

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

STATE OF MISSISSIPPI  
LAFAYETTE COUNTY

FILED

HOMESAFE INSPECTION, INC.

PLAINTIFF

VERSUS

JAN 14 2015

CAUSE NO. L15-013

INTERNATIONAL ASSOCIATION  
OF CERTIFIED HOME INSPECTORS

By:  Baretta Mosley  
CIRCUIT CLERK D.C.

DEFENDANT

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**COMPLAINT**

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COMES NOW the Plaintiff, HOMESAFE INSPECTION, INC. ("Plaintiff"), and files this, its Complaint against INTERNATIONAL ASSOCIATION OF CERTIFIED HOME INSPECTORS, A Colorado non-profit corporation, ("Nachi"), and in support thereof, states the following:

**PARTIES**

1. Plaintiff is a Mississippi Corporation whose principal place of business and mailing address is 1109 Van Buren Ave., P.O. Box 1113, Oxford, Mississippi 38655.
2. Defendant, INTERNATIONAL ASSOCIATION OF CERTIFIED HOME INSPECTORS, a Colorado non-profit corporation, with a principal place of business at 1750 30<sup>th</sup> Street, Suite 301, Boulder, Colorado, 80301.

**JURISDICTION AND VENUE**

3. This Court has personal and subject matter jurisdiction over the parties identified in this Complaint based on contractual agreement of the parties.
4. Venue is proper in this court based on contractual agreement of the parties.

## FACTS

5. Plaintiff is the owner of certain patented processes for using infrared cameras to detect home inspection problems, such as insect infestation, moisture problems, and air quality issues.

6. Plaintiff has established, through continuous, long-term use in commerce, common law rights in its services.

7. Defendant is a national organization of thousands of home inspectors around the country, many who are utilizing the Plaintiff's patented method of use of infrared camera to inspect homes.

8. Defendant and Plaintiff entered into an agreement dated October 23, 2013 ("Agreement" attached hereto as Exhibit A), wherein Defendant purchased a bulk license for (1) its existing members to utilize Plaintiff's patented methods, and for new members who register as using infrared technology, and (2) the forbearance by Plaintiff from suing existing members who violated the patent prior to the existence of the Agreement.

9. Payment to HomeSafe for the purchase of this bulk license and forbearance agreement was to be made from Nachi membership fees paid in the future. In particular, in return for the license and forbearance provided to Nachi for its members, Nachi agreed to pay the full Nachi membership fee the first year, and half the Nachi membership fee for every year thereafter, for any new member that completes the Nachi IR Application or a later IR R-Application.

10. Defendant has breached the Agreement in several ways, including but not limited to:

- a. failing to post the IR Application or the IR Re-Application on the Nachi website in a manner that new or existing members would be able to locate and utilize, despite repeated demand by Plaintiff.

- b. By failing to inform its member using IR to reapply for membership through the (non-existent) IR Re-Application,
- c. By intentionally informing “new members” who wish to re-apply under the IR Re-Application, that they were “existing members” already covered under the Plaintiff’s bulk license to Nachi, and thereby preventing them from registering in a manner that would generate revenue for Plaintiff under the agreement.

10. Upon information and belief, Nachi continues to inform potential members and members who first joined after the date of the agreement to re-apply through the application link that does not reference IR even when Nachi knows or should have known that these potential or actual members were using IR.

11. As a direct and proximate consequence of Defendants’ actions, Plaintiff has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Plaintiff is entitled to relief.

**COUNT I**  
**VIOLATION OF THE MISSISSIPPI FAIR TRADE PRACTICES ACT**

12. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

13. Defendants’ willful and knowing acts constitute unfair methods of trade practice in violation of Sections 75-24-1 through 75-24-5 of the Mississippi Code.

14. Defendant’s acts were known by Defendant to be deceptive and misleading.

15. Defendant’s acts were conducted with the intent or purpose, either directly or indirectly, of selling services to induce the public to enter into obligations relating to such services.

16. Plaintiff is entitled to injunctive relief and all other available statutory remedies, and reasonable attorneys’ fees and costs.

**COUNT II**  
**COMMON LAW UNFAIR COMPETITION**

17. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

18. Defendant is liable to Plaintiff for unfair competition under Mississippi law, as Defendant's conduct is tortuous and has deprived Plaintiff of customers and other prospects.

19. The acts of Defendant constituting unfair competition have caused Plaintiff damages as hereinafter alleged.

**COUNT III**  
**UNJUST ENRICHMENT**

20. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

21. Defendant is liable to Plaintiff for unjust enrichment under Mississippi law.

22. Defendant's acts have caused Plaintiff damages and unjustly enriched Defendant.

**COUNT IV**  
**BREACH OF CONTRACT**

23. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

24. Defendant is liable to Plaintiff for breach of the Agreement.

25. Defendant's acts were and are willful and intentional.

26. The acts of Defendant have caused Plaintiff damages as hereinafter alleged.

**COUNT V**  
**CONVERSION**

27. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

28. Defendant is liable to Plaintiff for conversion as Defendant remains in possession of Plaintiff's revenue derived in violation of the Agreement.

29. Defendant's acts were and are willful and intentional.

30. The acts of Defendant have caused Plaintiff damages as hereinafter alleged.

**DAMAGES AND INJUNCTIVE RELIEF**

31. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

32. By reason of Defendant's act alleged herein, Plaintiff has and will suffer damage to its business, reputation and goodwill, and the loss of sales and profits Plaintiff would have made but for Defendant's act, and will further suffer the costs of remediating the harm to Plaintiff's goodwill which has resulted. Defendant has wrongly profited from and been unjustly enriched by its conduct.

33. Plaintiff is entitled to return of its revenue improperly held and converted, damages, costs, and reasonable attorneys' fees for Defendant's violations of the Agreement, Plaintiff's rights under the common law and the statutory law of the state of Mississippi. Upon information and belief, Defendants intend to continue to do the acts complained of herein unless restrained and enjoined.

34. Plaintiff's remedy at law is inadequate.

35. Plaintiff is entitled to an injunction prohibiting Defendant, and its affiliates, agents, servants and employees, and anyone acting with their authority or on their behalf for misdirecting potential members or existing members of Nachi using IR from proper registration, and directing Nachi to pay over all appropriate fees due to Homesafe.

**PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays:

A. That Defendant be required to account to Plaintiff for any and all benefits or profits derived by Defendants under the Agreement, and for all damages sustained by Plaintiff by reasons complained of herein;

B. That Defendant be required to pay punitive damages for the reasons complained herein.

C. That the costs of this action, including attorneys' fees, be awarded to Plaintiff;

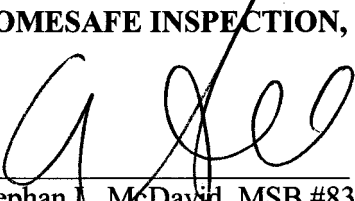
D. That pursuant to the Agreement, Defendant transfer to Plaintiff all revenue improperly gained or withheld.

E. That this Court grant to Plaintiff such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

RESPECTFULLY SUBMITTED, this the 13 day of January 2015.

**HOMESAFE INSPECTION, INC.**

By:

  
Stephan L. McDavid, MSB #8380  
MCDAVID & ASSOCIATES, PC  
1109 Van Buren Avenue  
Post Office Box 1113  
Oxford, Mississippi 38655  
Telephone: (662) 281-8300  
Facsimile: (662) 281-8353  
*Attorney for Plaintiff*

## Agreement

This agreement is made by and between HOMESAFE INSPECTION, INC., a C-Corporation with a principal address at 1109 Van Buren Ave, Oxford, MS 38655 ("HomeSafe") and INTERNATIONAL ASSOCIATION OF CERTIFIED HOME INSPECTORS, a Colorado Non-Profit Corporation with a principal address at 1750 30th St Ste 301, Boulder, CO 80301 ("InterNACHI").

## Recitals

HomeSafe is the owner of certain proprietary information including energy, environmental, air quality, home and termite inspection procedures, patent applications, patents and technology for the use of the same, (hereinafter "HomeSafe Technology"). InterNACHI is an international trade association for home inspectors. The parties desire HomeSafe to grant to InterNACHI, on behalf of its members, (1) the right to use the HomeSafe Technology, and (2) for HomeSafe to forebear legal action against existing InterNACHI members for past use of the HomeSafe Technology, all in accordance with the terms set out below.

THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

## Obligations

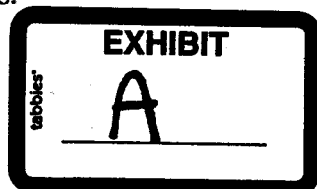
In return for and conditioned upon the obligations of InterNACHI contained herein, HomeSafe, by this Agreement, does:

1. Grant to all existing paying InterNACHI members, for so long as this Agreement is in force and effect, the right to use the HomeSafe Technology. A list of existing members are attached hereto as Exhibit A.
2. Grant to all "Qualified New Members" (as defined below) the right to use the HomeSafe Technology.
3. Agree to forebear any right it has to sue any present existing paying member of InterNACHI for any violation of any HomeSafe patent rights from the use of the HomeSafe Technology prior to the date of this Agreement.

This grant of rights and forbearance from suit shall terminate when any InterNACHI member terminates his or her membership in InterNACHI. HomeSafe specifically retains the right to sue a terminated InterNACHI member for violation of HomeSafe's patent rights, or other rights, in the HomeSafe Technology, which violation occurred prior to the date of this Agreement.

In return for and conditioned upon the obligations of HomeSafe contained herein, InterNACHI, by this Agreement, does:

1. Agree to pay HomeSafe for each "Qualified New Member" as defined below, the full membership fees paid to InterNACHI for the first year of membership, and one-half of the membership fees paid to InterNACHI for each subsequent year until this Agreement terminates.



- a. Such payments to HomeSafe shall be made monthly within 30 days of any Qualified New Member making payment to InterNACHI.
  - b. Along with payments to HomeSafe, InterNACHI shall supply supporting documentation that clearly indicates the identity of each Qualified New Member and the amount paid.
2. Agree that InterNACHI and HomeSafe will create an InterNACHI application and reapplication form specifically for members that are or intend to use IR technology, referred to herein as the "IR Application."
3. Agree that a "Qualified New Member" of InterNACHI shall be defined as any new member who joins InterNACHI after the date of this agreement, and who completes the IR Application or a later IR Re-Application . Although all existing members of InterNACHI are covered by the grant of use from HomeSafe without taking any action other than continued membership, InterNACHI will request that existing members who are or intend to use IR technology reapply through the IR Re-application.
4. Agrees that the rights of use and forbearance from suit granted by HomeSafe above applies to all presently existing members of InterNACHI, but only those new members who apply for membership, or later reapply, by completing the IR Application. If a new member does not apply or reapply with the IR Application, then the right to use and forbearance from suit does not apply to that new member.
5. Agree that no more than twice annually HomeSafe may examine, at its own expense, InterNACHI membership records to determine its compliance with this Agreement.
6. Agree that the fees to be charged a new member under the IR Application or IR Re-application shall not be less than \$400 annually unless agreed upon by InterNACHI and HomeSafe.
7. Agree that InterNACHI, through its officers, employees and agents, will publicly acknowledge that they believe that the HomeSafe Technology, and in particular the HomeSafe patents, are valid and enforceable.
8. Agree that after the termination of this agreement, InterNACHI shall remain silent on the issue of HomeSafe patents unless it is party to a lawsuit related to said patents.

### **Term and Termination**

This Agreement shall commence on the day signed by both parties, and shall continue for three (3) years, and will continue thereafter until terminated by one of the parties. Both parties have the right to terminate this Agreement at any time after the termination of the initial term.

Once this Agreement is terminated by either party, HomeSafe again has the right to sue an InterNACHI member for violation of its rights of the HomeSafe Technology after termination, and to no longer forebear suit against InterNACHI members for any violation of HomeSafe's rights which occurred prior to the date of this Agreement.

The parties agree that the previously executed Confidentiality Agreement shall remain in effect during and after the term of this agreement.



**Forbearance of Fees**

HomeSafe acknowledges that if any Qualified New Member purchases the insurance designated by HomeSafe that covers infrared usage, HomeSafe will forebear the collection of the payment due herein from InterNACHI for that Qualified New Member for so long as the Qualified New Member maintains that particular insurance.

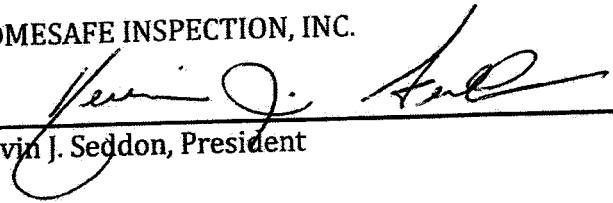
This Agreement shall be construed in accordance with and governed by the laws of the State of Mississippi, and venue for any action taken hereunder shall only be brought within the Courts having jurisdiction over Lafayette County, Mississippi.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of  
September 23, 2013.

~~Sept~~  
Oct  
INTERNATIONAL ASSOCIATION OF CERTIFIED HOME INSPECTORS

  
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Nick Gromicko, Founder

HOMESAFE INSPECTION, INC.

  
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Kevin J. Seddon, President