

THE HONORABLE THOMAS S. ZILLY



08-CV-01219-IFP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SAFEWORKS, LLC, a Washington limited liability company,

Plaintiff,

v.

TEUPEN AMERICA, LLC; EXTREME ACCESS SOLUTIONS, INC; THE SPIDERLIFT COMPANY, INC.; AND LEONARDO POLONSKI,

Defendants.

NO. 08-1219 TSZ

PRETRIAL ORDER

~~PROPOSED~~

JURISDICTION

1. This Court has original jurisdiction over Counts I and II under 15 U.S.C. §1121(a) (action arising under the Lanham Act) and 28 U.S.C. §§1331, 1338(a) in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §§1051-1127.

2. This Court has jurisdiction over Count IV and V under 28 U.S.C §1338(b) and 28 USC §1367 in accordance with the principles of supplemental jurisdiction in that said

PRETRIAL ORDER - 1

INVICTA LAW GROUP, PLLC  
1000 SECOND AVENUE, SUITE 3310  
SEATTLE, WA 98104-1019  
FAX (206) 903-6365  
TEL (206) 903-6364

1 claim is joined with substantial and related claims under the Trademark Laws of the United  
2 States, 15 U.S.C. §§1051-1127.

3 3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

4 4. Personal jurisdiction in this district is proper because Defendants have  
5 voluntarily subjected themselves to the jurisdiction of this Court.

6 **CLAIMS AND DEFENSES**

7 **A. SafeWorks Claims:**

8 1) Federal trademark infringement under 15 U.S.C. §1114 for injunctive relief,  
9 damages and unjust enrichment resulting from Defendants' infringing use of Plaintiff's  
10 Marks.

11 2) *False designation of origin, false advertising and unfair competition under the*  
12 *Lanham Act Section, 43 (a) (15 U.S.C. § 1125(a))* for injunctive relief, damages and unjust  
13 enrichment resulting from Defendants' infringing use of Plaintiff's Marks.

14 3) Based on these violations of the Lanham Act, Plaintiff seeks judgment in the  
15 amount of three (3) times its damages, together with reasonable attorney's fees and costs of  
16 suit pursuant to 15 U.S.C. § 1117(a).

17 4) Violation of the Washington State Unfair Competition and Consumer  
18 Protection Act, RCW 19.86, for treble damages and unjust enrichment resulting from  
19 Defendants' infringing use of Plaintiff's Marks.

20 5) Breach of two separate contracts to stop infringing the Marks, and money  
21 damages resulting therefrom.

22 **B. Defendants' Affirmative Defenses:**  
23

1 Defendants will pursue the following affirmative defenses:

2 1) The claims asserted in the Complaint are barred by laches, waiver, and/or  
3 estoppel.

4 2) The Complaint is barred by SAFEWORKS's unclean hands.

5 3) If SAFEWORKS suffered any injury or damages as alleged in the Complaint,  
6 which is expressly denied, then said damages or injuries resulted from its own acts and/or  
7 omissions.

8 4) Plaintiff's recovery is barred because the alleged agreements between  
9 SAFEWORKS and Defendants are invalid as inchoate, and further because of lack of  
10 consideration, vagueness, failure of a meeting of the minds.

11 5) Plaintiff's recovery is barred by the statute of frauds.

12 **C. Defendants' Counterclaims:**

13 ~~1) Violation of the Washington State Unfair Competition and Consumer~~  
14 ~~Protection Act, RCW 19.86, for treble damages and unjust enrichment resulting from~~  
15 ~~Plaintiff's unlawful attempts to extend the reach of its trademark rights beyond the United~~  
16 ~~States.~~ B

17 2) Violation of Massachusetts General Laws Ch. 93A for frivolous lawsuit, and  
18 for resulting from Plaintiff's unlawful attempts to extend the reach of its trademark rights  
19 ~~beyond the United States.~~

**ADMITTED FACTS**

1  
2 1. Plaintiff, SafeWorks, LLC (“SafeWorks”) is a Washington limited liability  
3 company based in Tukwila, Washington with 24 offices throughout the United States, as well  
4 as offices in Canada, the United Arab Emirates and Belgium.

5 2. SafeWorks’ Spider division has manufactured, sold and rented lifting, hoisting,  
6 safety and access equipment for the construction, mining and maintenance industries, since  
7 1947.

8 3. Spider provides all types of equipment to raise and lower both workers and  
9 materials above and below the ground.

10 4. Defendant Teupen America LLC is a Massachusetts limited liability company,  
11 with headquarters at 14 Chapin Avenue in Reading, Massachusetts.

12 5. Teupen America was previously known as “American Spider Lifts, LLC”, but  
13 changed its name to “Teupen America LLC” on April 25, 2005.

14 6. Teupen’s German principal company, Teupen Maschinenbau GmbH, objected  
15 to Defendant’s use of the name “Teupen America”.

16 7. On April 17, 2008, Teupen America announced a name change to “The Spider  
17 Lift Company” but never operated using that name. Instead, a new corporation was formed  
18 called “Extreme Access Solutions”.

19 8. Defendant Extreme Access is a Massachusetts Corporation, with headquarters  
20 at 14 Chapin Avenue in Reading, Massachusetts.

21 9. Extreme Access is a sister company of Teupen America and has continuing  
22 business dealings with Teupen America.  
23

1           10.    Leonardo Polonski is the President of Teupen America and of Extreme Access  
2 Solutions.

3           11.    Defendants have used the term "Spiderlift" to sell lift machinery in the United  
4 States.

5           12.    Defendants sell and rent track mounted aerial lifts manufactured by Teupen  
6 Maschinenbau GmbH, under a distributorship agreement between Defendants and Teupen  
7 Maschinenbau GmbH first dated November 2003 and modified in 2008. The distributorship  
8 agreement was again modified in 2009, between the parties Extreme Access Solutions, Inc.,  
9 and Teupen USA, Inc.

10          13.    At all times relevant to this proceeding, one or more Defendants were the  
11 registered owner of the website and domain name "www. spiderlifts.com."

12          14.    SafeWorks is the registered owner of U.S. Trademark Registration Nos.  
13 696,387 (SPIDER); 2,406,766 (SPIDER); 2,438,034 (SPIDER LINE); 577,536 (SPIDER  
14 STAGING); 1,239,947 (SPIDER); 1,385,728 (SPIDER design); 696,385 (design trademark);  
15 and 1,398,243 (design trademark). The first of these marks was registered with the U.S.  
16 Patent and Trademark Office ("USPTO") in 1953.

17          15.    Defendants filed U.S. trademark application, serial number 77150147, for the  
18 mark "American Spider Lifts", on April 5, 2007.

19          16.    In approximately 2004, Defendants began using the term "Spiderlift," and the  
20 domain name "spiderlifts.com" (collectively the "Infringing Marks") to promote and sell track  
21 mounted aerial lifts and other equipment.  
22  
23

1           17. On or about April 17, 2008, Teupen America announced that it was changing  
2 its name to "The Spiderlift Company." The press release announcing the name change was  
3 published in national and international trade publications as well as on the Internet.

4           18. Defendants filed their second trademark application, for "The SpiderLift  
5 Company", on April 17, 2008. Defendants have applied for and received two extensions of  
6 time in which to file their statement of use for the mark.

7           19. On or about August 1, 2008, Defendants filed an action for declaratory  
8 judgment in the Federal District court for the District of Eastern Massachusetts, asking that  
9 court to rule that SafeWorks be enjoined from bringing trademark litigation against them for  
10 their use of the Infringing Marks and for a determination that the Infringing Marks are  
11 generic. The action was dismissed and the issue transferred to this Court.

12           20. A fragment of the domain name spiderlifts.com incorporates SafeWorks'  
13 registered trademark "Spider."

14           **The Plaintiff contends as follows:**

15           1. Spider's products sold under and/or bearing the SPIDER® Marks have  
16 become well known in the construction, restoration, and maintenance industries as products  
17 of the highest quality that originate with Spider.

18           2. SafeWorks' SPIDER® Marks, registered since 1953, are incontestable, and  
19 commercially and conceptually strong and distinctive with regard to lifting, hoisting, safety  
20 and suspended access equipment. SafeWorks' SPIDER® marks are suggestive when applied  
21 to SafeWorks' products.

22           3. SafeWorks carefully guards its intellectual property rights around the world.  
23

1           4.     The SPIDER® marks and the “Spiderlift” mark are virtually identical in sight,  
2 sound and pronunciation, and meaning.

3           5.     Spider and “Spiderlift” domain names are similar.

4           6.     Spider’s products are competitive with Defendants products as both parties  
5 sell their products bearing similar marks via the same marketing channels to the same end  
6 users for the same purposes, and there is substantial overlap between the uses and functional  
7 features of Spider’s and Defendants’ products.

8           7.     SafeWorks first discovered the existence of Defendants in August, 2004.

9           8.     Both parties market, rent and sell their products to consumers in the  
10 construction industry, building industry, maintenance industry, window washing industry,  
11 landscaping industry, commercial painting industry, commercial restoration and masonry  
12 industry for the purposes of lifting and lowering.

13           9.     The parties directly compete for some of the same customers in some of the  
14 same industries.

15           10.    The potential customers for the goods and services sold by Defendants include  
16 customers for Spider’s goods and services.

17           11.    Defendants directly market and advertise their products to Spider’s potential  
18 customers by directly comparing their product to a Spider® product.

19           12.    The parties market and sell their products via the same channels of trade,  
20 including the internet, trade press, and trade shows.

21           13.    Correspondence between the parties via letter, e-mail and telephone, and  
22 including attorneys, resulted in an agreement between the parties, in which Defendants  
23

1 agreed to change their corporate name to "Teupen America," which was confirmed via e-  
2 mail on or about January 19, 2005. In reliance on that Agreement, ("First Agreement")  
3 Plaintiff did not file an infringement action against Defendants, but Defendant breached the  
4 Agreement.

5 14. Despite the First Agreement, Defendants once again began using the  
6 Infringing Marks to promote and sell their products. On or about March 2008, SafeWorks  
7 learned of actual confusion on the part of one or more buyers of a Teupen America product,  
8 who thought they were purchasing a SafeWorks product because of the confusingly similar  
9 marks.

10 15. Defendant entered into a second agreement with SafeWorks in May/June 2008  
11 to stop using the term "spiderlift" and breached that second agreement.

12 16. Defendants' infringement is intentional, willful, knowing and deliberate.

13 17. Defendants have and continues to market, advertise and sell products using  
14 the infringing "Spiderlift" mark notwithstanding its constructive and actual knowledge of  
15 SafeWorks' superior trademark rights.

16 18. SafeWorks (and its predecessors) have sought, and will continue to seek,  
17 expansion opportunities in the construction and maintenance industries under the SPIDER®  
18 Marks.

19 19. Defendants' products are within the reasonable zone of market and product  
20 expansion for Spider. Because both companies operate in the same industry, with many of  
21 the same actual customers and potential customers, use of the "Spiderlift" name places  
22 Spider at risk of people reasonably believing an affiliation between "Spiderlift" and Spider.  
23



1           20.   SafeWorks has suffered damages in the amount of defendant's profits from  
2 the sale of its products sold using the infringing "Spiderlift" mark. The amount of  
3 Defendants' profit through May 2009 is \$3,190,222.00.

4           21.   Defendant Leonardo Polonski has at all times been the sole operating officer  
5 and decision maker of each Defendant corporation, which corporations are but alter egos of  
6 Defendant Polonski.

7   **Defendant contends as follows:**

8           1.    Plaintiff has admitted it has no evidence of actual damages and is bound by  
9 those admissions.

10          2.    Plaintiff has admitted it has not performed or attempted to perform any  
11 surveys which would comprise evidence as to likelihood of confusion as to the source of the  
12 goods, and is bound by those admissions.

13          3.    Plaintiffs have shown only a single instance of actual confusion as to the  
14 source of the goods alleged by Plaintiff.

15          4.    Plaintiff's business is "suspended access" and "power driven suspended  
16 staging and scaffolding."

17          5.    Outside the U.S. the words "spider lift(s)" are used to describe the aerial man-  
18 lift products sold by Defendants.

19          6.    European publications identifying products of the type sold by Defendants as  
20 "spider lift(s)" are widely distributed in the United States, in English.

21          7.    The Defendants chose to use the expression "spider lift(s)" in connection  
22 with their products because the products were new to the United States at the time, and were  
23

1 known "spider lift(s)" throughout Europe, where they were extensively used.

2 8. The alleged contracts which Plaintiff alleges were breached were never  
3 finalized, were inchoate and preliminary, and not legally enforceable.

4 9. Plaintiff's damages are speculative and Plaintiff can not prove causation or the  
5 required willfulness. No profits are attributable to the alleged infringement. Any award of  
6 damages would be an impermissible penalty.

7 10. Defendant Leonardo Polonski was, at all times during the events complained  
8 of by the Plaintiff, performing only as an officer of the other Defendant business entity, and  
9 never on behalf of himself, personally.

10 **ISSUES OF LAW**

11 *The following are the issues of law to be determined by the Court:*

12 1 Whether Defendants intentionally infringed SafeWorks' SPIDER® Marks by  
13 choosing a company name that was identical in sound and meaning to SafeWorks' Marks,  
14 despite constructive knowledge of SafeWorks' SPIDER® Marks.

15 2. Whether there is a likelihood of confusion between SafeWorks' SPIDER®  
16 marks and "Spiderlift" or "spider lift(s)."

17 3. Whether Defendants are liable for damages for their willful infringement of  
18 SafeWorks' SPIDER® marks and for its violation of the Washington State Consumer  
19 Protection Act.

20 4. Whether Defendants should be enjoined from any further use of the mark.

21 5. Whether Defendants violated the Washington State Consumer Protection Act  
22 by using SafeWorks' SPIDER® marks.  
23

6. Whether SafeWorks is entitled to attorney's fees and costs for Defendants' alleged infringement and violation of the Washington State Consumer Protection Act, RCW 19.86.

7. Whether Defendants breached at least two contracts with SafeWorks to stop using the term "Spiderlift(s)".

8. Whether Plaintiff's claims relating to breach of contract are barred by the Statute of Frauds.

9. Whether Plaintiff's claims are barred by laches.

10. Whether the name "spiderlift(s)" is generic when used in connection with aerial man-lifts stabilized by outriggers.

~~11. Whether Defendants are entitled to attorney's fees and costs for SafeWorks' alleged violation of Massachusetts General Laws Statutes C. 93A by preventing and limiting the use of the generic term "spiderlift(s)" in connection with the sale of their goods.~~

~~12. Whether SafeWorks has engaged in unfair and deceptive acts or practices in violation of the Washington State Consumer Protection Act by preventing and limiting the use of the generic term "spiderlift(s)" in connection with the sale of their goods.~~

PC

**EXPERT WITNESSES**

(a) Each party shall be limited to \_\_\_\_\_ expert witnesses on the issues of \_\_\_\_\_

(b) The names and addresses of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiff:

Witness	Will testify or possible witness only	Nature of Testimony
Mr. Steve Gooding 11026 - 94th Street NE Lake Stevens, WA 98258	Will testify	Mr. Gooding will testify on behalf of Plaintiff about whether "spiderlift" is generic, the stature and reputation of SafeWorks, the competitive posture of the parties, the marketing channels of the parties and other members of the relevant industries, and his general knowledge of use of terms in the industry.
Mr. R. Gregory Kipper 1201 Third Ave., Suite 3320 Seattle, WA 98101	Will testify	Mr. Kipper will testify on behalf of Plaintiff about damages to SafeWorks resulting from Defendants' infringement.

(2) On behalf of Defendants:

Witness	Will testify or possible witness only	Nature of Testimony
Mr. Guy Ramsey	Will testify	Mr. Ramsey will testify on behalf of Defendants that the expression "spiderlift" is generic around the world, including the United States, for aerial man-lifts having outrigger legs. He will also testify to his knowledge of the publications in which spiderlifts and other cranes, lifts, hoists, etc. are advertised and written about, and who advertises in these publications.

**OTHER WITNESSES**

The name and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of the plaintiff:

Witness	Will testify or possible witness only	Nature of Testimony
Elizabeth Callahan	Will testify	Ms. Callahan is the Vice President of Marketing for SafeWorks. She will testify regarding all issues related to the parties' claims and defenses.

(b) On behalf of the Defendants:

Witness	Will testify or possible witness only	Nature of Testimony
Leonardo Polonski	Will testify	Mr. Polonski is a defendant and the owner of Teupen America, LLC, Extreme Access Solutions and The Spiderlift Company. He is expected to testify regarding all issues related to Defendants' defenses.
Ryan Polonski	Will testify	Mr. R. Polonski is an officer of Teupen America, LLC, Extreme Access Solutions and The Spiderlift Company. He is expected to testify regarding all issues related to Defendants' defenses and counterclaims.

### EXHIBITS

(a) Admissibility stipulated:

#### Plaintiff's Exhibits

No.	Description	Admitted/Not Admitted
1	USPTO Registration certificate for SafeWorks' Spider Staging trademark 577,536	
2	USPTO Registration Certificates for SafeWorks Spider design trademark 696,385	
3	USPTO Registration Certificate and Certificate of Renewal for SafeWorks' "Spider" trademark 696,387	
4	USPTO Registration Certificate for SafeWorks' Spider trademark 1,239,947	
5	USPTO Registration Certificate for SafeWorks' design trademark 1,385,728	
6	USPTO Registration certificate for SafeWorks' Spider trademark 2,406,766	
7	USPTO Registration certificate for Safeworks' "Spider-Line" trademark 2,438,034	

PRETRIAL ORDER – 13

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
8	USPTO Registration certificate for SafeWorks' design trademark 1,398,243	
9	SafeWorks website	
10	Spider Staging website	
11	SafeWorks' Spider Catalog (SW 01226)	
12	Spider Marketing Materials (SW 00427-00431)	
14	Anniversary CD – (SW 00402)	
15	Spider Marketing Materials (SW 00543-571)	
16	Spider® advertising/promotional materials (SW 00572-00586)	
22	December 9, 2008 cease and desist letter to Teupen Maschinenbau GmbH (SW 00338-00341)	
27	June 17, 2009 cease and desist to Man and Material Lift Engineering (SW 01083-01091)	
29	July 14, 2009 cease and desist letter to Tracked Lifts (SW 01108-01117)	
30	September 18, 2009 letter to Tracked Lifts (SW 01227-01248)	
31	September 18, 2009 letter to Platform Basket (SW 01249-01262)	
32	September 18, 2009 letter to Omme Lift A/S and Omme Lift USA (SW 01263-01280)	
33	September 18, 2009 letter to HEILA GRU S.r.l. – ITALMEC (SW 01281-01299)	
42	Trademark application for “American Spiderlifts”	

PRETRIAL ORDER – 14

**INVICTA LAW GROUP, PLLC**  
1000 SECOND AVENUE, SUITE 3310  
SEATTLE, WA 98104-1019  
FAX (206) 903-6365  
TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
43	Trademark application for "The Spiderlift Company"	
44	Notice of Allowance for "The Spiderlift Company"	
45	SOU Extension Request for "The Spiderlift Company", dated 6/02/09	
46	TESS printout regarding "American Spiderlifts"	
47	TESS printout regarding "The Spiderlift Company"	
49	Extreme Access Solutions advertisement (Safe Works 000163)	
51	Printout from EAS website dated 10/21/09	
53	Spider Logos (SW 00147-00149)	
57	August 10, 2004 cease and desist letter to Leonardo Polonski (SW 00109-111)	
58	August 23, 2004 response letter from Leonardo Polonski (SW 00108)	
59	September 2, 2004 letter from SafeWorks' counsel to Leonardo Polonski (SW 00098-100)	
60	Email communications dated September 16, 2004-October 4, 2004, between SafeWorks' counsel and Leonardo Polonski (SW 00607)	
61	Email communications dated November 5, 2004 - December 15, 2004, between SafeWorks' counsel and Leonardo Polonski (SW 00601-00602)	
62	Email communications dated November 5, 2004 - January 19, 2005 between SafeWorks' counsel and Leonardo Polonski (SW 00599-600)	

No.	Description	Admitted/Not Admitted
63	Email communications dated November 5, 2004 – January 19, 2005, between SafeWorks’ counsel and Leonardo Polonski (SW 00719-00722)	
64	Email communication dated January 19, 2005, between Leonardo Polonski and SafeWorks’ counsel (SW 00846)	
67	May 6, 2008 cease and desist letter to Leonardo Polonski (SW 00723-00725)	
68	May 29, 2008 response letter from Mark White (SW 00726-00727)	
69	June 4, 2008 letter from Stacie Foster to Mark White (SW 00358)	
70	June 11, 2008 letter from Stacie Foster to Mark White (SW 00728)	
71	June 18, 2008 fax from Mark White to Stacie Foster (SW 00354)	
72	July 3, 2008 letter from Mark White to Stacie Foster (SW 00729-730)	
73	Expert Report of Steve Gooding	
90	Lift and Access articles (Safe Works 000901-000912)	
95	Expert Report of R. Gregory Kipper	
97	Deposition Testimony of Leonardo Polonski dated September 8, 2009	
98	Deposition Testimony of Leonardo Polonski dated September 9, 2009	
99	Deposition Testimony of Ryan Polonski dated September 8, 2009	
100	Deposition Testimony of Guy Ramsey dated September 16, 2009	

PRETRIAL ORDER – 16

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364



No.	Description	Admitted/Not Admitted
101	No Exhibit	
102	Defendants' Initial Disclosures dated December 15, 2008	
103	Defendants' Responses to Plaintiff's First Set of Requests for Admission, dated May 14, 2009	
104	Defendants' Responses to Plaintiff's First Set of Interrogatories, dated May 28, 2009	
105	Defendants' Responses to Plaintiff's First Set of Requests for Production, dated May 29, 2009	
106	August 3, 2009 letter from Mark White supplementing discovery responses	
107	Defendants' Supplemental Response to Plaintiff's First Requests for Production of Documents, dated August 7, 2009	
108	Defendants' Second Supplemental Response to Plaintiff's First Requests for Production of Documents, dated August 13, 2009	
109	August 14, 2009 letter from Mark White supplementing discovery responses	
110	Defendants' Response to Plaintiff's Second Request for Production of Document, dated August 19, 2009	
111	Defendants' Third Supplemental Response to Plaintiff's First Request for Production of Document, dated August 31, 2009	

**Defendants' Exhibits**

No.	Description	Admitted/Not Admitted
A-4	TESS: Spiderlift wordmark record	

No.	Description	Admitted/Not Admitted
A-114	Group of documents beginning with Profit or Loss from Business 2004 Kipper deposition exhibits 2	
A-115	Extreme Access Solutions Income Statement for the Five Months Ending May 31, 2009 Kipper deposition exhibits 3	
A-118	Deposition Testimony of Liz Callahan dated September 22, 2009	
A-119	Deposition Testimony of Gregory Kipper dated September 22, 2009	
A-120	Secretary of the Commonwealth of Massachusetts summary screen for Mini Lift USA	
A-121	Secretary of the Commonwealth of Massachusetts summary screen for Extreme Access Solutions, Inc.	
A-122	Plaintiff's Initial Disclosures filed November 3, 2008	
A-128	Plaintiff's Response to Defendant's Request for Production of Documents dated 4/27/2009	
A-129	Plaintiff's Answers to Defendant's Interrogatories dated 4/27/2009	

(b) Authenticity stipulated, admissibility disputed:

**Plaintiff's Exhibits**

No.	Description	Admitted/Not Admitted
	No exhibits in this category	

**Defendants' Exhibits**

PRETRIAL ORDER - 18

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
	No exhibits in this category	

(c) Authenticity and admissibility disputed:

**Plaintiff's Exhibits**

No.	Description	Admitted/Not Admitted
13	Spider Brand Study (SW 00443-00458) HIGHLY CONF.-ATTY EYS ONLY	
17	SafeWorks' marketing expenses and supplement (SW 00589-590, SW 01404) HIGHLY CONF.-ATTY EYES ONLY	
18	SafeWorks domain history (SW597-598)	
19	CoatingsPro article (SW 01342-01347)	
20	July 29, 2004 letter from Ebbe Christensen of ReachMaster to SafeWorks (SW 00115-00119)	
21	August 2, 2004 letter from SafeWorks to Ebbe Christensen of ReachMaster (SW 00112)	
23	January 27, 2009 response letter from Teupen Maschinenbau GmbH (SW 00337)	
24	March 5, 2002 cease and desist letter to E. Falck Schmidt AS (SW 00075-00076)	
25	March 21, 2002 response letter from counsel for E. Falck Schmidt AS (SW 00081)	
26	April 10, 2002 draft letter to counsel for E. Falck Schmidt AS (SW 00079)	
28	August 20, 2009 response letter from Man and Material Lift Engineering (SW 01092; SW 01348)	
34	September 25, 2009 cease and desist letter to High Access Solutions (SW 01349-01350)	

PRETRIAL ORDER - 19

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
35	Email communications dated September 30, 2009, between Stacie Foster and High Access Solutions (SW 01351-01352)	
36	November 12, 2009 letter to American Window Cleaner (SW 01353-01354)	
37	Email communications dated November 12, 2009, between Invicta and Norman Finegold regarding American Window Cleaner (SW 01355)	
38	Emails communications dated November 12, 2009-November 13, 2009, between Invicta and Norman Finegold regarding American Window Cleaner (SW 01356)	
39	April 22, 2010 cease and desist letter to Teupen USA (SW 01357-01360)	
40	April 22, 2010 cease and desist letter to Tree Care Industry Magazine (SW 01361-01366)	
41	Customer Segmentation – Contractor Types (SW 00596) HIGHLY CONF.-ATTY EYES ONLY	
48	March 2009 Lift and Access advertisement for Extreme Access Solutions (Ex. 10 to Leonardo Polonski Dep. 9/8/09)	
50	Web printout from VIP Window Cleaning (Safe Works 000305)	
52	Extreme Access Solution website	
54	SafeWorks' internal email communications dated January 7, 2008-January 29, 2008 (SW 00412)	
55	Web printout from VIP Window Cleaning (Safe Works 000305)	
56	SafeWorks' Brainstorming Session from Sept. 2006 regarding expansion (SW 00432-00442) HIGHLY CONF.-ATTY EYES ONLY	
65	Email dated September 10, 2004 between Kevin Costanza and SafeWorks (SW 00608)	

PRETRIAL ORDER – 20

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
66	Email dated November 5, 2004 between Kevin Costanza and SafeWorks (SW 00603-00604)	
74	ANSI Standards A92.3, A92.5 and A92.6	
75	Website printouts from www.teupen.com dated 11/13/09 (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
76	Website printouts from www.safeaccesslifts.com (Safe Works 001007-01008)	
77	Website printouts from www.safeaccesslifts.com, dated 11/13/09 (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
78	Website printouts from Omme Lift (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
79	Website printouts from Italmec USA (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
80	Website printouts from Nifty Lift (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
81	Website printouts from Reachmaster (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
82	Reachmaster website printouts (SW 00995-01001)	
83	Website printouts for OMME Lift USA (SW 01002-01043)	
84	Website printouts for Italmec USA (SW 01044-01060)	
85	Website printouts for Oil & Steel (SW 01061-01069)	
86	Italmec USA website printouts dated 9/1/09 (Ryan Polonski Dep.)	
87	Omme Lift USA website printouts dated 9/1/09 (Ryan Polonski Dep.)	

No.	Description	Admitted/Not Admitted
88	Bil-Jax website printouts dated 9/4/09 (Ryan Polonski Dep.)	
89	Web printout from Vertikal.net (SW 01367-01368)	
91	Oil & Steel website printouts dated 9/2/09 (Leonardo Polonski Dep. 9/9/09)	
92	JLG website printouts dated 9/4/09 (Leonardo Polonski Dep. 9/9/09)	
93	Niftylift website printouts dated 9/2/09 (Leonardo Polonski Dep. 9/9/09)	
94	Caterpillar powerpoint (SW 01312-01341)	
96	Intermediate Accounting Reference (SW 01309-01311)	
112	Website printouts from Extreme Access Solutions (www.spiderlifts.com), dated 11/13/09 (Ex. B to Gooding Decl. in Opposition to Sum. Judg. Mot.)	
113	Agreement dated February 15, 2010 (Safe Works 001654-001655)  EXTREMELY CONF.-ATTY EYES ONLY	
114	Bank report dated March 25, 2010 (Safe Works 001656)  EXTREMELY CONF.-ATTY EYES ONLY	
115	January 8, 2010 Extreme Access Solutions Minutes from Joint Annual Meeting (Safe Works 001648-001653)	
116	Email dated February 15, 2010 from Mark White regarding agreement with Defendants  (Safe Works 001657)  EXTREMELY CONF.-ATTY EYES ONLY	
117	Financial documents relied on by Expert Gregory Kipper	

1 **Defendants' Exhibits**

2

No.	Description	Admitted/Not Admitted
A-1	Press release re: Palazzani spider leg outrigger BATES 39	
A-2	Palazzani Tracked Spider BATES 40	
A-3	Palazanni TSJ38 Window Cleaning Demo Photo BATES 41	
A-5	Consumer quote request re: "Spiderlift" BATES 928	
A-6	Bravi to distribute Spiderlift products BATES 930	
A-7	Press release re: italian show on spider products BATES 931	
A-8	Advertising for rental of atrium/spiderlifts BATES 937	
A-9	Spiderlift financing BATES 938	
A-10	Dinolift (Finnish Co.) launches Spider lift BATES 968	
A-11	Universal: Falcon Spider Description BATES 970	
A-12	Universal: Falcon Spider Image BATES 971	
A-13	Spiderlift index BATES 972	
A-14	Baker Access: Used Spiders for sale BATES 973	
A-15	Kegiom advertisement for "mini grus" BATES 974	

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

No.	Description	Admitted/Not Admitted
A-16	Press release: Braci, UK to distribute spiderlifts products BATES 977	
A-17	Spiderlifts for sale citing "different brands" BATES 982	
A-18	Spider-style cranes and crawlers for sale BATES 986	
A-19	Article on definitions of mini cranes using Spider BATES 996	
A-20	Article re: Heila launching line of spider cranes BATES 997	
A-21	Sale Ad for Omme Spiderlift BATES 1002	
A-22	Article re: spider-type/spider-like lifts BATES 1016	
A-23	Spider-like cranes for sale BATES 1044	
A-24	Atrium manlifts and spiderlifts BATES 1060	
A-25	Omme Spiderlift for sale BATES 1065	
A-26	Ad for financing of Spider Lifts BATES 1068	
A-27	Ad for sale of Omme Spiderlift BATES 1069	
A-28	Ad for construction equipt show/discussion of spiderlifts BATES 1080	
A-29	Article on growth of spiderlift and The Spiderlift Company BATES 1081	
A-30	Ad and Image of spiderlift by manlift engineering BATES 1082	

PRETRIAL ORDER - 24

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364



No.	Description	Admitted/Not Admitted
A-31	Ad for sale of Spiderlifts BATES 1083	
A-32	Ad for 78-foot spider lift BATES 1084	
A-33	rental of spider lifts BATES 1085	
A-34	press release re: spiderlifts BATES 1091	
A-35	Article Re: Spiderlifts BATES 1093	
A-36	Spider lift webpage w/ pics and description BATES 1096	
A-37	Spider Lift Specifications BATES 1097	
A-38	Spider lift among list of other types of equipt BATES 1098	
A-39	blog entry: potential consumer discussing Spider lifts BATES 1099	
A-40	Press release re: Spider Lifts in UK BATES 1120	
A-41	Press release re: spider Lift show, UK BATES 1123	
A-42	The Spiderlift Company, full page ad w/ pic BATES 1127	
A-43	Spiderlifts for sale BATES 1132	
A-44	MLE Spiderlift advertisement w/ picture BATES 1134	
A-45	Classified listings w/ Spider lifts for sale BATES 1137	

PRETRIAL ORDER – 25

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-3019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
A-46	Spiderlift Advertised w/ other types of lifts BATES 1150	
A-47	Tracked mounted spider lifts - mag cover BATES 1175	
A-48	Table of contents showcasing spiderlift articles BATES 1176	
A-49	Bluelift and SkyKing parting ways citing "Spider Market" BATES 1177	
A-50	Spiderlift article: full page BATES 1190	
A-51	Spiderlift article: full page continued from 1191 BATES 1191	
A-52	Spiderlift article: full page continued from 1191 BATES 1192	
A-53	Spiderlift article: full page continued from 1191 BATES 1193	
A-54	Spiderlift article: full page continued from 1191 BATES 1194	
A-55	Spiderlift Company article BATES 1195	
A-56	Spiderlift Company article BATES 1196	
A-57	Falcon Spider article BATES 1197	
A-58	Falcon Spider Image BATES 1216	
A-59	Spider Article "Crawling Awareness" BATES 1218	
A-60	Italmec Spider Lifts ad BATES 1242	

PRETRIAL ORDER - 26

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
A-61	Classified listings w/ Spider lifts for sale BATES 1243	
A-62	N/A	
A-63	Spiderlift (apparently a UK company) BATES 1245	
A-64	Spiderlift (apparently a UK company) BATES 1246	
A-65	Spiderlift article for cleaning windows BATES 1248	
A-66	Spider lift ad with several pictures BATES 1251	
A-67	Article re: introduction of spider lifts BATES 1252	
A-68	Spiderlift article w/ several different pictures BATES 1254	
A-69	Spiderlift article w/ several different pictures BATES 1255	
A-70	Article: On the Right Track BATES 1256	
A-71	Article: On the Right Track, plus ad for Nifty Lift Spider lifts BATES 1257	
A-72	Article: On the Right Track BATES 1258	
A-73	Pump up the Volume Article, plus specifications of different spider lifts BATES 1259	
A-74	Classified listings w/ Spider lifts for sale BATES 1269	
A-75	Classified listings w/ Spider lifts for sale BATES 1270	

PRETRIAL ORDER - 27

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
A-76	MLE Spider Lift advertisement BATES 1275	
A-77	Classified listings w/ Spider lifts for sale BATES 1283	
A-78	MLE Spider Lift advertisement BATES 1304	
A-79	MLE Spider Lift Advertisement comparisons BATES 1305	
A-80	Spiderlift Image BATES 1308	
A-81	US Army referencing Spider Lifts re: solicitation BATES 1448	
A-82	US Army referencing Spider Lifts re: solicitation BATES 1449	
A-83	US Army referencing Spider Lifts re: solicitation BATES 1450	
A-84	Classified listings w/ Spider lifts for sale BATES 1490	
A-85	Classified listings w/ Spider lifts for sale BATES 1501	
A-86	Classified listings w/ Spider lifts for sale BATES 1515	
A-87	Ranking equipment including spiderlift BATES 1521	
A-88	Spiderlift listed as one of several lifts BATES 1588	
A-89	Tracked lifts advertisement for trade show BATES 1589	
A-90	Spider lift classified listing BATES 1590	

No.	Description	Admitted/Not Admitted
A-91	MLE Spider lift advertisement BATES 1591	
A-92	Omme Spider lift advertisement BATES 1593	
A-93	Spider Ad, center page w/ other arborist equipment BATES 1594	
A-94	From Leigh at vertikal.net re: customer lists BATES 1599	
A-95	Procurement advertisement re: Spiderlift BATES 1605	
A-96	Re: widespread use and reliability of the mag w/in the trade BATES 1607	
A-97	Business and industry charts BATES 1608	
A-98	Spiderlift classified ads BATES 1609	
A-99	Spiderlifts for sale BATES 1610	
A-100	MLE full page advertisement looks like a repeat) BATES 1614	
A-101	Italtec Spider Lifts ad BATES 1620	
A-102	Article re: spider-type lifts BATES 1622	
A-103	Re: [World] Spider Lifts / Atrium Lifts usage BATES 1625	
A-104	Spider Lift search results BATES 1627	
A-105	Article on diversity/widespread readership of the mad BATES 1631	

PRETRIAL ORDER - 29

**INVICTA LAW GROUP, PLLC**  
 1000 SECOND AVENUE, SUITE 3310  
 SEATTLE, WA 98104-1019  
 FAX (206) 903-6365  
 TEL (206) 903-6364

No.	Description	Admitted/Not Admitted
A-106	Nifty Lift ad w/ variety of spider lifts and article re: spider lifts BATES 1634	
A-107	Article re: Spiders and their history BATES 1636	
A-108	Falcon Spider Image and chart (looks like a repeat) BATES 1637	
A-109	Article re: variety of lifts including spiders, plus two images BATES 1638	
A-110	Top 30 Aerial lift rental companies, listed by lift type BATES 1641	
A-111	MLE full page ad for spiderlift, demonstrates uses BATES 1644	
A-112	Lift and Access 2007 Editorial Audit BATES 1646	
A-113	Fedbid verification of spiderlift bid BATES 1647	
A-116	Plaintiff's Supplemental Document Production dated 8/17/2009	
A-117	Trial transcripts of SafeWorks vs. Spydercrane, U.S.D.C. Case No. 08-cv-0922 JPD. Trial date October 27-29, 2009	
A-123	Memorandum Opinion in SafeWorks v. Spydercrane, NO. 2:08-CV-00922-JPD, 12/07/09	
A-124	Memorandum Opinion in SafeWorks v. Spydercrane, NO. 2:08-CV-00922-JPD, 12/07/09	
A-125	Affidavit of Leigh Sparrow authenticating letter of Bates No. 1599.	
A-126	Article in C & A Bates No. 00030-00038.	

No.	Description	Admitted/Not Admitted
A-127	Article in C & A Bates No. 1190-1194.	

**ACTION BY THE COURT**

(a) This case is scheduled for trial without a jury on May 10, 2010, at 9:00 a.m.

(b) Trial briefs shall be submitted to the Court on or before May 5, 2010.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 6<sup>th</sup> day of May 2010.

  
JUDGE THOMAS S. ZILLY  
United States District Judge

Approved as to form:

INVICTA LAW GROUP, PLLC

WHITE AND FUDULA L.C.

BY: /s/Stacie Foster  
Stacie Foster, WSBA No. 23397  
1000 Second Avenue, Suite 3310  
Seattle, WA 98104-1019  
Tel: (206) 906-6364  
Fax: (206) 903-6364  
Email: sfoster@invictalaw.com  
Attorney for Plaintiff SafeWorks, LLC

BY: /s/Mark White  
Mark White, BBO 556,246  
57 Bedford St., Suite 100  
Lexington, MA 02420  
Tel: (781) 863-2041  
Fax: (781) 863-2250  
Email: mark@whiteandfudala.com  
Attorney for Defendants

PRETRIAL ORDER - 31

**INVICTA LAW GROUP, PLLC**  
1000 SECOND AVENUE, SUITE 3310  
SEATTLE, WA 98104-1019  
FAX (206) 903-6365  
TEL (206) 903-6364

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

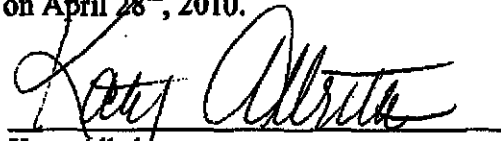
**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2010, I caused the foregoing Pretrial Order to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via email:

Mr. Mark White  
WHITE & FUDALA LC  
57 Bedford Street, Suite 100  
Lexington, MA 02420

Mr. David L. Garrison  
DAVID L. GARRISON PS  
P.O. Box 16100  
Seattle, WA 98116

EXECUTED at Seattle, Washington on April 28<sup>th</sup>, 2010.

  
Katy Albritton