IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TENNESSEE, NORTHEASTERN DISTRICT

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| O.S.S. Holdings, LLC, a Delaware limited liability company,<br><br>Plaintiff<br>v.<br><br>THERMAL DEFENSE SOLUTIONS, LLC, a Tennessee limited liability company; ED ELLIS, an individual and resident of Tennessee doing business as THERMAL DEFENSE INC.<br><br>Defendants. | **FIRST AMENDED COMPLAINT**<br><br>Case No. 2:19-cv-00137-HSM-MCLC<br><br>Judge Henry Mattice |

Plaintiff O.S.S. Holdings, LLC (hereinafter "Plaintiff" or "OSS"), by and through its counsel, hereby file this Complaint with Jury Demand against Defendants Thermal Defense Solutions, LLC ("Defendant" or "TDS") and Ed Ellis doing business as Thermal Defense Inc. (TDI) (collectively "Defendants").

## FIRST AMENDED COMPLAINT

OSS complains and alleges as follows:

## PARTIES, JURISDICTION, AND VENUE

1. OSS is a Delaware limited liability company having a principal place of business at 280 West Central Avenue, Millcreek, Utah 84107.

2. Upon information and belief, Defendant TDS is a Tennessee limited liability company with a principal address of 149 Deerchase Lane, Chuckey, Tennessee 37641-4940.



SilencerCo - EX1035 - U.S. Patent No. 8,286,750

3. Upon information and belief, Defendant TDI is a resident of the state of Tennessee.

4. Upon information and belief Defendant TDI is the registered owner of the domain name thermaldefenseinc.com, which sells and offers for sale products accused of infringement herein.

5. Upon information and belief, Defendants maintain an office in the state of Tennessee and have employees in the state of Tennessee and collude in the perpetration of the acts complained of herein.

6. OSS brings this action under U.S. patent laws, 35 U.S.C. §§ 1 et seq.

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338.

8. This Court has supplemental jurisdiction over any state law, or statutory and common law claims pursuant to 28 U.S.C. § 1367.

9. Upon information and belief, this Court has specific personal jurisdiction over Defendants because Defendants are Tennessee residents and because Defendants have purposefully directed their activities toward the state of Tennessee by selling products—which infringe the patents at issue in this case—directly into the state of Tennessee, thereby also inducing and contributing to the infringement of the patents at issue.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 1400(b) because Defendants reside in this district and conduct business in this district directly related to the patents at issue in this case, is subject to the court's personal jurisdiction in this case, and a substantial part of the infringing activity giving rise to the OSS's causes of action occurred in

this judicial district. Defendants have committed acts of infringement and have a regular and established place of business in this judicial district.

## BACKGROUND

11. OSS has been in the business of designing, manufacturing, and selling firearm silencers or suppressors since at least as early as 2007.

12. Since that time, OSS has invested significant resources into the innovation of new and useful suppressor products.

13. As part of its development efforts and innovation, OSS has been awarded and is the owner of patents relating to and covering its silencer technology, including but not limited to, U.S. Patent No. 8,286,750 (the "'750 Patent" or the "Patent-in-Suit").

14. OSS is the owner of the '750 Patent.

15. The '750 Patent is entitled "Energy Capture and Control Device," and was issued on October 16, 2012. A copy of the '750 Patent is attached hereto as Exhibit A.

16. Claim 1 of the '750 Patent is a representative claim. This claim states as follows:

> 1. An energy capture and control device, comprising:
>
> a) a central chamber oriented along a central axis within an outer shell, said central chamber having an inlet configured to receive a high energy material from a high energy outlet;
>
> b) a common off axis chamber oriented within the outer shell in fluid communication with the central chamber and having a fluid outlet and multiple internal walls defining a serpentine fluid pathway which is at least one of axially serpentine and radially serpentine and which dissipates energy transferred from the high energy material; and
>
> c) a plurality of deflectors oriented in series along the central axis of the central chamber and configured to deflect the energy from the high energy material to the common off axis chamber.

17. On or about July 20, 2018, OSS sent Defendant TDS a letter to its business address in Jonesborough, TN and via email at sales@thermaldefenseinc.com. The letter informed TDS that one of its products infringed the '750 Patent. A copy of that letter is attached hereto as Exhibit B.

18. TDS failed to respond to the July 20, 2018 letter.

19. OSS sent a follow up letter to TDS on March 26, 2019 regarding TDS's infringing acts, again asking TDS to cease its infringement. Plaintiff's follow up letter was sent to Defendant TDS's Jonesborough address, the business address of its registered agent in Johnson City, TN, and also to the following email addresses: ed@thermaldefenseinc.com; rodney@thermaldefenseinc.com; jonaaron@thermaldefenseinc.com; and edellis@aol.com.

20. TDS again failed to respond.

21. On or about March 29, 2019, TDS sent a letter to Oak Ridge National Laboratory stating that OSS was infringing on an ORNL patent related to suppressors. Upon information and belief, TDS sent this letter in response to the cease and desist letter it had received from OSS.

## DEFENDANTS MISCONDUCT

22. Upon information and belief, Defendants are in the business of making, using, selling, and/or offering for sale suppressors.

23. Upon information and belief, Defendants' products include suppressors for use in commercial, police, and military applications.

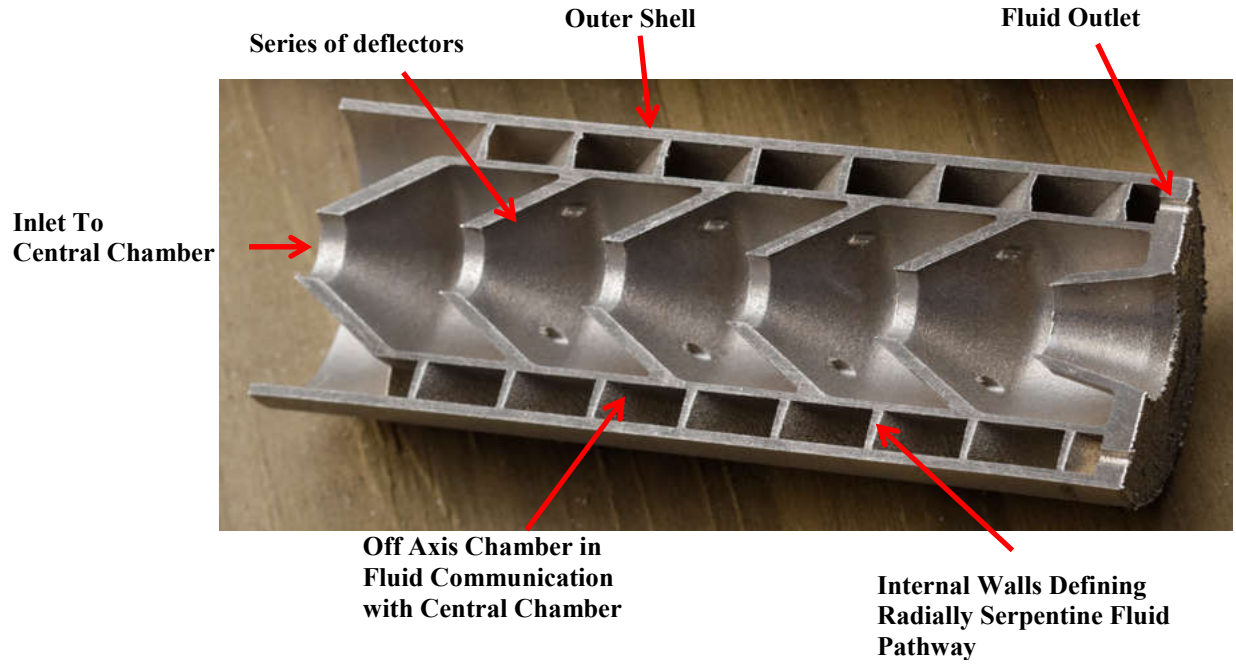
24. Upon information and belief, Defendants' products are sold through retailers, where they are purchased by consumers throughout the United States, including the State of Tennessee.

25. One of Defendants' products is a firearm silencer called the "Bantam," which the Defendants advertise as being "shorter, lighter and quieter than any other centerfire rifle suppressor on the market in its size."

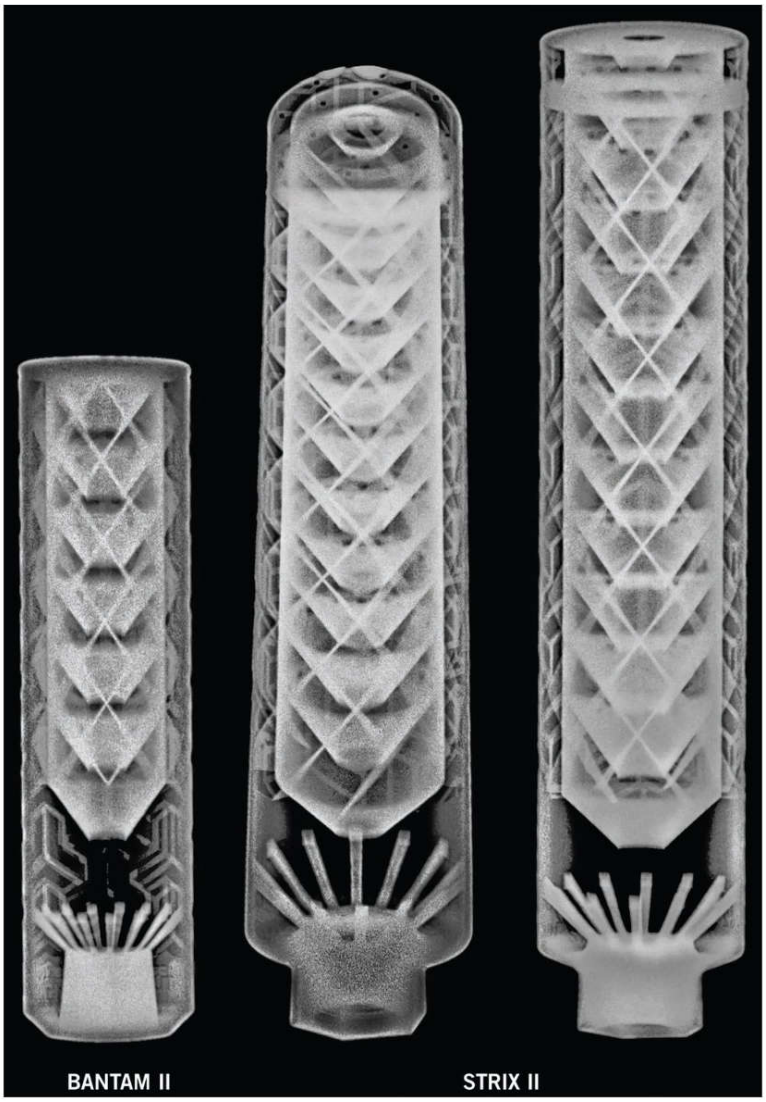
26. Other of Defendants' products are marketed as the Bantam II and Strix II. The Bantam, Bantam II, and Strix II suppressors are collectively referred to herein as the Accused Products.

27. Upon information and belief, the Accused Products infringe at least claims 1, 4, 8, 19, and 20 of the '750 Patent.

28. Upon information and belief, a photograph of the internal components of the Bantam product is shown below:




29. Upon information and belief, an x-ray of the internal components of the Bantam II and Strix II suppressors is shown below:




30. Upon information and belief, the Bantam II product and the Strix II suppressors have a similar internal design as the Bantam suppressor, including components similar to those called out in paragraph 28 of this Amended Complaint.

31. Upon information and belief, the Bantam, Bantam II, and Strix II suppressors each comprise each and every element of at least Claim 1 of the ‘750 Patent.

32. Claim 1 of the ‘750 Patent requires, among other things, an energy capture and control device to have a central chamber oriented along a central axis with an outer shell. Upon

inspection of a photograph of the internal construction of the Bantam suppressor and an x ray of the Bantam II and Strix II suppressors, the Accused Products contain a central chamber with a central axis enclosed by an outer shell.

33. Upon information and belief, the central chamber of the Accused Products contains multiple deflectors in series placed along the central axis configured to deflect energy from the high energy material to the common off axis chamber.

34. Upon information and belief, the Accused Products comprise an off axis chamber in fluid communication with the central chamber. The off axis chamber comprises fluid outlet multiple internal walls configured in the shape of a helix which creates a radially serpentine path that spirals around the central chamber dispersing high energy material.

35. Upon information and belief, Defendants' continued manufacture, use, sale, offer for sale, and/or import of the Accused Products has injured, is injuring, and will continue to cause irreparable injury to OSS.

36. Upon information and belief, a representative of Defendant TDS indicated to a prospective purchaser that the Bantam product was similar to OSS's suppressors.

37. Upon information and belief, OSS has been and continues to be significantly damaged by Defendants' actions. So long as Defendants continue performing the unlawful and improper actions described in this Complaint, OSS will continue to suffer irreparable harm that will not be fully compensable by money damages.

**FIRST CAUSE OF ACTION**
**Direct Patent Infringement**
**35 U.S.C. § 271(a)**

38. OSS hereby incorporates by reference each and every preceding allegation of this Complaint as if set forth fully herein.

39. Upon information and belief, the Accused Products sold by TDS and TDI comprise an energy capture and control device.

40. Upon information and belief, the Accused Products comprise each and every element of Claim 1 of the '750 Patent.

41. For example, the Accused Products contain a central chamber with a central axis enclosed by an outer shell. Moreover, upon information and belief, the central chamber contains multiple deflectors in series placed along the central axis.

42. Upon information and belief, the Accused Products also comprise an off axis chamber with multiple internal walls configured in the shape of a helix which creates a radially serpentine path that spirals around the central chamber dispersing high energy material.

43. Upon information and belief, Defendants' infringing activities have damaged OSS in an amount to be proven at trial. Among other remedies, OSS is entitled to its lost profits and/or a reasonable royalty to adequately compensate OSS for Defendants' infringing activities.

44. OSS is entitled at least to damages and/or a reasonable royalty for Defendants' infringing activities. Moreover, the harm to OSS arising from Defendants' infringing activities are not fully compensable by money damages, and OSS will continue to suffer irreparable harm unless Defendants' infringing conduct is preliminarily and permanently enjoined.

45. Upon information and belief, Defendant acted in an objectively reckless manner with respect to OSS's patent rights. Upon information and belief, Defendants made, used, sold, and offered for sale the Accused Products knowing that it was highly likely that its acts would infringe the Patent-in-Suit. As a consequence, Defendants have engaged in willful infringement of the Patent-in-Suit. OSS is therefore entitled to treble damages and attorneys' fees as well as costs incurred in this action along with prejudgment interest under 35 U.S.C. §§ 284 and 285.

**SECOND CAUSE OF ACTION**
**Induced Patent Infringement**
**35 U.S.C. § 271(b)**

46. OSS hereby incorporates by reference each and every preceding allegation of this Complaint as if set forth fully herein.

47. As explained above, the Accused Products infringe at least one claim of the Patent-in-Suit.

48. Upon information and belief, Defendants' customers and others are using the Accused Product.

49. At no time has OSS granted Defendants' customers or users of the Accused Products permission, license, or authorization to practice the claims of the Patent-in-Suit.

50. Accordingly, the Defendants' customers and users of the Accused Products have infringed and are infringing at least one claim of the Patent-in-Suit.

51. As explained above, Defendants knew about the Patent-in-Suit, as demonstrated by OSS's June 2018 Letter.

52. Defendants also knew about the OSS's products and indicated that at least the Bantam suppressor functioned similar to OSS's products.

53. Upon information and belief, Defendants knew that its customers and other users, in using the Accused Products, were practicing at least one claim of the Patent-in-Suit.

54. Upon information and belief, Defendants' suppressor product manuals instruct customers and others on how to use the Accused Products.

55. Accordingly, Defendants have induced and are inducing its customers and others to infringe at least one claim of the Patent-in-Suit.

56. Upon information and belief, Defendants' infringing activities have damaged OSS in an amount to be proven at trial. Among other remedies, OSS is entitled to its lost profits and/or a reasonable royalty to adequately compensate OSS for Defendants' infringing activities.

57. OSS is entitled at least to damages and/or a reasonable royalty for Defendants' infringing activities. Moreover, the harm to OSS arising from Defendants' infringing activities are not fully compensable by money damages, and OSS will continue to suffer irreparable harm unless Defendants' infringing conduct is preliminarily and permanently enjoined.

58. Upon information and belief, Defendants acted in an objectively reckless manner with respect to OSS's patent rights. Upon information and belief, Defendants made, used, sold, and offered for sale its suppressors knowing that it was highly likely that its acts would infringe the Patent-in-Suit. As a consequence, Defendants have engaged in willful infringement of the Patent-in-Suit. OSS is therefore entitled to treble damages and attorneys' fees as well as costs incurred in this action along with prejudgment interest under 35 U.S.C. §§ 284 and 285.

**WHEREFORE**, it is respectfully requested that the Court enter judgment in favor of OSS as follows:

A. That the Court enter judgment that Defendants have infringed the Patent-in-Suit.

B. That the Court enter judgment that Defendants have induced the infringement of the Patent-in-Suit.

C. That the Defendants be ordered to pay damages to OSS, together with interest, in an amount to be determined by this Court.

D. That the Court award OSS treble damages pursuant to 35 U.S.C. §284.

E. That the Court award OSS punitive damages.

F. That the Court award OSS costs and attorneys' fees related to this action pursuant to 35 U.S.C. §285.

G. That the Court award OSS prejudgment interest.

H. That Defendants' infringing conduct be preliminarily and permanently enjoined.

I. That OSS have such other and further relief as shall seem just and proper to the Court.

**JURY DEMAND**

OSS demands that all claims and causes of action raised in this Complaint be tried to a jury to the fullest extent possible under the United States and Tennessee Constitutions.

DATED this 9th day of August, 2019.

**LUEDEKA NEELY GROUP, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of August, 2019, a copy of the foregoing First Amended Complaint was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties listed below will be served by email and regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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