which is available at [www.nationalstormshelter.com](http://www.nationalstormshelter.com). Defendants' web site says the following about Turner:

Owner Jeff Turner has 15 plus years in the manufacturing / machining business. He leverages industry knowledge and expertise to design and build storm shelters. The business was formed when the F5 tornado hit Murfreesboro in [April 10,] 2009. Jeff decided to begin building shelters so that people in his community and others, could be safe and have options. He was one of the only people locally that could facilitate the design and development of this product.

For purposes relevant to this Complaint, Defendants have their primary place of business at 603 Swan Drive in Smyrna, Tennessee 37167. NSS is currently named as a member of the NSSA, but the application for NSSA membership was filed on or about January 5, 2010 by TMC.

### **BACKGROUND**

4. On or about April 21, 2010, at least seven infringing shelters were on sale in Defendants' inventory in its Smyrna, Tennessee facility. The nature of these shelters and the fact that they were, in all material respects, copies of Plaintiffs' patented shelters, was confirmed by a visit of two individuals familiar with Plaintiffs' shelters to Defendants' facility. These individuals personally viewed at least one of the infringing shelters.

5. Defendants' brochures are attached hereto as Exhibit 2. They show the infringing shelter and attest that this shelter has been installed in at least one customer's home. On information and belief, Plaintiffs allege that Defendants have installed at least 12 infringing shelters. Defendants' copying has gone so far as to duplicate the details of Plaintiffs' 25-year structural integrity and corrosion. Compare Exhibit 2, at caption under

the top-right picture on the first page, with Plaintiffs' web site at <http://www.flatsafe.com/AboutUs/25YearCorrosionWarranty.aspx>.

6. Defendants' copying resulted from their visits to Plaintiffs' web site, which is maintained at <http://www.flatsafe.com/>. Plaintiffs' web site gives clear notice that Plaintiffs' manufacturing operation is located in Oklahoma. See <http://www.flatsafe.com/ContactUs.aspx>. Defendants knew, or should have known, that their infringement, unfair competition, and copying of Plaintiffs' works would impact Plaintiffs in this state.

### **JURISDICTION AND VENUE**

7. Jurisdiction and venue of this court are properly invoked under 28 U.S.C. §§ 1331, 1332, 1337, 1338, 1367, 1391 and/or 1400 for Plaintiffs' claims arising under 17 U.S.C. § 101, and 35 U.S.C. §271 and related causes of action as more fully set forth below.

### **FIRST CAUSE OF ACTION** **PATENT INFRINGEMENT**

8. In contravention of Plaintiffs' rights under the '800 Patent, Defendants have made, used, attempted to sell, and/or sold storm shelters that infringe the '800 Patent. Plaintiffs seek damages and injunctive relief related to Defendants' direct, indirect, and willful infringement of the '800 Patent. Claims for patent infringement arise, *inter alia*, under 35 U.S.C. §§ 271 (infringement), and 281-285 (remedies for infringement). Defendants induced and/or contributed to ongoing infringement of the '800 Patent by means

of sale and/or use of installed shelters that Defendants copied from Plaintiffs' patented design.

9. Defendants' actions have been willful. Defendants knew that Plaintiffs' shelters were patented. Nevertheless, Defendants proceeded to admittedly copy Plaintiffs' shelters and sell them on Defendants' own account without making any payment to Plaintiffs, and without giving proper notice to purchasers of the risks associated with buying shelters that were copies of shelters protected by the '800 Patent.

10. WHEREFORE, Plaintiffs pray for judgment against Defendants as follows and for the following relief:

a. That Defendants be held to have infringed the '800 Patent.

b. That Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and inducing infringement of the '800 Patent, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patent-in-suit during the life of the '800 Patent, without the express written authority of Plaintiffs.

c. That Defendants be directed to fully compensate Plaintiffs for all damages attributable to Defendants' infringement of the '800 Patent in an amount according to proof at trial.

- d. That this case be deemed exceptional.
- e. That all damages awarded be trebled.
- f. That Defendants be ordered to deliver to Plaintiffs all products that infringe the '800 Patent.
- g. That Defendants be required to account for all gains, profits, advantages, and unjust enrichment derived from their violations of law.
- h. That Plaintiffs be awarded reasonable attorney's fees.
- i. That Plaintiffs be awarded the costs of suit, and an assessment of interest.
- j. That Plaintiffs have such other, further, and different relief as the court deems proper under the circumstances.

**SECOND CAUSE OF ACTION**  
**MISAPPROPRIATION / UNFAIR COMPETITION**

- 11. Plaintiffs incorporate by reference the foregoing and subsequent allegations of this Complaint.
- 12. Defendants adopted a name that is a mere shortening of NSSA's name. The adoption of this name is likely to deceive consumers into believing that there is some sponsorship of Defendants by the NSSA or some special approval of them above and beyond mere testing and certification of their products.

13. Further, by copying Plaintiffs' shelters, Defendants have created actual confusion in the minds of potential customers and the potential for confusion about whether Defendants are affiliated with or sponsored by Plaintiffs.

14. Defendants' actions violate the Oklahoma Deceptive Trade Practices Act, 78 O.S. § 51, et seq.

15. WHEREFORE, Plaintiffs pray for judgment against Defendants as follows and for the following relief:

a. That Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from using the trade name "National Storm Shelters."

b. That Defendants be directed to fully compensate Plaintiffs for all damages attributable to Defendants' actions according to proof at trial.

c. That Defendants be required to account for all gains, profits, advantages, and unjust enrichment derived from their violations of law.

d. That Plaintiffs be awarded punitive damages.

e. That Plaintiffs be awarded reasonable attorney's fees.

f. That Plaintiffs be awarded the costs of suit, and an assessment of interest.

g. That Plaintiffs have such other, further, and different relief as the court deems proper under the circumstances.

**THIRD CAUSE OF ACTION**  
**COPYRIGHT VIOLATION**

16. This cause of action is for copyright infringement under 17 U.S.C.A. § 501 to protect and enforce the exclusive rights of authorship and ownership conferred by 17 U.S.C.A. § 106, to wit, the exclusive rights of a copyright owner to copy, reproduce, distribute, display, and to prepare derivative works, of original works of authorship claimed by the copyright owner.

17. Plaintiffs create (or cause to be created) and sell for financial gain storm shelters. As a part of its business, Plaintiffs have created marketing materials that they use to publicize its products and to encourage their sale. A copyright application has been filed for certain of those materials, and Plaintiffs are the owners of that putative copyright. *See* Exhibit 3, showing works for which a copyright application will be filed.

18. Defendants had access to Plaintiffs' works because they are open to the public on their web site (<http://www.flatsafe.com/>).

19. Defendants' copying, reproduction, distribution and selling of Plaintiffs' works resulted in a financial gain for Defendants and a financial loss to Plaintiffs.

20. Plaintiffs' works consists of original works of authorship fixed in a tangible medium of expression.



21. Plaintiffs' works will be pending registration with the United States Copyright Office, and, as an entity with exclusive rights granted by the owner and holder of copyright protection, Plaintiffs have the exclusive rights of reproduction, preparation of derivative works, distribution, and display of same consistent with the license it holds. 17 U.S.C. § 106.

22. Defendants copied, distributed and sold, without Plaintiffs' knowledge, consent or permission, Plaintiffs' works for Defendants' commercial use and benefit, including without limitation, for the purpose of financial gain and obtaining a competitive edge over Plaintiffs.

23. WHEREFORE, Plaintiffs pray for judgment against Defendants as follows and for the following relief:

a. That Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from further infringing Plaintiff's works.

b. That Defendants be directed to fully compensate Plaintiffs for all damages attributable to Defendants' copyright infringement in an amount according to proof at trial.

c. That Defendants be ordered to deliver to Plaintiffs all products or systems that result from Defendants' copyright infringement.

- d. That Defendants be required to account for all gains, profits, advantages, and unjust enrichment derived from their violations of copyright law.
- e. That Plaintiffs be awarded punitive damages.
- f. That Plaintiffs be awarded reasonable attorney's fees.
- g. That Plaintiffs be awarded the costs of suit, and an assessment of interest.
- h. That Plaintiffs have such other, further, and different relief as the court deems proper under the circumstances.

**PRELIMINARY AND PERMANENT INJUNCTION**

24. Plaintiffs also ask for injunctive relief. It is still possible to mitigate the some of the damages that will ensue from Defendants' ongoing infringement. Injunction may be available for infringement of Plaintiffs' patent and copyrights. Further, Plaintiffs ask the Court to enjoin Defendants' use of a name likely to confuse the public into believing that there is a special relationship between them and the NSSA. Therefore, Plaintiffs ask the Court to enjoin Defendants' ongoing infringements pending the Court hearing from the parties on the propriety of injunctive relief. Plaintiffs seek this injunctive relief on a preliminary and emergency basis while the litigation is ongoing. A hearing is sought on this matter as soon as possible. Plaintiffs also seek a permanent injunction.

Respectfully Submitted,  
EDWARD L. WHITE, P.C.

s/ Edward L. White

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ATTORNEY FOR PLAINTIFFS

**FILED: April 27, 2010**

**ATTORNEY LIEN CLAIMED**

**JURY TRIAL DEMANDED**