

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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 FIDO'S FENCES, INC. :  
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 Petitioner :  
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 v. :  
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 INVISIBLE FENCE, INC. :  
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 Respondent :  
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# 74 228652

CANCELLATION NOS. **92050302 (PARENT)**  
**92050306**  
**92650322**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH 510786877 US in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board on Friday, February 27, 2009

DATED: 02/27/08  
Name:

*Panagiota Betty Tufariello*  
Panagiota Betty Tufariello

**DECLARATION OF PANAGIOTA BETTY TUFARIELLO, ESQ. ON BEHALF OF PETITIONER FIDO'S FENCES, INC. IN RESPONSE TO THE T.T.A.B.'S JANUARY 28, 2009, ORDER RE: CANCELLATION NOS. 92050302 (PARENT), 92050306, 92050322**

I, PANAGIOTA BETTY TUFARIELLO, ESQ., an attorney duly admitted to the practice of law before the Courts of the State of New York, as well as the U.S. District Court for the Eastern District of New York, and a member of the Patent Bar of the U.S. Patent and Trademark Office (# 40,851), hereby declare under penalty of perjury the following:

- I hereby submit the present declaration in response to the T.T.A.B.'s January 28, 2009, Order in re: Cancellation Nos. 92050302 (parent), 92050306, 92050322.



2. I am an attorney and member of the firm IntellectualLaw, The Law Offices of P.B. Tufariello, P.C., attorneys of record for the Petitioner FIDO'S FENCES, INC. (hereinafter Fido's Fences), in the above captioned cancellations. As such, I am fully familiar with the facts and events leading up to the Cancellation Nos. 92050302 (parent), 92050306, 920503022.
3. On April 20, 2008, Fido's Fences filed an Amended Complaint and Jury Demand in connection with the matter Fido's Fences, Inc. v. The Canine Fence Company, Case No. 08-cv-754 in the U.S. District Court for the Eastern District of New York. Annexed hereto as **Exhibit 1**, is a copy of said Amended Complaint and Jury Demand as it was filed.
4. At the time of the filing of the Amended Complaint and Jury Demand, the trademarks at issue in the Cancellation proceedings set forth herein above were not and had not been either asserted or challenged.
5. On August 14, 2008, Defendant The Canine Fence Company (hereinafter Canine Fence) in the case Fido's Fences, Inc. v. The Canine Fence Company, Case No. 08-cv-754, in the U.S. District Court for the Eastern District of New York, filed its Answer, Affirmative Defenses and Amended Counter-Claim to Amended Complaint. A copy of said filing is annexed hereto as **Exhibit 2**.
6. In such filing, Canine Fence alleged counter-claims against Fido's Fences for breach of contract based on Fido's Fences' alleged failure to discontinue use of the marks that are at issue in the Cancellations referenced herein above. (Answer, p. 27, ¶ 51).

7. With regard to the case Fido's Fences, Inc. v. The Canine Fence Company, Case No. 08-cv-754, in the U.S. District Court for the Eastern District of New York, we note that all fact discovery has been completed, expert discovery is due on or before March 23, 2009, and a pre-trial conference is scheduled for May 5, 2009.
8. Upon information and belief, Canine Fence is a licensee of the trademarks set forth in the Cancellations herein above. Also, upon information and belief, the owner of the said trademarks and licensor is Invisible Fence, Inc.
9. Upon information and belief, Invisible Fence, Inc. (hereinafter Invisible Fence) is a corporation organized under the laws of the State of Delaware, having a principal place of business at 10427 Electric Avenue, Knoxville, Tennessee 37932.
10. On January 22, 2009, Invisible Fence brought suit against Petitioner Fido's Fences in the U.S. District Court for the Eastern District of Tennessee, Knoxville Division, *i.e.* Invisible Fence, Inc. v. Fido's Fences, Inc., Case No. 3:09-cv-00025. A copy of Invisible Fence's Complaint as filed is annexed hereto as **Exhibit 3**.
11. On February 9, 2009, Fido's Fences filed a Motion to Dismiss the matter Invisible Fence, Inc. v. Fido's Fences, Inc., Case No. 3:09-cv-00025, in the U.S. District Court for the Eastern District of Tennessee, Knoxville Division, for lack of personal jurisdiction and/or alternatively to move the case from Tennessee and consolidate it with the matter Fido's Fences, Inc. v. The Canine Fence Company, Case No. 08-cv-754, in the U.S. District Court for the Eastern District of New York.
12. Petitioner Fido's Fences is in agreement with the T.T.A.B.'s conclusion that the


aforementioned Cancellations involve the same parties, similar marks and common questions of law and fact as those in the matters currently pending in the U.S. District Court for the Eastern District of New York and Eastern District of Tennessee, respectively. Accordingly, it has no objection to the consolidation of these proceedings pursuant to Fed. R. Civ. P. 42 (a).

13. However, Petitioner Fido's Fences hereby requires that the T.T.A.B. update its records to reflect that the consolidation and suspension of the proceedings are done so, not only because of the matter Fido's Fences, Inc. v. The Canine Fence Company, Case No. 08-cv-754, in the U.S. District Court for the Eastern District of New York, but also of the matter Invisible Fence, Inc. v. Fido's Fences, Inc., Case No. 3:09-cv-00025, pending in the U.S. District Court for the Eastern District of Tennessee, Knoxville Division.

Respectfully Submitted,  
**INTELLECTULAW**  
**THE LAW OFFICES OF P.B. TUFARIELLO, P.C.**

Dated: 02/27/09

By: \_\_\_\_\_

  
PANAGIOTA BETTY TUFARIELLO, ESQ.  
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**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH510786877US in an envelope addressed to: U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451, on Friday, February 27, 2009. I also certify that on this date a copy of the foregoing **DECLARATION OF PANAGIOTA BETTY TUFARIELLO, ESQ. ON BEHALF OF PETITIONER FIDO'S FENCES, INC. IN RESPONSE TO THE T.T.A.B.'S JANUARY 28, 2009, ORDER RE: CANCELLATION NOS. 92050302 (PARENT), 92050306, 92050322** dated Friday, February 27, 2009, has been forwarded to Respondent's counsel via Express Mail No. EH510786863US at the following address:

R. Bradford Brittan  
Pitts and Brittan , P.C.  
P.O. Box 51295  
Knoxville, TN 37950-1295

on Friday, February 27, 2009

  
\_\_\_\_\_  
Panagiota Betty Tufariello, Esq.



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<b>FIDO'S FENCES, INC, a Corporation,</b>  <b>Plaintiff,</b>  v.  <b>THE CANINE FENCE COMPANY, a Corporation,</b>  <b>Defendant</b>	<b>CASE NO. 2: 08-CV-754 (Wexler, J.) (Wall, M.)</b>  <b>AMENDED COMPLAINT AND JURY DEMAND</b>
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Plaintiff, FIDO'S FENCES, INC., by and through its undersigned attorneys, INTELLECTULAW<sup>SM</sup> THE LAW OFFICES OF P.B. TUFARIELLO, P.C. and THE LAW FIRM OF BIRZON STRANG & BAZARSKY, LLP, on its behalf, and for its First Amended Complaint against the above-named Defendant THE CANINE FENCE COMPANY, pursuant to this Court's March 20, 2008 Order, alleges and avers as follows:

**PARTIES**

1. Plaintiff, Fido's Fences, Inc. (hereinafter "Fido's Fences"), is a domestic corporation duly organized and existing under the laws of the state of New York, having a regular and established place of business at 405 West Main Street, Smithtown, New York. 11787-2612.
2. Upon information and belief, Defendant The Canine Fence Company (hereinafter "Defendant"), is a foreign corporation duly organized and existing under the laws of the State of Connecticut, having a regular and established place of business at 493 Danbury Road, Wilton Connecticut 06987 and duly authorized to do business in the State of New York.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction of this action on the following basis:
  - a. Under 28 U.S.C. § 1331, because this action arises under the Laws of the United States, *i.e.*, § 2 of the Sherman Anti-Trust Act, 15 U.S.C. §§ 2 *et seq.*; § 3 of the Clayton Anti-Trust Act, and 15 U.S.C. §§ 13, 14, 15, 22 & 26.
  - b. Under 15 U.S.C. § 9, because this action arises under the Laws of the United States, *i.e.*, § 2 of the Sherman Anti-Trust Act, 15 U.S.C. §§ 2 *et seq.*; § 3 of the Clayton Anti-Trust Act, and 15 U.S.C. §§ 13, 14, 15, 22 & 26.
  - c. Under 28 U.S.C. § 1332 since there is complete diversity of citizenship between the parties and upon information and belief the matter in controversy exceeds \$75,000;
  - d. Under 28 U.S.C. § 2201, the Federal Declaratory Judgement Act; and
  - e. Under 28 U.S.C. § 1367(a) since this action alleges state law violations that are part of the same case or controversy as those claims arising under the laws of the United States.
4. Personal jurisdiction over Defendant is vested in this Court in view of the fact that, upon information and belief, the Defendant is a foreign corporation registered with the Secretary of the State of New York to do business within the state of New York, and claims alleged arise from acts and conduct Defendant purposefully directed toward New York consumers.
5. Venue is proper in the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. § 1391 since a substantial portion of the harm sought to be avoided, and a substantial part of the events and omissions giving rise to the



claims asserted herein, occurred within this district.

### **FACTS COMMON TO ALL CLAIMS**

#### **I. FIDO'S FENCES-BACKGROUND FACTS**

6. Fido's Fences was established in 1991.
7. Fido's Fences specializes in the sale and installation of electronic pet containment systems and pet obedience training.
8. Fido's Fences electronic pet containment installation and service teams include Pet Consultants who help design electronic pet containment systems, suitable to fit the unique needs of each family and its pet(s), respectively.
9. Fido's Fences electronic pet containment systems can be used both indoors and outdoors.
10. Fido's Fences outdoor pet containment systems can accommodate a pet of any size, on a land parcel of any size, *i.e.*, from a very small parcel, to a parcel of multiple acres, irrespective of the land parcel's terrain or landscaping.
11. Unlike unsightly and expensive traditional fencing, Fido's Fences' outdoor electronic pet containment systems go anywhere: under water, up hills, through wooded areas, and even across driveways.
12. Similarly, Fido's Fences' indoor electronic pet containment systems can be custom designed to accommodate a pet in any room, or any number of rooms and to keep the pet off pieces of furniture or entirely away from specific rooms.
13. Fido's Fences' electronic pet containment systems are concealed in such a manner that no can see or perceive that the systems are in place.
14. On the other hand, Fido's Fences electronic pet containment systems combined with Fido's Fences' pet obedience training offered by its highly specialized and certified trainers are extremely effective at teaching the pets their boundaries.

15. Fido's Fences' trainers use play, positive reinforcement, repetition and Fido's Fences' specialized flag training system to help the pets learn their new boundaries. Their techniques have been approved by veterinarians, behaviorists, and trainers for their safe and loving approach to training, which allows the pets to realize their full potential while simultaneously eliminating behavioral problems.

## II. DEFENDANT-BACKGROUND FACTS

16. Upon information and belief Defendant has operated and maintained a similar business to that of Fido's Fences. Specifically, Defendant The Canine Fence Company:
- a. is the exclusive Distributor of and specializes in the sale and installation of electronic pet containment systems and pet training for proper use thereof.
  - b. has Pet Consultants who visits the pet's home and helps design electronic pet containment systems, suitable to fit the unique needs of each pet, and its family, respectively.
  - c. has professional pet trainers who, after the installation of the electronic pet containment system, provide one-on-one training for the pet, using a training protocol that introduces the pet to the system. The pet is trained to recognize its boundaries with visual flag cues and audible tones.
17. Upon information and belief, the electronic pet containment systems, exclusively distributed by the Defendant, are manufactured by the Invisible Fence Company, Inc. Of Wayne, Pennsylvania (hereinafter "IFC").
18. Upon information and belief, IFC's electronic pet containment systems are covered by United States Letters Patent No. 3,753,421 entitled METHOD AND APPARATUS FOR CONTROLLING AN ANIMAL (hereinafter "the '421 patent"), of which, upon information and belief, IFC is the assignee and owner.

A copy of the '421 patent is annexed hereto as **Exhibit 1**.

19. Upon information and belief the IFC electronic pet containment systems comprise antenna wiring, a radio receiver mounted on a collar designed to be worn by a pet, and a radio transmitter.
20. Upon information and belief, the installation process for an outdoor installation of IFC's electronic pet containment systems comprises the following steps: digging a trench around the perimeter of the territory within which the pet will be allowed to roam and run freely in; laying and burying the radio antenna within the trench; installing the radio transmitter in the pet owner's home; connecting the antenna wiring to the radio transmitter within the pet owner's home; placing and securing the collar-bearing receiver on the pet; and activating the system. As the pet gets close to the buried antenna wire at the edge of the perimeter of the territory, the receiver is activated by the transmitter to emit a warning sound which causes the dog to step back and avoid getting static correction.
21. The legal but limited monopoly afforded to IFC and to the Defendant by the '421 patent for IFC's electronic pet containment systems expired in 1990.
22. Upon information and belief, Defendant is an exclusive distributor of the IFC electronic pet containment systems within seven states located in the Northeastern United States and the Southeastern region of the state of New York, with the authority to grant dealerships to third parties.

### III. THE DEFENDANT'S ANTI-COMPETITIVE ACTIONS

23. Upon information and belief, the Defendant has monopolized and engrossed approximately 95% of the substantial interstate trade and commerce, in the Northeastern United States, relating to the purchase, sale, shipment and installation of electronic pet containment systems.

24. Beginning on or about the time that the '421 patent was about to expire, and since then, the Defendant has continuously engaged in a concerted pattern of behavior in restraint of the trade and commerce among at least seven states in the Northeastern United States, including the states of New York and Connecticut, relating to the materials, goods, devices, and services used in the installation and service of electronic pet containment systems.
25. As part of its concerted pattern of behavior in restraint of the trade and commerce relating to electronic pet containment systems, the Defendant has:
- a. successfully acquired Defendant-induced, financially challenged, electronic pet containment businesses in a rapidly growing, highly profitable industry, for the purpose of, and in concert with other acquisitions, manipulating and controlling the market for electronically pet containment systems, by:
    - i. engaging in predatory practices such as placing unreasonable demands on, misrepresenting situations to, freezing or shutting down of, and refusing shipment of electronic pet containment systems to the fledgling, financially challenged, electronic-pet-containment-systems businesses;
    - ii. manipulating the wholesale pricing of its electronic pet containment systems in a manner that resulted in price fixing to both the Defendant-induced, financially challenged, businesses and the consumers; and
    - iii. calculating that the cost of initiating litigation for the purpose of protecting themselves from Defendant's predatory practices would be so high that it would force (and it did) the Defendant-induced, financially challenged businesses to give up all controlling interest to the Defendant without any fight and without any compensation.

- b. **wilfully, intentionally and successfully restrained trade through agreements that improperly extend the life of the '421 patent beyond its 1990 expiration date by:**
    - i. **requiring all of its nonexclusive dealers to purchase all of their electronic pet containment systems only from the Defendant;**
    - ii. **requiring all of its dealers to purchase all replacement components for both their installed and uninstalled electronic pet containment systems only from the Defendant;**
    - iii. **restraining and preventing its nonexclusive dealers from marketing, offering to sell, selling and installing electronic pet containment systems from other distributors and other manufacturers; and**
    - iv. **restraining and preventing its nonexclusive dealers from marketing, offering to sell, selling and installing electronic pet containment systems from other distributors and other manufacturers, anywhere in the United States, even after Defendant's Dealership agreements with its dealers had(ve) been terminated.**
  - c. **willfully, intentionally and successfully restrained trade by manipulating its prices to its dealers which resulted in price fixing to consumers. And,**
  - d. **wilfully, intentionally and successfully restrained trade through improper use of warranties to implement and enforce vertical tying agreements.**
26. **All of the foregoing acts of the Defendant, were committed with the purpose and effect of preventing, reducing and limiting competition in, constitute(d) an attempt to monopolize, have in fact achieved monopolization of, and will continue to monopolize the market of electronic pet containment systems,**

**IV. FIDO'S FENCES' RELATIONSHIP TO THE DEFENDANT CANINE FENCE COMPANY AND ITS BREAKDOWN**

27. On or about June 30, 1989, the principal of Fido's Fences' Mr. William Coden entered into a first Distributor Dealer Agreement with the Defendant. On or about December 1, 1996, Fido's Fences entered into a second Distributor Dealer Agreement (hereinafter both agreements collectively referred to as "the Agreement"). A copy of each the Agreements is annexed hereto as **Exhibit 2** and **Exhibit 3**, respectively. With the exception of the names of the parties, the Agreements are identical.
28. As a result of the Agreement, Fido's Fences became a nonexclusive dealer of the Defendant for the purpose of selling, installing, and servicing of IFC electronic pet containment systems on Long Island.
29. The Agreements led to the establishment of a profitable and long-standing relationship between Fido's Fences and Defendant; a relationship that has been in force for more than 18 years, and which as a result established clearly set accepted business practices between both Fido's Fences and Defendant.
30. Such business practices included Fido's Fences' placement of orders with Defendant for IFC products; Defendant's acceptance of such orders, extension of credit to Fido's Fences by Defendant for such orders; the shipment of the product to Fido's Fences; sale of the product under the FIDO'S FENCES trademark; and Fido's Fences' payment for shipments made by Defendant on a regular basis.
31. Historically, Fido's Fences was offered a reasonable amount of credit and time to maintain its account with the Defendant.
32. A typical payment schedule showing Fido's Fences payments for the time period January 1, 2007 through January 17, 2008 is annexed hereto as **Exhibit 4**.
33. During the more than 18 years of Fido's Fences conducting business with the

Defendant, while the Defendant would occasionally remind Fido's Fences to make payments, the Defendant never complained or intimated that Fido's Fences' method of payment was unacceptable or that it needed to change.

34. As a result, Fido's Fences came to understand that its method of payment with some amount always in arrears was totally acceptable to Defendant and that Defendant would (and in fact did) continue to extend credit to Fido's Fences for shipments made.
35. Fido's Fences relied on Defendant's acceptance of Fido's Fences method of payment and as the Defendant never objected to this well established relationship.
36. On the basis of its reliance, Fido's Fences continued to expand and grow its sales of IFC electronic pet containment systems under the FIDO'S FENCES mark (not under IFS' marks), so much so that it established itself as one of the largest dealers of the Defendant in the northeastern United States, and upon information and belief the second largest dealer in the United States.
37. In fact, on or about the end of 2007, the Defendant nominated Fido's Fences for "Super Dealer of the Year." Further, Defendant rewarded Fido's Fences for its outstanding performance in 2007 with its program "\$10 for 10's". With this program Fido's Fences received \$10 from Defendant for each "10" Fido's Fences received on Overall Performance from Fido's Fences customers who had completed the surveys Defendant had sent out in the year 2007. Copies of correspondence Defendant sent to Fido's Fences regarding the nomination and the reward of \$570.00 under Defendant's "\$10 for 10's" are annexed hereto as **Exhibit 5**.
38. As a result, Fido's Fences has developed a significant customer list, a number of valuable trade secrets in connection with its business, and has created FIDO'S FENCES "brand loyalty."

39. The foregoing notwithstanding, on January 17, 2008, Defendant unilaterally and arbitrarily terminated the Agreement and placed Fido's Fences' account on hold for Fido's Fences' alleged default to remit payment on time. A copy of Defendant's letter of January 17, 2008 attempting to terminate its Agreement with Fido's Fences for the alleged default is annexed hereto as **Exhibit 6**.
40. Based on the parties' accepted business practices over the past 18 years, Fido's Fences was not in default and has never been in default at any time.
41. Defendant's letter of January 17, 2008 was the very first time that Fido's Fences was informed that Fido's Fences' was in default or that its payment schedule was considered a default.
42. Defendant clearly intended for the Agreement to be terminated, because Defendant sent the letter during a time that it knew Fido's Fences would not be able to appropriately respond, i.e., during the time that its principals were away on a family vacation. The letter provided only five days for Fido's Fences to cure, all five days comprising a holiday weekend, during which Fido's Fences would not be able to cure; and asked for payment during a period that is traditionally the worst time for cash flow in Fido's Fences' and Defendant's business.
43. The letter was dated Thursday January 17, 2008. However it arrived at Fido's Fences' during Martin Luther King's Birthday, a National Holiday and celebrated this year on Monday, January 21, 2008. Thus, Fido's Fences was not able to respond and cure during such five day cure period as provided in Defendant's January 17, 2008-letter. Accordingly, Fido's Fences considers the Agreement terminated.
44. Fido's belief that the Agreement has been terminated is further bolstered by the fact that potential new customers are no longer directed to Fido's Fences through the Internet.



45. Prior to the termination of the Agreement, a customer searching for Fido's Fences on the internet would be directed to [www.caninefence.com](http://www.caninefence.com), whereupon the customer would be prompted to enter their zip code. Upon submission of the zip code the dealer name, telephone number and contact information that would appear, was that of Fido's Fences.
46. Subsequent to the termination of the Agreement, however, upon submission of the zip code, the dealer name, telephone number and contact information that appears are no longer those of Fido's Fences but those of the Defendant.
47. Defendant's willful, arbitrary, commercially unreasonable and unilateral termination of the Agreement has caused Fido's Fences great damage, the magnitude of which Fido's Fences is still ascertaining.
48. As a result of the termination of the Agreement, Defendant is no longer shipping orders and no longer directing customers to Fido's Fences. Thus, Fido's Fences is experiencing a tremendous loss of revenue due to lost sales.
49. As a further result of the termination of the Agreement, Fido's Fences is no longer able to service existing customers or ship existing customers consumable or replacement components.
50. Fido's Fences is unable to honor the warranties for systems that have already been sold and installed at customers' facilities. Nor can it ship equipment back to the Defendant for the issuance of credit.
51. Consequently, not only is Fido's Fences losing revenue from existing customers but it will suffer great harm to its good will and reputation.
52. Fido's Fences' inability to honor the warranties, is exposing Fido's Fences to potential claims for breach of warranty.
53. Fido's Fences is unable to mitigate any of the damages accrued as a result of the termination of the Agreement due to language in the Agreement that prohibits

Fido's Fences from sourcing goods from third parties for the servicing of existing customer accounts.

54. Specifically, Section 3 (a) of the Agreement partly states as follows: " Dealer agrees: (I) to purchase Invisible Fence Systems, components thereof and similar systems solely from the Company." Further Section 16(b) partly states as follows: "Dealer will not, without the written consent of Company, conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the Continental United States during the term of this Agreement and for a period of two (2) years after the date of termination."
55. Following, the Defendant's January 17, 2008, letter of termination, Defendant contacted Fido's Fences to ask for information regarding Fido's Fences so that they can do an evaluation and make a proposal to allegedly purchase Fido's Fences.
56. Upon information and belief, Defendant's actions set forth herein above is part of Defendant's plan to take over Fido's Fences together with all of Fido's Fences customer lists and trade secrets.
57. Upon information and belief, all of the foregoing are part of a pattern of behavior that Defendant has adopted and implemented for the purpose of engaging in hostile takeovers of dealers once they have established the sale of electronic pet containment systems in a particular geographic area.
58. All of the foregoing acts of the Defendant, were committed with the purpose and effect of preventing, reducing and limiting competition in, constitute(d) an attempt to monopolize, have in fact achieved monopolization of, and will continue to monopolize the market of electronic pet containment systems,

**V. EFFECT ON INTERSTATE TRADE AND COMMERCE**

59. Upon information and belief, the Defendant's sales of electric pet containment systems amount to approximately \$25,000,000 per year.
60. The Defendant orders its electronic pet containment systems from one or more manufacturing assembly sites in the United States or elsewhere in the world, and distributes these electronic pet containment systems, throughout its distributorship territory within seven states in the Northeastern United States, including the state of Connecticut and the southeastern region of the state of New York.
61. Thus, Defendant's activities, as alleged herein above, substantively affect interstate commerce as well as foreign commerce, in the market of electronic pet containment systems.

**VI. THE RELEVANT PRODUCT MARKET**

62. The relevant product market is the market consisting of electronic pet containment systems.
63. As was set forth herein above, electronic pet containment systems are used primarily by dog owners for the purpose of allowing their dogs to freely run and cavort within a particularly designated territory, while at the same time preventing them from running into busy streets.
64. Thus, electronic pet containment systems promote the dogs' health, as well as protect the dogs by keeping them out of harm's way.
65. Electronic pet containment systems are sold both at retail and through dealer installers. In any sale though, they are expensive. Even those of the products that are sold at retail cost more than \$100.00 per system.
66. Electronic pet containment systems comprise antenna wiring, a radio receiver mounted on a collar, and a radio transmitter. As such, they require sophisticated

manufacturing facilities.

67. The installation of electronic pet containment systems' installation comprises the following steps: digging a trench around the perimeter of the territory within which the dog will be allowed to roam and run freely in; laying and burying the radio antenna within the trench; installing the radio transmitter in the dog owner's home; connecting the antenna wiring to the radio transmitter within the dog owner's home; placing and securing the collar-bearing receiver on the dog; and activating the system. As the dog gets close to the buried antenna wire at the edge of the perimeter of the territory, the receiver is activated by the transmitter to emit a warning sound which causes the dog to step back and avoid getting static correction.
68. On the basis for the foregoing, it is clear that electronic pet containment systems have unique components, special characteristics, solve very particular problems, involve rather complex installation, and are bought by more sophisticated and more affluent consumers due to their expensive price and application. Accordingly, there is no other equivalent or substitute for such a system in the market.

#### VII. EFFECT ON CONSUMERS AND INJURY TO FIDO'S FENCES

69. The effect of Defendant's foregoing activities was not only to destroy competition, including possible competition by Fido's Fences, but to increase consumer prices of electronic pet containment systems, including but not limited to, through the following ways:
- a. Continued price increases, often above retail, to dealers throughout the entire dealership agreement period;
  - b. Higher prices to dealers translated to much higher prices to consumers,

particularly for electronic-pet-containment- system components, i.e., collar receiver batteries (\$3.00 batteries often sold for \$18 or higher);

- c. Improper use of warranties for the purpose of implementing and enforcing tying arrangement;
- d. No new electronic pet containment systems being introduced into the market, thereby reducing consumer choices for electronic pet containment systems;
- e. Failure of various electronic-pet-containment system companies further increasing Defendant's market share;
- f. Lack of price competition and lower prices normally associated with breaking in of new electronic pet containment systems to the market.

70. As a direct and proximate cause of all of Defendant's unlawful acts, as described above, Fido's Fences has already suffered and will continue to suffer substantial damages, including loss of revenue, harm to its goodwill and reputation, and loss of business value, all in an amount totaling not less than \$2,000,000 or more, which amount will be proven with certainty at the time of trial, due to the following:

- a. lost sales to both existing customers as well as potential new customer;
- b. inability to service existing customers or ship existing customers consumable or replacement components;
- c. inability to honor the warranties for systems that have already been sold and installed at various customer venues;
- d. exposure to potential claims for breach of warranties; and
- e. Defendant's unfair misappropriation of its customer list.

71. Fido's Fences has no adequate remedy at law.

**First Claim for Relief  
Breach of Contract**

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72. Plaintiff Fido's Fences Inc. incorporates by reference all of its allegations contained in Paragraphs 1-71 of this Complaint, as though more fully set forth herein.
73. Defendants' actions as set forth herein constitute breach of contract.
74. By reason of the foregoing, Plaintiff Fido's Fences has been injured in an amount not yet fully determined.
75. Defendants' actions have been knowing, intentional, wanton, and willful, entitling Plaintiff Fido's Fences to damages, treble damages, profits, attorney's fees, and the costs of this action.

**Second Claim for Relief  
New York Unfair Competition**

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76. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-75 of the present Complaint, as though more fully set forth herein.
77. Defendant's actions as described herein above constitute unfair competition.
78. By reason of the foregoing, Plaintiff Fido's Fences has been injured in an amount not yet fully determined.
79. Defendants' actions have been knowing, intentional, wanton, and willful, entitling Plaintiff Fido's Fences to damages, punitive damages, profits, attorney's fees, and costs of this action.

**Third Claim for Relief**  
**Deceptive Acts and Practices under N.Y. GBL § 349-350**

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80. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-80 of the present Complaint, as though more fully set forth herein.
81. Defendant's conduct, as described herein, constitutes deceptive trade practices, in violation of N.Y GBL § 349-350.
82. Defendant's acts have been willful and deliberate entitling Plaintiff Fido's Fences to damages, punitive damages, profits, attorney's fees, and costs of this action.

**Fourth Claim for Relief**  
**Tortious Interference with Business Relations**

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83. Plaintiff Fido's Fences incorporates by reference all of its responses and allegations contained in Paragraphs 1-82 of the present Complaint, as though more fully set forth herein.
84. Defendant is fully aware of all the contractual relationships and beneficial business relationships between Plaintiff Fido's Fences and its customers.
85. Defendant's willful and reckless actions as set forth herein above inadvertently resulted in third parties, including without limitation, Plaintiff Fido's Fences' customers, to breach their relationships with Fido's Fences and deal directly with Defendant.
86. By reason of the forgoing, Fido's Fences has been damaged an amount to be determined at trial.
87. Fido's Fences is entitled to damages, including punitive damages, attorneys' fees, the costs of this action, and a preliminary and temporary injunction enjoining defendant from approaching Fido's Fences third party business relations.

**Fifth Claim for Relief**  
**Claim for Declaratory Judgement of No Default**

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88. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-87 of the present Complaint, as though more fully set forth herein.
89. Defendant's letter of January 17, 2008, (**Exhibit 3 supra**) and Defendant's actions set forth herein above create a case of actual controversy, thus warranting the declaratory relief sought by Plaintiff Fido's Fences in the present claim.
90. Plaintiff Fido's Fences seeks a declaratory judgement and a determination that its payment practices and the amounts left in arrears do not constitute a default.
91. Plaintiff Fido's Fences has not acted in bad faith.
92. Plaintiff believed and had reasonable grounds to believe that its payment practices of paying Defendant on a regular basis and leaving some monies in arrears, were perfectly acceptable to Defendant.

**Sixth Claim for Relief**  
**Claim for Declaratory Judgement of No Breach**

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93. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-92 of the present Complaint, as though more fully set forth herein.
94. Defendant's letter of January 17, 2008, (**Exhibit 4 supra**) and Defendant's actions set forth herein above create a case of actual controversy, thus warranting the declaratory relief sought by Plaintiff Fido's Fences in the present claim.
95. Plaintiff Fido's Fences seeks a declaratory judgement and a determination that its payment practices and the amounts left in arrears do not constitute a breach of the Agreement.
96. Plaintiff Fido's Fences has not acted in bad faith.
97. Plaintiff believed and had reasonable grounds to believe that its payment practices



of paying Defendant regularly and leaving some monies in arrears, were perfectly acceptable to Defendant and did not constitute a breach.

**Seventh Claim for Relief**  
**Claim for Declaratory Judgement that Agreement is null and void**

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98. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-97 of the present Complaint, as though more fully set forth herein.
99. Defendant's actions set forth herein above create a case of actual controversy, thus warranting the declaratory relief sought by Plaintiff Fido's Fences in the present claim.
100. Plaintiff Fido's Fences seeks a declaratory judgement and a determination that Defendant's actions as set forth above and their unfair practices render the Agreement null and void and that the Agreement is unenforceable.
101. Plaintiff Fido's Fences has not acted in bad faith.
102. While Plaintiff believed and had reasonable grounds to believe that it was entering an Agreement that had been negotiated at arm's length and in good faith, Defendant apparently did not.

**Eighth Claim for Relief**  
**Claim for Declaratory Judgement that the Non-Compete Clause**  
**of the Agreement is null void and unenforceable as it is against public policy**

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103. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-102 of the present Complaint, as though more fully set forth herein.
104. Defendant's actions set forth herein above create a case of actual controversy, thus warranting the declaratory relief sought by Plaintiff Fido's Fences in the present claim.

105. Plaintiff Fido's Fences seeks a declaratory judgement and a determination that the Non-Compete Clause of the Agreement ¶ 16(b) is null and void and therefore unenforceable.
106. Plaintiff Fido's Fences has not acted in bad faith.
107. While Plaintiff believed and had reasonable grounds to believe that it was entering an Agreement that had been negotiated at arm's length and in good faith, Defendant apparently did not.

**Ninth Claim for Relief**  
**Request for a Protective/Restraining Order preventing Plaintiff's Hostile Take Over by Defendant and misappropriation of Plaintiff's trade secrets**

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108. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-107 of the present Complaint, as though more fully set forth herein.
109. Defendant's actions set forth herein above create a case of actual controversy, thus warranting the declaratory relief sought by Plaintiff Fido's Fences in the present claim.
110. Plaintiff Fido's Fences seeks a declaratory judgement and order that Defendant cease and desist from any unfair practices that will result in the hostile takeover of Plaintiff Fido's Fences by Defendant, or in the theft of Plaintiff Fido's Fences customer list and trade secrets.
111. Plaintiff Fido's Fences has not acted in bad faith.
112. While Plaintiff believed and had reasonable grounds to believe that it was entering an Agreement that had been negotiated at arm's length and in good faith, Defendant apparently did not.

**Tenth Claim for Relief  
Declaratory Judgement that Defendant honor its warranties.**

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113. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-112 of the present Complaint, as though more fully set forth herein.
114. Defendant's actions set forth herein above create a case of actual controversy, thus warranting the declaratory relief sought by Plaintiff Fido's Fences in the present claim.
115. Plaintiff Fido's Fences seeks a declaratory judgement and order that Defendant cease and desist from refusing to honor its warranties through Fido's Fences.
116. Plaintiff Fido's Fences has not acted in bad faith.
117. While Plaintiff believed and had reasonable grounds to believe that it was entering an Agreement that had been negotiated at arm's length and in good faith, Defendant apparently did not.

**Eleventh Claim for Relief  
Attempted Monopolization of the Electronic Pet Containment System Market  
in violation of § 2 of the Sherman Act**

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118. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-117 of the present Complaint, as though more fully set forth herein.
119. Defendant's activities constitute violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, as Defendant sought to monopolize the electronic pet containment system market in the Northeastern United States to the substantial exclusion of any rival competitors. Defendant had the specific intent to monopolize this market and in furtherance of this intent, has engaged in the exclusionary conduct of behavior set forth above.
120. As a direct and proximate result of Defendant's actions, Plaintiff Fido's Fences has suffered and continues to suffer damages.

**Twelfth Claim for Relief  
Monopolization of the Electronic Pet Containment System Market  
in violation of § 2 of the Sherman Act**

---

121. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-120 of the present Complaint, as though more fully set forth herein.
122. Defendant's activities constitute violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, as Defendant has, by the means set forth above, knowingly and intentionally and with specific intent to do so used their monopolization of the electronic pet containment system market in the Northeastern United States to foreclose or attempt to foreclose competition from rival electronic pet containment system companies, including Fido's Fences.
123. As a direct and proximate result of Defendant's actions, Plaintiff Fido's Fences has suffered and continues to suffer damages.

**Thirteenth Claim for Relief  
Defendant's Illegal Pricing in violation of the Robinson-Patman Act  
Section 2 of the Clayton Act- 15 U.S.C. § 13**

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124. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-123 of the present Complaint, as though more fully set forth herein.
125. Defendant's activities constitute violations of The Robinson -Patman Act, 15 U.S.C. § 13, as Defendant has, by the means set forth above, knowingly and intentionally and with specific intent to do so, discriminated in price between dealers and retailers of Defendant's electronic pet containment systems.
126. Due to Defendant's dominant position in the electronic pet containment systems market and their illegal marketing and selling arrangements described above, the

Defendant has substantially impaired and restricted trade within the electronic pet containment systems market by discriminating in price between different purchasers.

127. As a direct and proximate result of Defendant's actions, Plaintiff Fido's Fences has suffered and continues to suffer damages.

**Fourteenth Claim for Relief  
Defendant's Illegal Tying in Violation of § 3 of the Clayton Act  
15 U.S.C. § 14**

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128. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-127 of the present Complaint, as though more fully set forth herein.
129. Defendant's activities constitute violations of Section 3 of the Clayton Act, 15 U.S.C. § 14, as Defendant has, by the means set forth above, knowingly and intentionally and with specific intent to do so, conditioned and continues to condition the electronic pet containment system warranties to both its dealers and their customers, on whether Defendant's dealers and their customers agree to purchase all of their electronic pet containment system batteries from the Defendant and whether the dealers agree to sell Defendant's electronic pet containment systems and batteries on an exclusive basis.
130. Due to Defendant's dominant position in the electronic pet containment systems market and their illegal marketing and selling arrangements described above, the Defendant has substantially impaired and restricted trade within the electronic pet containment systems market by reducing the availability of competitive brands to consumers and has seriously injured the consumers by having them pay more for Defendant's batteries, if they wish to have their warranties honored by Defendant.
131. As a direct and proximate result of Defendant's actions, not only were the

consumers harmed but Plaintiff Fido's Fences has suffered and continues to suffer damages, as well.

**Fifteenth Claim for Relief  
Defendant's Illegal Exclusive and Non-Compete Dealership Agreements  
Are in Violation of § 3 of the Clayton Act  
15 U.S.C. § 14**

---

132. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-131 of the present Complaint, as though more fully set forth herein.
133. As set forth herein above, Defendant's Distributor Dealer Agreements contain an Exclusivity Clause, Section 3 (a) of the Agreement, and a Non-Compete Clause, Section 16(b) of the Agreement.
134. Further, Defendant as part of its normal course and practice, has never decreased the prices, and continuously and unjustifiably raises the unit costs of each electronic pet containment system, notwithstanding the drop in electronics' prices over the years.
135. The aforesaid predatory pricing, among other things, and the Agreement's Exclusivity and Non-Compete Clauses has let to an anti-competitive impact, as once these dealers, including Fido's Fences, are parties to the Distributor Dealer Agreements, they are under the exclusive control and manipulation of the Defendant. The dealers are bound to the Defendant in perpetuity.
136. For if said dealers desired to terminate the Agreement as a result of increased charges by, or unreasonable demands of the Defendant, the dealers would not be able to purchase or sell other electronic pet containment systems, partly due to the Distributor Dealer Agreement and partly due to the lack of other electronic pet containment systems as a result of Defendant's monopolistic activities.
137. The dealers' inability to sell electronic pet containment systems at the termination

of their Distributor Dealer Agreement in turn, allows for Defendant's hostile take over of the dealers' businesses.

138. Defendant's foregoing activities and Agreement constitute violations of Section 3 of the Clayton Act, 15 U.S.C. § 14, as Defendant has, by all of the means set forth above, knowingly and intentionally and with specific intent to do so, actively restrained, infringed and curtailed competition in a substantial share of the relevant market
139. The foregoing violations restrain trade and foreclose competition by virtue of, not only the existence of the Defendant's Distributor Dealer Agreements, but also a result of increased amounts that Defendant's dealers are undoubtedly forced to pass along to their customers. The net result then of the Distributor Dealership Agreements is to prevent said dealers from purchasing electronic pet containment systems elsewhere, thereby foreclosing competition and affecting a substantial share of the line of commerce all in violation of § 3 of the Clayton Act, 15 U.S.C.A. § 14.
140. As a direct and proximate result of Defendant's actions, not only are consumers being harmed but Plaintiff Fido's Fences has suffered and continues to suffer damages, as well.

**Sixteenth Claim for Relief  
Defendant's Illegal Acquisition of Dealerships  
Are in Violation of § 7 of the Clayton Act  
15 U.S.C.A. § 18**

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141. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-140 of the present Complaint, as though more fully set forth herein.
142. The Defendant, in violation of Section 7 of the Clayton Act, 15 U.S.C.A. § 18, has unlawfully acquired businesses and the effect of such acquisitions has substantially

lessened competition and/or tended to create a monopoly.

143. By the actions alleged above, the Defendant's actions have increased its concentration of market power and inhibited the competition in the relevant market.
144. By illegally and improperly embarking on a scheme to monopolize the market, which the Defendant has accomplished, and then by illegally exploiting that monopoly power, the Defendant was able to unlawfully acquire its dealers' businesses and is now trying to unlawfully acquire Fido's Fences business, and the effect of such acquisitions and attempted acquisition, has substantially lessened competition and/or tended to create a monopoly.
145. As a direct and proximate result of Defendant's actions, Plaintiff Fido's Fences has suffered and continues to suffer damages.

**Seventeenth Claim for Relief  
Tying Agreements, Restraint of Trade in Per se Violation of the Donnelly Act**

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146. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-145 of the present Complaint, as though more fully set forth herein.
147. Defendant's Distributor Dealer Agreements, and illegal battery tying arrangements constitute an entry into a contract, agreement, arrangement, and combination for an unreasonable restraint of interstate and intrastate trade and commerce in violation of the Donnelly Act, N.Y. Gen. Bus. Law §§ 340 *et. seq.*
148. As a direct and proximate result of Defendant's actions, Plaintiff Fido's Fences has suffered and continues to suffer damages.



**Eighteenth Claim for Relief**  
**Conn. Antitrust Act § 35-24 et. seq.**

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149. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-148 of the present Complaint, as though more fully set forth herein.
150. Defendant's concerted pattern of behavior as set forth above and incorporated herein constitutes an unreasonable restraint of interstate and intrastate trade and commerce in violation of the Conn. Antitrust Act § 35-24 et. seq.
151. As a direct and proximate result of Defendant's actions, Plaintiff Fido's Fences has suffered and continues to suffer damages.

**Nineteenth Claim for Relief**  
**Declaratory Relief**

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152. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-151 of the present Complaint, as though more fully set forth herein.
153. There is a real and actual controversy between Plaintiff Fido's Fences and the Defendant regarding Defendant's concerted pattern of behavior as set forth above and incorporated herein.
154. Plaintiff Fido's Fences seeks a declaratory judgement pursuant to Section 2201 of the Declaratory Judgement Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure for the purpose of determining and adjudicating actual cases and controversies between the parties.
155. By reason of the foregoing, Plaintiff Fido's Fences is entitled to judgment declaring that the Defendant engaged in conduct in violation of all of the laws and statutes set forth herein above, including Section 2 of the Sherman Act, 15 U.S.C. § 2; Section 2 of the Clayton Act, 15 U.S.C. § 13; Section 3 of the Clayton Act, 15

U.S.C. § 14; The Donnelly Act, N.Y. Gen. Bus. Law §§ 340, *et seq.*; New York State Common Laws, Connecticut State Common Laws, and Conn. Antitrust Act § 35-24 *et. seq.*, as herein above set forth.

**Twentieth Claim for Relief  
Injunctive Relief**

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156. Plaintiff Fido's Fences incorporates by reference all of its allegations contained in Paragraphs 1-155 of the present Complaint, as though more fully set forth herein.
157. Fido's Fences seeks immediate and permanent relief on its claims under the Sherman Act, the Clayton Act, the Donnelly Act and all of the other laws asserted herein, because Fido's Fences will be irreparably damaged if Defendant continues to engage in its concerted pattern of behavior, as set forth herein above.
158. Fido's Fences is suffering and will continue to suffer injury as a result of Defendant's alleged misconduct.
159. Fido's Fences does not have an adequate remedy at law to prevent Defendant from violating Fido's Fences interests by enforcing the Agreement, due to Defendant's efforts to monopolize and otherwise restrict competition in the electronic pet containment systems market, and money damages alone cannot compensate Fido's Fences for the violation of its rights.
160. Fido's Fences has a clear and ascertainable right to the protection of its legitimate and reasonable rights, including the right to keep its business alive by purchasing, selling and installing electronic pet containment systems.
161. Fido's Fences is likely to prevail on the merits of its claims, under the Sherman Act, the Clayton Act, the Donnelly Act, the Conn. Antitrust Act, and under all of the other laws it has asserted herein.
162. The Defendant, its agents, employees, and anyone else acting in concert or

participation with Defendant, should be prohibited and enjoined from resuming its anti-competitive practices and attempted monopolization of electronic pet containment systems in the Northeastern United States, including in the states of Connecticut and the State of New York.

163. Fido's Fences requests that this Court enter an Order declaring the Agreement null and void, and therefore unenforceable.
164. By the Defendant's concerted pattern of behavior, Fido's Fences has been injured by the Defendant's collusion and efforts to eradicate their competition by illegal and improper means, and Fido's Fences requests that this Court enjoin the Defendant, its agents, servants, employees, and anyone else acting in concert or participation with them, from engaging in any further actions that would be in violation of all of the laws set forth herein above.
165. By reason of the foregoing, the Defendant, its agents, servants, employees, and anyone else acting in concert or participation with them, should be permanently enjoined from engaging, directly or indirectly in any further actions or conduct constituting violations of the Sherman Act, the Clayton Act, the Donnelly Act, the Conn. Antitrust Act, all of the laws set forth herein above.

### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff Fido's Fences prays and respectfully requests judgement against the Defendant The Canine Fence Company as follows:

- I. declaring the Dealership Agreements between Plaintiff Fido's Fences and William Coden on the one hand, and Defendant on the other, respectively , null and void and therefore unenforceable; and/or
- II. declaring the Non-Compete Clause of the Dealership Agreement ¶ 16(b) null

and void and therefore unenforceable; and/or

- III. adjudging and decreeing that Fido's Fences is not in default of the Agreement and has committed no Breach of the Agreement;
- IV. permanently enjoining the Defendant from engaging in unfair competitive practices;
- V. permanently enjoining Defendant from interfering with Fido's Fences' contractual relationships;
- VI. adjudging and decreeing that Plaintiff Fido's Fences Inc. is free to compete with Defendant by purchasing equipment from third parties, servicing their current customers with equipment from other sources including other companies and distributors, and expanding its current customer list on Long Island and elsewhere, without limit;
- VII. permanently enjoining the Defendant from misappropriating Fido's Fences' customer list and other trade secrets;
- VIII. awarding Fido's Fences damages in an amount to be determined at trial, but in no event less than \$6,000,000 in treble damages together with interest thereon;
- IX. awarding Fido's Fences recovery of their costs and disbursements, including reasonable attorneys' fees, accountants' fees and expert witness' fees incurred in this action pursuant to 15 U.S.C. § 15; and
- X. awarding Fido's Fences such other relief as this Court may deem just and proper.

### **JURY DEMAND**

Pursuant to Rule 38(d) of the Federal Rules of Civil Procedure, Plaintiff Fido's Fences demands a trial by jury on all issues so triable by right.

Respectfully Submitted,

INTELLECTULAW,  
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 04/21/08

By: Panagiota Betty Tufariello

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( of counsel)

Attorneys for Plaintiff Fido's Fences Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S AMENDED COMPLAINT**, has been served upon the Attorneys for Defendant **THE CANINE FENCE COMPANY** via Electronic Mail, as well as by Express Mail addressed to:

Patrick J. McHugh  
Finn Dixon & Herling LLP  
177 Broad Street, 15<sup>th</sup> Floor  
Stamford, CT 06901-2689

on Monday, April 21, 2008.

Panagiota Betty Tufariello  
Panagiota Betty Tufariello, Esq.

# **EXHIBIT 1**

**United States Patent** [19]

[11] **3,753,421**

**Peck**

[45] **Aug. 21, 1973**

[54] **METHOD AND APPARATUS FOR CONTROLLING AN ANIMAL**

3,310,754 3/1967 Stewart..... 325/118 X  
2,800,104 7/1957 Cameron et al..... 119/29

[76] **Inventor: Richard M. Peck, 3113 Club Dr., Allentown, Pa. 18103**

*Primary Examiner*—Louis G. Mancene  
*Assistant Examiner*—J. N. Eskovitz  
*Attorney*—Francis C. Browne, Joseph A. De Grandi et al.

[22] **Filed: Dec. 20, 1971**

[21] **Appl. No.: 209,928**

[57] **ABSTRACT**

[52] **U.S. Cl.**..... 119/29, 119/106, 231/2 E

Method and apparatus for controlling a domestic animal to prevent it from moving into or out of a predetermined area wherein a signal emitting wire is placed to surround the area, and a low-powered, high voltage receiver circuit is mounted to the animal such as through a collar for receiving the signal from the wire and producing a physical effect on the animal as it approaches the wire.

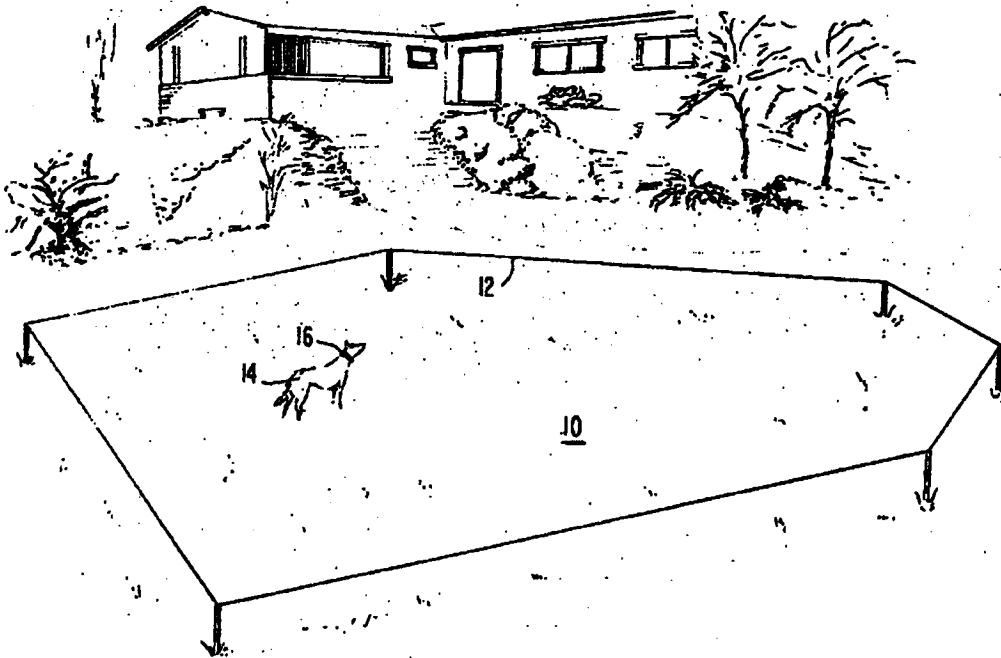
[51] **Int. Cl.**..... A01k 15/00

[58] **Field of Search**..... 119/29, 96, 106; 273/84; 231/2 E; 325/118, 119, 361, 364; 340/224

[56] **References Cited**  
**UNITED STATES PATENTS**

3,589,337 6/1971 Doss..... 119/29

**13 Claims, 3 Drawing Figures**



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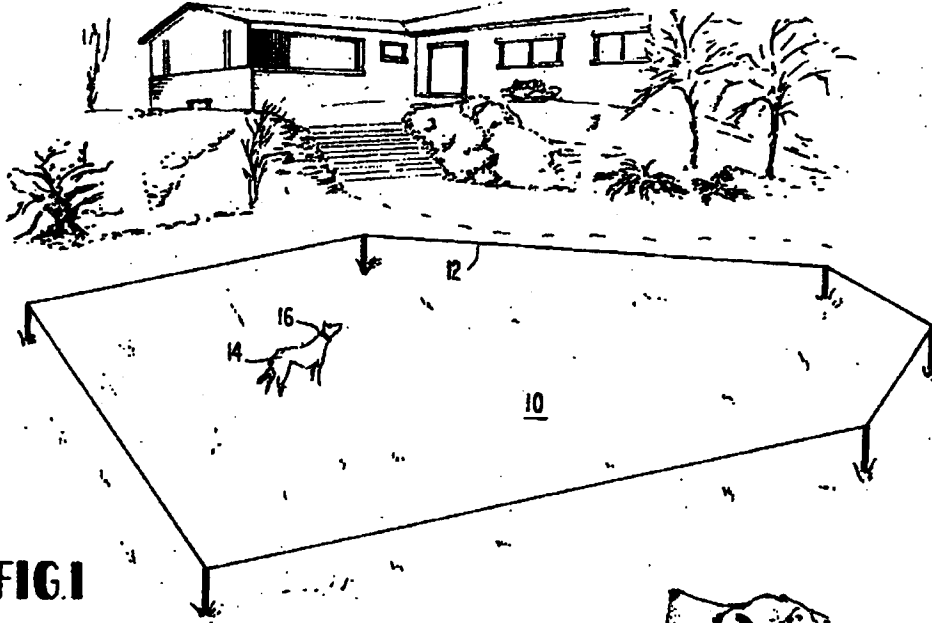


FIG. 1

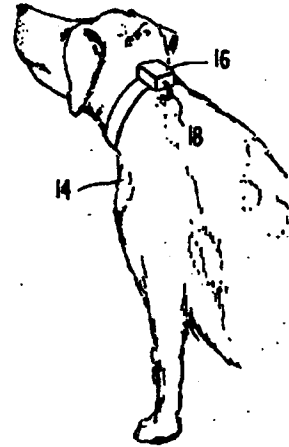


FIG. 2

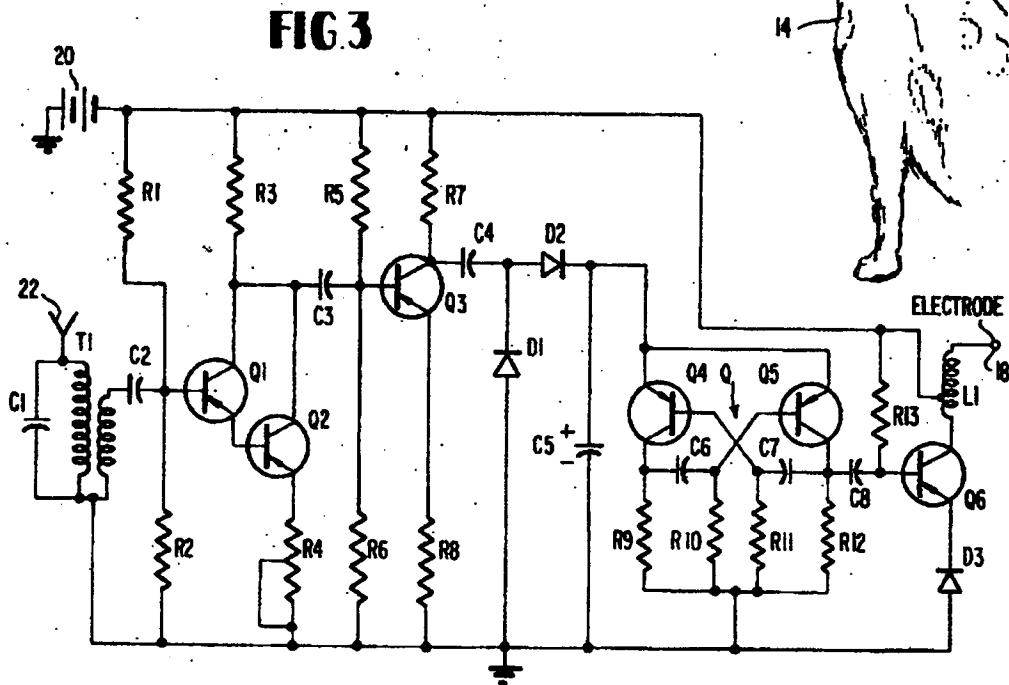


FIG. 3



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**METHOD AND APPARATUS FOR CONTROLLING AN ANIMAL****OBJECT OF INVENTION**

The present invention relates to method and apparatus for controlling the movement of an animal such as a dog or a cat.

One of the objects of the present invention is to provide a novel method and apparatus for controlling the movement of an animal such as a domestic dog or cat to prevent it from moving into or out of a predetermined area. Included herein is the provision of such a method and apparatus which, although effective in controlling the animal, does not require supervision, leashing or fencing of the animal, and furthermore, will not injure or otherwise seriously harm the animal.

A further object of the present invention is to provide such a method and apparatus which may be easily implemented in actual use without any special skill or excessive cost.

A further object of the present invention is to provide such an apparatus which may be easily manufactured for retail at relatively low prices and with a compact design susceptible for incorporation into a collar, blanket, harness or other article to be worn by the animal to be controlled.

**SUMMARY OF INVENTION**

In accordance with one embodiment of the invention when it is desired, for example, to prevent an animal from moving into or out of a predetermined area, an electrical antenna in the form of a wire is placed in or above the ground to surround the area to radiate a field in the vicinity of the wire when energized such as by an A.C. current alternating at a sub-broadcast band frequency. A receiver circuit is incorporated in an article such as a collar or blanket to be worn by the animal so as to receive signals from the wire when the animal approaches the wire. The receiver circuit includes an alarm which will produce a physical effect such as a noise annoying to the animal or a physical shock directly to the animal in response to certain signals received from the wire.

The receiver circuit is of the low-power, high voltage type preferably energized by a dry-cell battery. The receiver circuit further includes an antenna for picking up the signals radiated from the wire, an amplifier for amplifying the signal, and an oscillator circuit for operating the alarm means which may either be a loud speaker or a coil for producing a shock in the animal. The receiver circuit further includes an energy storing circuit for powering the oscillator means. The antenna is tuned to the frequency of the signal radiated from the wire.

In use, the receiving unit may be placed on an animal collar with the conductor positioned so as to make contact with the skin of the animal. When the animal approaches the signal emitting wire, the tuned antenna on the collar will pick up the signal and feed it to the voltage amplifier of the receiver circuit. The strength of the signal fed to the amplifier will vary with the proximity of the animal to the signal radiating wire. At the fringes of the signal field, the voltage will be small, and the amplified voltage applied to the D.C. energy storing circuit will be of low magnitude. At reduced voltage, the oscillator will cause an induction coil, associated with the conductor, to produce a mild shock to the animal.

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The intensity of the shock will increase almost exponentially as the animal gets closer to the signal radiating wire. However, the lower power characteristics of the circuit will never allow the shock to be hazardous to the animal. If the animal is positioned in the area enclosed by the signal radiating wire, the shock produced on the animal will prevent the animal from crossing the wire and thereby leaving the area. In situations where it is desired to prevent an animal from gaining access into an area, the animal will be positioned outside of the area enclosed by the signal radiating wire and will be prevented from crossing the wire into the area.

**DRAWINGS**

Other objects and advantages of the present invention will become apparent from the following more detailed description taken in conjunction with the attached drawings in which:

FIG. 1 is a perspective view of a residential home with an adjacent area to which it is desired to restrict an animal shown as a dog in accordance with the present invention;

FIG. 2 is a perspective view of a dog equipped with apparatus embodying the invention; and

FIG. 3 is a schematic view of a circuit included in the apparatus of the present invention.

**DETAILED DESCRIPTION**

Referring now to the drawings in detail, there is shown in FIG. 1 an area 10 enclosed by a signal emitter in the form of an electrical wire 12, and an animal such as a dog 14 to be maintained within area 10 in accordance with the present invention. Wire 12 is capable of carrying an A.C. current alternating at a sub-broadcast band frequency (below 560 Kilohertz) for radiating signals in a field in the vicinity of the wire. The signal may be introduced into wire 12 by a transmitter that can be powered by any suitable means such as by a battery or an A.C. home power outlet. Furthermore, wire 12 may be buried in the ground or located above the ground. Although not shown wire 12 may be placed around shrubs, flowers, trees, and restricted areas for purposes of preventing entry thereto by an animal.

Signals emitted by wire 12 are to be picked up by an electronic receiver unit generally designated 16 mounted or otherwise incorporated in an article such as a collar, blanket, etc. to be attached to an animal as shown in FIG. 2. In the shown embodiment receiver unit 16 has a conductor 18 which is placed into engagement with the skin of the animal so as to impart a shock to the animal when it approaches wire 12. The shock causes the animal to stop and move away from the wire 12, thus maintaining the animal within the area 10.

Receiver unit 16 includes a low power, high voltage electronic circuit preferably powered by a miniature dry cell battery indicated at 20 in FIG. 3. Signals from wire 12 are picked up by a tuned antenna 22 connected to a resonant circuit including capacitor C1 and Transformer T1 that selects and presents a high impedance to the desired signal frequency. Frequencies above and below the desired frequency are attenuated or entirely rejected by shunting them to ground in a well known manner.

The selected signal is then coupled to a voltage amplifier Q1 and Q2 by the secondary winding on transformer T1 which matches the low input impedance of the amplifier. Voltage amplifier Q1 and Q2 is a high

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gain amplifier known in the art as a Darlington pair. The operating point of the amplifier is set by bias resistors R1 and R2. The amplified output signal is developed across a collector resistor R3 which is the load resistor. Additionally, an emitter resistor R4 is provided as a feedback resistor for circuit stability. The latter can also be used to set the gain of the voltage amplifier.

The output signal of the voltage amplifier is coupled to a low power amplifier Q3 to charge an energy storing capacitor C5. The A.C. signal developed across the transistor load resistor R7 is rectified to a D.C. voltage by diodes D1 and D2. A capacitor C5 is charged by the D.C. voltage and becomes the power source for an oscillator circuit Q shown as an astable multivibrator consisting of transistors Q4 and Q5 and associated circuitry. The oscillator produces a square wave output signal which is amplified by transistor Q6 and used to power induction coil L1 for producing a high voltage for shocking the animal through conductor 18. It will be understood that instead of a shock producing coil L1, a loudspeaker may be provided to produce a noise which would be annoying to the animals' sensitive ears.

Although not shown, the above described circuit can be modified to function with a transmitting antenna located centrally within area 10 to keep the animal from being shocked as long as it remained within the range of the transmitter. If the animal ventured towards the fringes of the signal field, the animal would start to receive mild shocks and as it wandered out of the field, the shocks would become more intense. The latter may be accomplished by rectifying the signal output of the voltage amplifier and then using the D.C. voltage to bias transistor Q3 into its cut-off or nonconducting region. Then, as the animal moves towards the fringes of the signal field, the amplified signal used to hold transistor Q3 at cut-off would be reduced and transistor Q3 would start to conduct. With transistor Q3 conducting, capacitor C5 would charge to power the oscillator circuit. As previously described, the oscillator output signal would then be amplified to power induction coil L1 which in turn would cause the animal to receive a shock.

It will also be understood that integrated circuits or other electronic components although not shown, could be substituted for the components shown in FIG. 3.

I claim:

1. A system for controlling the movement of an animal relative to an area, the system comprising in combination, means associated with said area for producing a signal, and an electronic receiver means to be placed on and carried by an animal, said receiver means including an alarm means for producing a physical effect annoying to the animal for controlling the movement of the animal relative to said area and means for receiving the signal from said signal means for initiating operation of said alarm means, said receiver means further including means for causing the intensity of the physical effect to be increased as the animal moves closer to said signal means.

2. The system defined in claim 1 wherein said means for producing said signal includes a wire carrying an

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A.C. current alternating at a sub-broadcast band frequency, and wherein said receiver means includes a low-powered battery operated high voltage circuit.

3. The system defined in claim 1 wherein said means for producing the signal encloses said area.

4. An article for attachment to an animal for purposes of controlling the same relative to a predetermined area, said article including an electronic circuit, said circuit including means for receiving a signal encompassing said area, alarm means responsive to said signal for producing a physical effect for controlling movement of the animal and means for varying the intensity of said alarm means depending upon the animal's changing position relative to the boundary of the area.

5. The article defined in claim 4 wherein said means for receiving said signal includes an antenna, and wherein said circuit further includes amplifier means for amplifying the signal, an energy storing circuit, a low-power induction coil connected to said alarm means to operate the same, and an oscillator circuit connected to said energy storing circuit and said coil for powering the coil to operate said alarm means.

6. The article defined in claim 5 including a low-power dry-cell battery connected to the circuit to provide power for the same, and wherein said coil is a high voltage low-power induction coil.

7. The article defined in claim 6 wherein said antenna is tuned to a predetermined frequency.

8. The article defined in claim 7 wherein said alarm means includes a conductor for shocking the animal.

9. The article defined in claim 7 wherein said alarm means includes a loudspeaker for producing a noise.

10. A method of controlling the movement of an animal with respect to a certain predetermined area comprising the steps of establishing a signal encompassing said area, and equipping the animal with an electronic receiving means responsive to said signal for producing a physical effect annoying to the animal when the animal approaches certain positions relative to the boundary of said area.

11. The method defined in claim 10 wherein said signal is established by energizing a wire enclosing said area to prevent the animal from crossing said wire into or out of said area.

12. A system for controlling the movement of an animal relative to a predetermined area, the system comprising in combination, means associated with said area for producing a signal encompassing said area, and an electronic receiver means to be placed on and carried by an animal, said receiver means including an alarm means for producing a physical effect annoying to the animal for controlling the movement of the animal relative to said area and means for receiving the signal from said signal means depending upon the position of the animal relative to the boundary of the area for initiating operation of said alarm means.

13. The system defined in claim 12, wherein said means for producing the signal is a wire enclosing said area.

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# REEXAMINATION CERTIFICATE (252nd)

## United States Patent [19] [11] B1 3,753,421

Peck [45] Certificate Issued Sep. 25, 1984

[54] **METHOD AND APPARATUS FOR CONTROLLING AN ANIMAL**

[76] Inventor: **Richard M. Peck, 3113 Club Dr., Allentown, Pa. 18103**

Reexamination Request:  
No. 90/000,423, Jul. 22, 1983

Reexamination Certificate for:  
Patent No.: **3,753,421**  
Issued: **Aug. 21, 1973**  
Appl. No.: **209,928**  
Filed: **Dec. 20, 1971**

[51] Int. Cl.<sup>3</sup> ..... **A01K 15/00**  
[52] U.S. Cl. .... **119/29; 119/106; 231/2 E**  
[58] Field of Search ..... **119/29, 96, 106**

[56] **References Cited**

U.S. PATENT DOCUMENTS		
2,023,950	12/1935	Carter ..... 175/311
2,252,641	8/1941	Pollakoff et al. .... 179/82
2,405,501	8/1946	Halstead et al. .... 179/2
2,615,969	10/1952	Albrecht ..... 177/311
2,663,800	12/1953	Herzog ..... 250/36
2,721,896	10/1955	Foot ..... 179/1
2,741,224	10/1956	Putnam ..... 119/29
2,789,282	4/1957	Winters ..... 340/258
2,800,104	7/1957	Cameron et al. .... 119/29
2,853,557	9/1958	Lehman et al. .... 179/82
2,904,645	9/1959	Sarles ..... 179/171
2,908,766	10/1959	Taylor ..... 179/82
2,921,141	1/1960	Enchevoff ..... 179/82
2,996,043	8/1961	Pettingill ..... 119/131
3,009,099	11/1961	Muller ..... 324/52
3,021,391	2/1962	Wagnell et al. .... 179/82

3,026,508	3/1962	Müller ..... 340/282
3,051,936	8/1962	Finger et al. .... 340/280
3,076,058	1/1963	Müller ..... 179/82
3,105,120	9/1963	Hayas ..... 179/82
3,110,891	11/1963	Herrick et al. .... 340/258
3,128,840	4/1964	Barrett, Jr. .... 180/77
3,150,321	9/1964	Summers ..... 325/28
3,157,871	11/1964	Umanoff ..... 340/280
3,162,726	12/1964	Rosenberg et al. .... 179/1
3,168,729	2/1965	Volberg ..... 340/258
3,175,047	3/1965	Borberg ..... 179/82
3,192,507	6/1965	Sadges ..... 340/171
3,273,110	9/1966	Monroe et al. .... 340/4
3,309,690	3/1967	Moffitt ..... 340/258
3,336,530	8/1967	Sloan et al. .... 325/29
3,341,842	9/1967	Breguet ..... 340/384
3,346,856	10/1967	Doble et al. .... 340/258
3,383,595	5/1968	Obata ..... 325/64
3,418,572	12/1968	Humphreys, Jr. .... 324/67
3,495,213	2/1970	Nahas ..... 340/32
3,570,227	3/1971	Bellinger ..... 56/25.4

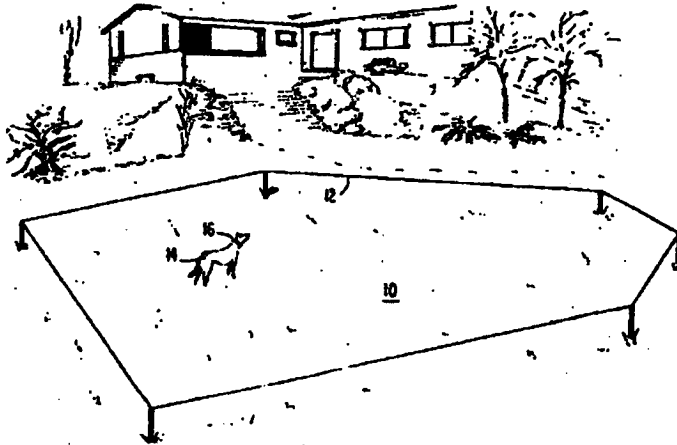
**OTHER PUBLICATIONS**

Publication entitled "Planning Farm Fences," issued by American Association for Agricultural Engineering and Vocational Agriculture, Jun. 1966.

Primary Examiner—Hugh R. Chamblee

[57] **ABSTRACT**

Method and apparatus for controlling a domestic animal to prevent it from moving into or out of a predetermined area wherein a signal emitting wire is placed to surround the area, and a low-powered, high voltage receiver circuit is mounted to the animal such as through a collar for receiving the signal from the wire and producing a physical effect on the animal as it approaches the wire.



B1 3,753,421

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**REEXAMINATION CERTIFICATE  
ISSUED UNDER 35 U.S.C. 307.**

**AS A RESULT OF REEXAMINATION, IT HAS  
BEEN DETERMINED THAT:**

**NO AMENDMENTS HAVE BEEN MADE TO  
THE PATENT.**

3 The patentability of claims 1-13 is confirmed.

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## **EXHIBIT 2**



hereunder, to the extent and in the manner set forth in written guidelines supplied to Dealer by the Company. Dealer shall immediately cease to use the trademark "Invisible Fencing" upon the expiration or termination of this Agreement for any reason.

Dealer shall not use the words "Invisible Fencing", "Invisible Fence" or any combination of such words in its corporate or partnership name, nor allow such use by others. Dealer will sell or provide no products or services under the trademark "Invisible Fencing" other than the Invisible Fence System.

Section 3. Assuring Quality and Performance Standards.

a. The Invisible Fence System has been developed and tested to assure good quality and dependable performance based upon the use of components of a given level of performance and quality. The Manufacturer has also developed considerable goodwill in connection with the trademark "Invisible Fencing" by providing quality products and service to customers purchasing Invisible Fence Systems. In order to protect the goodwill associated with the Manufacturer, the Invisible Fence System and the "Invisible Fencing" trademark, Dealer agrees: (i) to purchase Invisible Fence Systems, components thereof and similar systems solely from the Company; (ii) to install and service all Invisible Fence Systems sold by Dealer; (iii) to maintain the same high standards as are maintained by the Manufacturer and the Company in selling, installing and servicing Invisible Fence Systems; (iv) not to sell systems similar in nature to the Invisible Fence System (electronic animal containment systems) which are distributed by persons other than the Manufacturer or the Company; and (v) to comply with such customer service and other standards as may be established from time to time by the Manufacturer or the Company regarding the sale, installation and provision of customer service in connection with the Invisible Fence System.

b. Wire and other materials used in the installation of Invisible Fence Systems may be purchased from the Company or from other parties provided that any such wire or other materials must comply with specifications established by the Manufacturer.

c. Dealer agrees to cooperate with the Company in facilitating the Company's control over the nature and quality of services rendered by Dealer in connection with the sale, installation and service of Invisible Fence Systems in order to insure that such sales, installation and service meet the established standards of the Manufacturer and the Company as set forth in the Dealer Manual or otherwise. In furtherance of this purpose, Dealer agrees to permit inspections of the Dealer's operation during business hours and upon reasonable notice to Dealer.

**Section 4. Price and Quantity.**

a. The Company agrees to sell to Dealer, at the price in the Company's wholesale price list from time to time established by the Company, such quantities of Invisible Fence Systems and components thereof as Dealer may order from the Company provided that the Company reserves the right to fulfill temporarily less than the total of such orders if the capacity of the Manufacturer is less than that required to meet the requirements of the Company. The wholesale price list shall be established from time to time by the Company. The Company reserves the right to make any change in the wholesale price list at any time on thirty (30) days' notice to Dealer. Any such change shall have application to any unshipped portion of an order previously issued by Dealer except in those cases where the Company has already received an assurance of payment accepted by the Company with respect to such order.

b. No purchase order or other written order or acknowledgment shall vary the terms and conditions herein, or otherwise increase the obligations of the Company provided for herein. Dealer agrees that its employees, agents and representatives will represent to each prospective customer each Invisible Fence System and its capabilities and the Company's warranty obligation with respect thereto only as authorized in writing by the Company.

**Section 5. Payment and Delivery.**

a. Prices to Dealer shall be F.O.B. Company's point of shipment, freight prepaid and added to invoice. Credit limits, if credit is extended to Dealer, and all payment terms shall be established separately for Dealer by the Company in its sole discretion. All prices, discounts, credit and payment terms shall be subject to change prior to acceptance by the Company of any order.

b. Dealer shall be obligated to accept delivery of Invisible Fence Systems as indicated on each order. Title shall pass to Dealer upon delivery to the carrier, and Dealer will assume the risk of loss upon delivery to carrier. In no event shall the Company be responsible to hold or store Invisible Fence Systems ordered for the account of Dealer.

c. The Company shall use its best efforts to fill orders placed with it by Dealer hereunder with reasonable promptness; provided, however, that notwithstanding any provision contained herein to the contrary, the Company shall have no obligation to furnish any Invisible Fence Systems hereunder after it shall have ceased to sell the same in the ordinary course of its business operations, nor shall the Company nor the Manufacturer be responsible or liable for acts or failures to act by its manufacturing facilities or for any loss,



damage, or delay caused by acts of God, war, blockades, embargoes, strikes, lockouts, governmental priorities or any other cause beyond the control of the Company or the Manufacturer.

Section 6. Product Warranty.

Company shall grant to Dealer the same warranty, as the same shall be in effect from time to time, which Manufacturer grants to retail customers; provided, however, that Dealer must return to Company a warranty card giving the name and address of the customer in order for the warranty to be extended to Dealer. No other representations or warranties have been made by the Company or the Manufacturer or relied upon by the Dealer. THE WARRANTY CONTAINED IN THIS SECTION 6 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall Company or Manufacturer be liable for consequential damages sustained in connection with any Invisible Fence System, and Company or Manufacturer neither assumes nor authorizes any representative or other person to assume for it any obligation or liability other than as expressly set forth herein. Dealer may extend any additional warranty protection to its customers in excess of that extended by the Company and Manufacturer to its retail customers; provided, however, that the Company or Manufacturer shall have no responsibility to Dealer or Dealer's customers for such additional warranty protection.

Section 7. Compliance with Laws.

Dealer agrees to make no sale in violation of any law, rule, regulation or order applicable within the Territory or of the United States provided that Dealer has been informed of such law, rule, regulation or order of the United States or otherwise has knowledge thereof.

Section 8. Relationship; Authority.

This Agreement does not in any way create the relationship of joint venture, partnership, employment, or principal and agent between Company and Dealer. Dealer acknowledges and agrees that neither Dealer nor any person acting on behalf of Dealer is or shall be considered an employee of the Company for any reason whatsoever and does not and shall not have any rights to, or participate in, any pension or welfare plans, or any other benefits which the Company now or hereafter maintains for or provides to its employees. Neither Dealer nor any person acting on behalf of Dealer is or shall be deemed to be the legal representative or agent of the Company for any purpose whatsoever, and Dealer is not authorized by the Company to transact business, incur obligations, express or implied, or otherwise act in any manner, in the name of or on behalf of the

Company or the Manufacturer, or to make any promise, warranty, or representation with respect to Invisible Fence Systems or any other matter in the name of or on behalf of the Company. DEALER IS ENGAGED IN ITS OWN INDEPENDENT BUSINESS AND SHALL INDEMNIFY THE COMPANY AND THE MANUFACTURER FROM AND AGAINST ANY DETERMINATION BY ANY COURT OR GOVERNMENT AGENCY IN THE UNITED STATES OR THE TERRITORY THAT DEALER OR ANY PERSON ACTING ON BEHALF OF DEALER IS AN EMPLOYEE OF THE COMPANY CONTRARY TO THE INTENT OF THE PARTIES HERETO. NEITHER THE COMPANY NOR THE MANUFACTURER HAS NO RESPONSIBILITY WITH RESPECT TO ANY EXPENSES OR OBLIGATIONS INCURRED BY DEALER IN CONNECTION WITH THE CARRYING ON OF ITS BUSINESS.

Section 9. Trademarks and Trade Names.

a. Dealer shall use such trade names, trademarks, service marks, designs, slogans and similar property of the Company and Manufacturer, including the trademark "Invisible Fencing" (herein called "Proprietary Marks"), as Company shall designate in marketing the Invisible Fence System. Company hereby represents that it is authorized by the owner or licensee of the Proprietary Marks and that the Company has the rights to the use of such Proprietary Marks.

b. Dealer acknowledges the validity of the Proprietary Marks and agrees that it shall not do anything to infringe upon, harm or contest the rights of Company or Manufacturer in the Proprietary Marks owned by Manufacturer or Company, respectively, or in any other mark or name which incorporates the name "Invisible Fencing". Dealer shall not use any mark or name other than as herein permitted in connection with the advertising or sale of the Invisible Fence System. Dealer shall not place any name or mark, other than the names and marks originally appearing thereon and Dealer's name, address and telephone number, on any products or packages or other materials which Dealer obtains from Company or Manufacturer.

c. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OR OF ANY OTHER MARK OR NAME THAT INCORPORATES THE NAME "INVISIBLE FENCING" INURES TO THE BENEFIT OF THE MANUFACTURER AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE MANUFACTURER SHOULD THIS AGREEMENT BE TERMINATED BY EITHER PARTY FOR ANY REASON.

d. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OWNED BY COMPANY INURES TO THE BENEFIT OF COMPANY AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE COMPANY AT THE TERMINATION OF THIS AGREEMENT.

e. Upon termination of this Agreement for whatever cause, the permission for the use of the Proprietary Marks and names as aforesaid and any interest of Dealer therein shall cease forthwith, and Dealer will not use or claim the right to use any

such Proprietary Marks or colorable imitations thereof. Dealer shall take such action and sign such documents as are reasonably required by Company or Manufacturer to evidence the fact that Dealer has ceased all use of and interest in such property.

Section 10. Policies of Company.

Dealer shall abide by such reasonable and lawful policies and regulations issued from time to time by the Company and by Manufacturer, and such sales quotas as issued by the Company, in connection with Dealer's operations under this Agreement and all matters arising under this Agreement, including but not limited to the policies of the Manufacturer attached hereto as Exhibit "A".

Section 11. Training of Dealer Personnel.

Dealer will attend, at Dealer's own expense (including costs of transportation and lodging), initial training classes to be conducted by Manufacturer, as well as any additional training classes established by the Company. Dealer shall train each of Dealer's employees involved in the sale or installation of Invisible Fence Systems with the same training provided Dealer by the Company. The Company shall have the right to supervise Dealer's in-house training program and to establish the regulations and requirements of such training. Dealer shall continuously operate full-time a sales and installation business with an adequate number of trained personnel, using Dealer's best efforts, skills and diligence in the conduct thereof and in the regulation of Dealer's employees. Dealer shall employ only those persons who are fit and competent to do such work.

Section 12. Advertising.

a. All advertising relating to Invisible Fence Systems used by Dealer shall be submitted to Company and approved or rejected by Company within thirty (30) working days after receipt by Company, prior to any use thereof by Dealer, which approval shall not be unreasonably withheld. If Company does not reject the advertisement within the said thirty (30) days, then the advertisement shall be deemed approved. Dealer shall not use any advertising material rejected by Company.

b. The Manufacturer shall own all copyrights in the advertising and other materials produced by Dealer relative to the Invisible Fence Systems and Dealer hereby assigns all right, title and interest in and to such copyrights to the Manufacturer. In connection with all such advertisements, Dealer shall use a copyright notice in the following form: "Invisible Fence Company, Inc., 1986 (or the year of first publication)" on all such material produced by Dealer. Dealer shall use the notation "R" with all federally registered marks of the Manufacturer.

Section 13. Insurance.

a. Dealer shall procure and maintain in full force and effect such liability insurance policies as Company and Manufacturer shall designate in such amounts as may be designated from time to time by Company and Manufacturer, protecting Dealer and its officers, employees, representatives and agents against any loss, liability or expense whatsoever from personal injury, death, property damage or loss otherwise arising or occurring from the operation of Dealer's business as it relates to the Invisible Fence Systems, including, but not limited to, the sale, installation and servicing of the Invisible Fence Systems. Dealer is presently required to carry a minimum of \$ SEE Appendix A. of products and completed operations insurance coverage, subject to change in the future upon notice by the Company or Manufacturer. Dealer shall make provision for workmen's compensation, unemployment and similar coverage with respect to the operation of its business.

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b. Certificates of insurance shall be delivered by the carrier to the Company and Manufacturer showing Dealer's compliance herewith, and certificates shall state that the policies will not be cancelled or materially altered without at least thirty (30) days prior written notice to Company and Manufacturer.

Section 14. Term and Renewal.

The term of this Agreement shall be for a period of one (1) year from the date hereof unless sooner terminated by either party hereto on 90 days' written notice to the other party. The term of this Agreement shall continue from year to year thereafter unless terminated by written notice to the other party at least 90 days prior to the expiration of any one-year term. It is expressly understood that neither party has an expectation of renewal or a unilateral option to renew.

Section 15. Termination.

a. Without prejudice to any other remedy the Company may have for the breach or non-performance of any undertaking or obligation of Dealer hereunder, the Company may terminate this Agreement and refuse to make further sales to Dealer prior to the Expiration of the term set forth in Section 14, by written notice to the Dealer if any of the following events occur, and Dealer acknowledges that termination for any such reason shall constitute just cause for termination:

- (i) If Dealer does not conform to any credit terms or policies established by Company;

(ii) If Dealer defaults in the payment of any sums due Company;

(iii) If Dealer defaults in the performance of any agreement made hereunder or breaches this Agreement or any covenant hereunder, and such default is not remedied to the Company's satisfaction within thirty (30) days after written notice thereof to Dealer;

(iv) If Dealer discontinues the business contemplated hereunder for a period of thirty (30) days and the Company provides Dealer with written notice of termination five (5) days prior to the termination date;

(v) Upon termination for any reason whatsoever of the Company's license to distribute Invisible Fence Systems; or

(vi) Upon transfer of ownership of any equity securities of Dealer, except in cases where Dealer has given notice in writing to Company of a proposed transfer of such equity securities and Company has given its written consent thereto.

b. This Agreement shall automatically terminate upon the insolvency of Dealer or if Dealer is declared bankrupt or makes an assignment for the benefit of creditors, or in the event a receiver is appointed or any proceeding is demanded by, for or against Dealer under any provision of any bankruptcy law.

IF DEALER'S APPOINTMENT IS TERMINATED OR IS NOT EXTENDED AT THE END OF THE TERM OF THIS AGREEMENT OR ANY SUCCESSIVE TERM, NEITHER PARTY SHALL BE ENTITLED TO ANY COMPENSATION OR REIMBURSEMENT FOR LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR OTHER LOSSES OCCASIONED BY TERMINATION OF THE RELATIONSHIP.

c. Notice of termination shall be given in the manner provided in Section 21 (d) hereof, and the date of termination shall be the date upon which the notice is effective as provided in Section 21 (d) hereof.

d. Termination of this Agreement shall not affect the rights of the Company to receive, or the obligation of Dealer to make payment for, Invisible Fence Systems ordered by Dealer hereunder prior to the termination date, whether shipped by the Company before or after the termination date.

e. In the event of termination of this Agreement, the Company shall have the first option, but no obligation, to repurchase from Dealer any or all of the Invisible Fence Systems as may then be owned by Dealer at the net price paid by the

Dealer including the cost of insurance and shipping. If the Company does not repurchase from Dealer any of the unsold Invisible Fence Systems, Company will notify other Dealers, if any, that Dealer has unused Invisible Fence Systems available for purchase. Sales terms shall be agreed upon between such other Dealers and Dealer.

Section 16. Duties of Dealer Upon Termination.

Upon the termination of this Agreement for any cause or reason:

a. Dealer will immediately discontinue the use of all trade names, service marks, Proprietary Marks, signs and forms of advertising indicative of Invisible Fencing, or any other name or designation then in use by Dealer, Manufacturer or Company in connection with the business contemplated by this Agreement unless such other name or designation is not confusingly similar to the trademark "Invisible Fencing" or any other trademark, service mark or Proprietary Mark developed, owned or licensed by the Company or Manufacturer.

b. Dealer will not, without the written consent of Company, conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the continental United States during the term of this Agreement and for a period of two (2) years after the date of termination. Sale of chain link or similar physical barrier fences shall not be deemed a violation of such non-competition covenant. During such period of time, Dealer will not employ or seek to employ any person who is employed by any business operated under the trademark or trade name of Invisible Fencing (or derivatives thereof) or by a licensee or sublicensee of Company in the business contemplated by this Agreement and will not, directly or indirectly, induce any such person to leave his or her employment unless Dealer has obtained the prior written approval of Company.

c. Dealer will execute and deliver all other documents reasonably required by Company to accomplish and evidence a complete termination of this Agreement and a surrender by Dealer of all rights hereunder.

d. The covenants contained in this Section shall be construed as independent of any other provision of this Agreement, and the existence of any claim or cause of action of Dealer against Company or Manufacturer whether predicated on this Agreement or otherwise shall not constitute a defense to the

enforcement of these provisions. Violation of any of these clauses shall authorize Company or Manufacturer to seek equitable relief as well as all other relief provided by law.

Section 17. Indemnification.

The Manufacturer agrees to defend and hold the Company or Dealer harmless with respect to any suits or claims arising solely out of an alleged product defect relating to an Invisible Fence System supplied by the Manufacturer and sold by Company or Dealer, provided that prompt notice is given by Company or Dealer to the Manufacturer of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct the defense of any such claim or suit, and that no settlement of any such claim or suit shall be made without the prior written consent of the Manufacturer. In addition, Company or Dealer shall furnish such information regarding itself and the claim in question as Manufacturer may reasonably request and as shall be reasonably required in connection with the defense of such claim or suit. If Manufacturer does not elect to assume the defense of any such claim or suit after notice from Company or Dealer, then Manufacturer will reimburse Company or Dealer for all costs and expenses, including reasonable counsel fees, as they are incurred in connection with investigating, preparing for or defending any such suit or claim.

Manufacturer will defend and hold the Dealer and Company harmless with respect to any suits or claims arising solely out of trademark, copyright or patent infringement relative to the Invisible Fence Systems supplied by the Company and not owned by Company or the use of the Proprietary Marks in connection therewith, provided that prompt notice is given to the Manufacturer and Company of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct defense of any such claim or suit, and that no settlement of any such claim shall be made without the prior written consent of the Manufacturer. Dealer agrees to promptly notify Manufacturer of any unauthorized use of the Proprietary marks or colorable imitations thereof by others. The Manufacturer shall have the sole right and discretion to bring infringement, unfair competition or other proceedings involving the Proprietary Marks or Invisible Fence Systems supplied by the Company and not owned by Company.

Dealer shall forever protect, save and keep Company and Manufacturer harmless and indemnify Company and Manufacturer against and from all claims, demands, losses, costs, damages, suits, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in connection with the operation of Dealer's business in a manner which constitutes negligence or willful misconduct, except as to any claims of

trademark, copyright or patent infringement with respect to Invisible Fence Systems supplied by Company.

Section 18. Assignment.

This Agreement shall be considered a personal agreement of Dealer and shall not be sold, assigned or transferred without the written consent of Company nor shall this Agreement or any right herein conferred be pledged or hypothecated in any manner whatsoever, nor may any sublicense be granted. Nothing to the contrary withstanding, all of the duties, covenants and obligations of Dealer and Company hereunder shall run in favor of Manufacturer.

Section 19. Trade Secrets.

Dealer during the term of this Agreement, and thereafter, will not use or communicate or divulge to, or for the benefit of, any person, partnership or corporation any trade secrets and confidential information including but not limited to information or knowledge concerning the methods, secret processes, sales or other skills used or employed by Company or Manufacturer which may be communicated to Dealer under the terms of this Agreement. Such knowledge shall include specific knowledge of the names of customers, Invisible Fence System design, any engineering developments or inventions of the Company or Manufacturer, forms of contracts and like information.

Section 20. Waiver of Breach.

No failure of the Company or Manufacturer to exercise any of the rights and options granted hereunder, or to insist upon strict compliance by Dealer, and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of Company's right to demand exact compliance with the terms hereof. A waiver by Company or Manufacturer of any specific default shall not affect or impair the rights of Company or Manufacturer with respect to any subsequent default of the same or different nature, nor shall any delay or omission to exercise any rights arising from a default affect or impair rights of Company or Manufacturer with respect to such default.

Section 21. Miscellaneous.

a. Dealer shall comply in all its actions with all applicable laws and regulations of all jurisdictions within which Dealer shall undertake to promote the sale of Invisible Fence Systems.

b. This Agreement shall be construed in accordance with and governed by the laws of the state of Connecticut.



c. This Agreement shall be binding on the parties hereto, their successors and assigns; provided, however, the right conferred upon Dealer hereunder is personal and may not be assigned or transferred, in whole or in part, directly or indirectly, by operation of law, or otherwise, without the prior written consent of the Company.

d. All notices, including any notice of termination pursuant to Section 17 hereof, shall be in writing and may be served personally, may be mailed by registered or certified mail, return receipt requested, postage prepaid letter, to either party at its address herein set forth or at such address as such party may provide in writing from time to time in the manner provided in this Section 21 (d). Such notices shall be effective immediately when delivered in person, on the fifth day after deposit in the mail in the United States or within the Territory as applicable.

e. No provision of this Agreement may be changed, revised, or waived except by a written agreement signed by the authorized representatives of the parties hereto.

f. This Agreement constitutes the sole and entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, understandings, and communications, whether oral or written.

g. If any provision of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

THE CANINE FENCE COMPANY

ATTEST:

Carol Hill

By: [Signature]

Title: Secretary

(Corporate Seal)

IF DEALER IS INCORPORATED

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

IF DEALER IS NOT INCORPORATED

Witness:

William L. Johnson

By: [Signature]

By: \_\_\_\_\_

EXHIBIT A

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: SERVICE

BACKGROUND:

The Invisible Fencing Organization has established a tradition of providing exemplary service to its customers. This ethic of dedicated service promotes an outstanding reputation for Invisible Fencing and the entire Organization. This reputation has distinct competitive advantages.

Therefore, the following policy is to be implemented:

Dealers are required to service what they sell. Specifically, that Dealers must provide a method for servicing the equipment they sell and the installations they perform.

Dealers must be able to provide customer-site service to any customer for whom they installed within two (2) working days of a request. For those customers who purchased a self-installation system, if on-site service is not practical, then service by mail must be performed with a turn-around time not to exceed three (3) working days.

Dealers are not permitted to charge a fee for the equipment exchanged under warranty. However, Dealers are permitted to charge a service fee for the labor associated with warranty servicing at customer's location.

Dealers are required to resolve, to the best of their ability, all customer complaints. Any customer complaint left unresolved for a period exceeding 60 days must be passed onto either the Manufacturer or Distributor.

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: LOCATION OF OPERATION

BACKGROUND:

Each Dealer enters into a contractual agreement with either the Manufacturer or an authorized Distributor Company. Each contract specifically lists a location where the Dealer's business is intended to be conducted. This constitutes a Dealer's location. A Dealer's location is established to achieve specific marketing purposes. The movement of location without approval may be counterproductive to achieving proper coverage for sales, service and installation. Business conditions sometimes dictate that a Dealer must change business location and it is not always practical to amend the Dealer agreement each time.

Therefore, the following policy is to be implemented:

A Dealer is not permitted to change the location of business beyond a radius of ten miles from the location listed on the Dealer Agreement, unless the change is mutually agreed to and such Agreement is set forth in writing and attached as an Addendum to the Dealer Agreement. Additional locations, annex offices or branch locations owned by the Dealership must be approved in advance and such approval evidenced by Addendum to the Dealer Agreement.

**STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.**

**EFFECTIVE DATE:** September 1, 1987

**RE: USE OF THE INVISIBLE FENCING BRAND NAME FOR CONSUMER  
COMMUNICATION**

Invisible Fencing is a registered trademark owned by Invisible Fence Company, Inc. (hereinafter known as Manufacturer).

It is the responsibility of Invisible Fence Company to control the use of the name Invisible Fencing and to govern its use by its representatives. It is to the benefit of everyone involved in the marketing of Invisible Fencing that the name appear in a clear and consistent fashion. This will generate product recognition and avoid brand name confusion.

Therefore, the following policy is to be implemented:

All advertising material which contains the name of Invisible Fencing must be approved before it appears in public. No approval needs to be obtained when using materials which the Manufacturer has produced.

**Rule of Thumb:** If the Manufacturer does not prepare it and/or supply it, and it contains the name Invisible Fencing, then it requires approval.

Any change in copy or form of Manufacturer-produced material must be approved before it appears in public. This includes advertisements, brochures, flyers, pamphlets, press releases or any other communication intended to appear in public.

Telephone directory listings or advertisements, bearing the Invisible Fencing brand name, must be approved before they appear in public. Placement of telephone directory listings or advertisements is limited to the Dealer's primary trading area. Placements outside this area must be authorized in writing by either the Manufacturer or Distributor.

All advertisements must carry the Dealer's location (city and state) and no advertising response is permitted to be directed to a location other than the Dealer's approved and/or authorized location(s). Responses are permitted to be collected by 800# services as long as the advertisements list the Dealer's and/or Distributor's location.

Letterheads, envelopes, business-cards, business forms and other such materials containing the name Invisible Fence or Invisible Fencing, must conform to a standard form as set forth in samples supplied by the Manufacturer.

APPENDIX A

Comprehensive Liability coverage of no less than \$1,000,000

Products and Completed Operations Coverage of no less than \$500,000

Applicable Workmans Comprehensive Coverage

# **EXHIBIT 3**

DISTRIBUTOR DEALER AGREEMENT

Agreement made as of this 1<sup>st</sup> day of December,  
19 96, by and between The Canine Fence Company  
, a Connecticut corporation  
having its principal place of business at   
22 Heritage Lane, Weston, Connecticut  
(hereinafter referred to as the "Company," ) and   
Fido's Fences, Inc  
having its principal place of business at   
42 Jeffrey Lane Hicksville NY 11801  
(hereinafter referred to as "Dealer").

RECITALS:

WHEREAS, Company is the distributor of a system designed to provide an electronic enclosure for animals ("Invisible Fence System") which System is manufactured by Invisible Fence Company, Inc. of Wayne, PA ("Manufacturer") and covered by U. S. Letters Patent 3,753,421 issued August 21, 1973, United Kingdom Letters Patent No. 1417086 issued May 24, 1973, Bermuda Certificate of Registration of Patent No. 346 issued October 7, 1975 and Canada Letters Patent No. 975841 issued October 7, 1975 and the trademark "Invisible Fencing";

WHEREAS, the Company seeks to appoint Dealer to sell and install the Invisible Fence System, but only upon the terms and conditions set forth herein;

WHEREAS, Dealer wishes, upon the terms and conditions hereinafter set forth, to sell and install Invisible Fence Systems;

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, and intending to be legally bound hereby, Company and Dealer hereby agree as follows:

Section 1. Invisible Fence System Defined.

The term "Invisible Fence System" means the system distributed by the Company at any time during the term of this Agreement which is designed to provide an electronic enclosure for animals through the use of an apparatus containing a receiver which is worn by the animal, a transmitter which produces a radio signal and related electronic apparatus.

Section 2. Grant of License to Use Trademark.

The Company hereby grants to Dealer permission to use the trademark "Invisible Fencing", in connection with Dealer's sale, installation and service of Invisible Fence Systems



hereunder, to the extent and in the manner set forth in written guidelines supplied to Dealer by the Company. Dealer shall immediately cease to use the trademark "Invisible Fencing" upon the expiration or termination of this Agreement for any reason.

Dealer shall not use the words "Invisible Fencing", "Invisible Fence" or any combination of such words in its corporate or partnership name, nor allow such use by others. Dealer will sell or provide no products or services under the trademark "Invisible Fencing" other than the Invisible Fence System.

Section 3. Assuring Quality and Performance Standards.

a. The Invisible Fence System has been developed and tested to assure good quality and dependable performance based upon the use of components of a given level of performance and quality. The Manufacturer has also developed considerable goodwill in connection with the trademark "Invisible Fencing" by providing quality products and service to customers purchasing Invisible Fence Systems. In order to protect the goodwill associated with the Manufacturer, the Invisible Fence System and the "Invisible Fencing" trademark, Dealer agrees: (i) to purchase Invisible Fence Systems, components thereof and similar systems solely from the Company; (ii) to install and service all Invisible Fence Systems sold by Dealer; (iii) to maintain the same high standards as are maintained by the Manufacturer and the Company in selling, installing and servicing Invisible Fence Systems; (iv) not to sell systems similar in nature to the Invisible Fence System (electronic animal containment systems) which are distributed by persons other than the Manufacturer or the Company; and (v) to comply with such customer service and other standards as may be established from time to time by the Manufacturer or the Company regarding the sale, installation and provision of customer service in connection with the Invisible Fence System.

b. Wire and other materials used in the installation of Invisible Fence Systems may be purchased from the Company or from other parties provided that any such wire or other materials must comply with specifications established by the Manufacturer.

c. Dealer agrees to cooperate with the Company in facilitating the Company's control over the nature and quality of services rendered by Dealer in connection with the sale, installation and service of Invisible Fence Systems in order to insure that such sales, installation and service meet the established standards of the Manufacturer and the Company as set forth in the Dealer Manual or otherwise. In furtherance of this purpose, Dealer agrees to permit inspections of the Dealer's operation during business hours and upon reasonable notice to Dealer.

Section 4. Price and Quantity.

a. The Company agrees to sell to Dealer, at the price in the Company's wholesale price list from time to time established by the Company, such quantities of Invisible Fence Systems and components thereof as Dealer may order from the Company provided that the Company reserves the right to fulfill temporarily less than the total of such orders if the capacity of the Manufacturer is less than that required to meet the requirements of the Company. The wholesale price list shall be established from time to time by the Company. The Company reserves the right to make any change in the wholesale price list at any time on thirty (30) days' notice to Dealer. Any such change shall have application to any unshipped portion of an order previously issued by Dealer except in those cases where the Company has already received an assurance of payment accepted by the Company with respect to such order.

b. No purchase order or other written order or acknowledgment shall vary the terms and conditions herein, or otherwise increase the obligations of the Company provided for herein. Dealer agrees that its employees, agents and representatives will represent to each prospective customer each Invisible Fence System and its capabilities and the Company's warranty obligation with respect thereto only as authorized in writing by the Company.

Section 5. Payment and Delivery.

a. Prices to Dealer shall be F.O.B. Company's point of shipment, freight prepaid and added to invoice. Credit limits, if credit is extended to Dealer, and all payment terms shall be established separately for Dealer by the Company in its sole discretion. All prices, discounts, credit and payment terms shall be subject to change prior to acceptance by the Company of any order.

b. Dealer shall be obligated to accept delivery of Invisible Fence Systems as indicated on each order. Title shall pass to Dealer upon delivery to the carrier, and Dealer will assume the risk of loss upon delivery to carrier. In no event shall the Company be responsible to hold or store Invisible Fence Systems ordered for the account of Dealer.

c. The Company shall use its best efforts to fill orders placed with it by Dealer hereunder with reasonable promptness; provided, however, that notwithstanding any provision contained herein to the contrary, the Company shall have no obligation to furnish any Invisible Fence Systems hereunder after it shall have ceased to sell the same in the ordinary course of its business operations, nor shall the Company nor the Manufacturer be responsible or liable for acts or failures to act by its manufacturing facilities or for any loss,

damage, or delay caused by acts of God, war, blockades, embargoes, strikes, lockouts, governmental priorities or any other cause beyond the control of the Company or the Manufacturer.

Section 6. Product Warranty.

Company shall grant to Dealer the same warranty, as the same shall be in effect from time to time, which Manufacturer grants to retail customers; provided, however, that Dealer must return to Company a warranty card giving the name and address of the customer in order for the warranty to be extended to Dealer. No other representations or warranties have been made by the Company or the Manufacturer or relied upon by the Dealer. THE WARRANTY CONTAINED IN THIS SECTION 6 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall Company or Manufacturer be liable for consequential damages sustained in connection with any Invisible Fence System, and Company or Manufacturer neither assumes nor authorizes any representative or other person to assume for it any obligation or liability other than as expressly set forth herein. Dealer may extend any additional warranty protection to its customers in excess of that extended by the Company and Manufacturer to its retail customers; provided, however, that the Company or Manufacturer shall have no responsibility to Dealer or Dealer's customers for such additional warranty protection.

Section 7. Compliance with Laws.

Dealer agrees to make no sale in violation of any law, rule, regulation or order applicable within the Territory or of the United States provided that Dealer has been informed of such law, rule, regulation or order of the United States or otherwise has knowledge thereof.

Section 8. Relationship; Authority.

This Agreement does not in any way create the relationship of joint venture, partnership, employment, or principal and agent between Company and Dealer. Dealer acknowledges and agrees that neither Dealer nor any person acting on behalf of Dealer is or shall be considered an employee of the Company for any reason whatsoever and does not and shall not have any rights to, or participate in, any pension or welfare plans, or any other benefits which the Company now or hereafter maintains for or provides to its employees. Neither Dealer nor any person acting on behalf of Dealer is or shall be deemed to be the legal representative or agent of the Company for any purpose whatsoever, and Dealer is not authorized by the Company to transact business, incur obligations, express or implied, or otherwise act in any manner, in the name of or on behalf of the

Company or the Manufacturer, or to make any promise, warranty, or representation with respect to Invisible Fence Systems or any other matter in the name of or on behalf of the Company. DEALER IS ENGAGED IN ITS OWN INDEPENDENT BUSINESS AND SHALL INDEMNIFY THE COMPANY AND THE MANUFACTURER FROM AND AGAINST ANY DETERMINATION BY ANY COURT OR GOVERNMENT AGENCY IN THE UNITED STATES OR THE TERRITORY THAT DEALER OR ANY PERSON ACTING ON BEHALF OF DEALER IS AN EMPLOYEE OF THE COMPANY CONTRARY TO THE INTENT OF THE PARTIES HERETO. NEITHER THE COMPANY NOR THE MANUFACTURER HAS NO RESPONSIBILITY WITH RESPECT TO ANY EXPENSES OR OBLIGATIONS INCURRED BY DEALER IN CONNECTION WITH THE CARRYING ON OF ITS BUSINESS.

Section 9. Trademarks and Trade Names.

a. Dealer shall use such trade names, trademarks, service marks, designs, slogans and similar property of the Company and Manufacturer, including the trademark "Invisible Fencing" (herein called "Proprietary Marks"), as Company shall designate in marketing the Invisible Fence System. Company hereby represents that it is authorized by the owner or licensee of the Proprietary Marks and that the Company has the rights to the use of such Proprietary Marks.

b. Dealer acknowledges the validity of the Proprietary Marks and agrees that it shall not do anything to infringe upon, harm or contest the rights of Company or Manufacturer in the Proprietary Marks owned by Manufacturer or Company, respectively, or in any other mark or name which incorporates the name "Invisible Fencing". Dealer shall not use any mark or name other than as herein permitted in connection with the advertising or sale of the Invisible Fence System. Dealer shall not place any name or mark, other than the names and marks originally appearing thereon and Dealer's name, address and telephone number, on any products or packages or other materials which Dealer obtains from Company or Manufacturer.

c. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OR OF ANY OTHER MARK OR NAME THAT INCORPORATES THE NAME "INVISIBLE FENCING" INURES TO THE BENEFIT OF THE MANUFACTURER AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE MANUFACTURER SHOULD THIS AGREEMENT BE TERMINATED BY EITHER PARTY FOR ANY REASON.

d. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OWNED BY COMPANY INURES TO THE BENEFIT OF COMPANY AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE COMPANY AT THE TERMINATION OF THIS AGREEMENT.

e. Upon termination of this Agreement for whatever cause, the permission for the use of the Proprietary Marks and names as aforesaid and any interest of Dealer therein shall cease forthwith, and Dealer will not use or claim the right to use any

such Proprietary Marks or colorable imitations thereof. Dealer shall take such action and sign such documents as are reasonably required by Company or Manufacturer to evidence the fact that Dealer has ceased all use of and interest in such property.

Section 10. Policies of Company.

Dealer shall abide by such reasonable and lawful policies and regulations issued from time to time by the Company and by Manufacturer, and such sales quotas as issued by the Company, in connection with Dealer's operations under this Agreement and all matters arising under this Agreement, including but not limited to the policies of the Manufacturer attached hereto as Exhibit "A".

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Section 11. Training of Dealer Personnel.

Dealer will attend, at Dealer's own expense (including costs of transportation and lodging), initial training classes to be conducted by Manufacturer, as well as any additional training classes established by the Company. Dealer shall train each of Dealer's employees involved in the sale or installation of Invisible Fence Systems with the same training provided Dealer by the Company. The Company shall have the right to supervise Dealer's in-house training program and to establish the regulations and requirements of such training. Dealer shall continuously operate full-time a sales and installation business with an adequate number of trained personnel, using Dealer's best efforts, skills and diligence in the conduct thereof and in the regulation of Dealer's employees. Dealer shall employ only those persons who are fit and competent to do such work.

Section 12. Advertising.

a. All advertising relating to Invisible Fence Systems used by Dealer shall be submitted to Company and approved or rejected by Company within thirty (30) working days after receipt by Company, prior to any use thereof by Dealer, which approval shall not be unreasonably withheld. If Company does not reject the advertisement within the said thirty (30) days, then the advertisement shall be deemed approved. Dealer shall not use any advertising material rejected by Company.

b. The Manufacturer shall own all copyrights in the advertising and other materials produced by Dealer relative to the Invisible Fence Systems and Dealer hereby assigns all right, title and interest in and to such copyrights to the Manufacturer. In connection with all such advertisements, Dealer shall use a copyright notice in the following form: "Invisible Fence Company, Inc., 1986 (or the year of first publication)" on all such material produced by Dealer. Dealer shall use the notation "R" with all federally registered marks of the Manufacturer.

Section 13. Insurance.

a. Dealer shall procure and maintain in full force and effect such liability insurance policies as Company and Manufacturer shall designate in such amounts as may be designated from time to time by Company and Manufacturer, protecting Dealer and its officers, employees, representatives and agents against any loss, liability or expense whatsoever from personal injury, death, property damage or loss otherwise arising or occurring from the operation of Dealer's business as it relates to the Invisible Fence Systems, including, but not limited to, the sale, installation and servicing of the Invisible Fence Systems. Dealer is presently required to carry a minimum of \$ \_\_\_\_\_ of products and completed operations insurance coverage, subject to change in the future upon notice by the Company or Manufacturer. Dealer shall make provision for workmen's compensation, unemployment and similar coverage with respect to the operation of its business.

b. Certificates of insurance shall be delivered by the carrier to the Company and Manufacturer showing Dealer's compliance herewith, and certificates shall state that the policies will not be cancelled or materially altered without at least thirty (30) days prior written notice to Company and Manufacturer.

Section 14. Term and Renewal.

The term of this Agreement shall be for a period of one (1) year from the date hereof unless sooner terminated by either party hereto on 90 days' written notice to the other party. The term of this Agreement shall continue from year to year thereafter unless terminated by written notice to the other party at least 90 days prior to the expiration of any one-year term. It is expressly understood that neither party has an expectation of renewal or a unilateral option to renew.

Section 15. Termination.

a. Without prejudice to any other remedy the Company may have for the breach or non-performance of any undertaking or obligation of Dealer hereunder, the Company may terminate this Agreement and refuse to make further sales to Dealer prior to the Expiration of the term set forth in Section 14, by written notice to the Dealer if any of the following events occur, and Dealer acknowledges that termination for any such reason shall constitute just cause for termination:

(i) If Dealer does not conform to any credit terms or policies established by Company;

(ii) If Dealer defaults in the payment of any sums due Company;

(iii) If Dealer defaults in the performance of any agreement made hereunder or breaches this Agreement or any covenant hereunder, and such default is not remedied to the Company's satisfaction within thirty (30) days after written notice thereof to Dealer;

(iv) If Dealer discontinues the business contemplated hereunder for a period of thirty (30) days and the Company provides Dealer with written notice of termination five (5) days prior to the termination date;

(v) Upon termination for any reason whatsoever of the Company's license to distribute Invisible Fence Systems; or

(vi) Upon transfer of ownership of any equity securities of Dealer, except in cases where Dealer has given notice in writing to Company of a proposed transfer of such equity securities and Company has given its written consent thereto.

b. This Agreement shall automatically terminate upon the insolvency of Dealer or if Dealer is declared bankrupt or makes an assignment for the benefit of creditors, or in the event a receiver is appointed or any proceeding is demanded by, for or against Dealer under any provision of any bankruptcy law.

IF DEALER'S APPOINTMENT IS TERMINATED OR IS NOT EXTENDED AT THE END OF THE TERM OF THIS AGREEMENT OR ANY SUCCESSIVE TERM, NEITHER PARTY SHALL BE ENTITLED TO ANY COMPENSATION OR REIMBURSEMENT FOR LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR OTHER LOSSES OCCASIONED BY TERMINATION OF THE RELATIONSHIP.

c. Notice of termination shall be given in the manner provided in Section 21 (d) hereof, and the date of termination shall be the date upon which the notice is effective as provided in Section 21 (d) hereof.

d. Termination of this Agreement shall not affect the rights of the Company to receive, or the obligation of Dealer to make payment for, Invisible Fence Systems ordered by Dealer hereunder prior to the termination date, whether shipped by the Company before or after the termination date.

e. In the event of termination of this Agreement, the Company shall have the first option, but no obligation, to repurchase from Dealer any or all of the Invisible Fence Systems as may then be owned by Dealer at the net price paid by the

Dealer including the cost of insurance and shipping. If the Company does not repurchase from Dealer any of the unsold Invisible Fence Systems, Company will notify other Dealers, if any, that Dealer has unused Invisible Fence Systems available for purchase. Sales terms shall be agreed upon between such other Dealers and Dealer.

Section 16. Duties of Dealer Upon Termination.

Upon the termination of this Agreement for any cause or reason:

a. Dealer will immediately discontinue the use of all trade names, service marks, Proprietary Marks, signs and forms of advertising indicative of Invisible Fencing, or any other name or designation then in use by Dealer, Manufacturer or Company in connection with the business contemplated by this Agreement unless such other name or designation is not confusingly similar to the trademark "Invisible Fencing" or any other trademark, service mark or Proprietary Mark developed, owned or licensed by the Company or Manufacturer.

b. Dealer will not, without the written consent of Company, conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the continental United States during the term of this Agreement and for a period of two (2) years after the date of termination. Sale of chain link or similar physical barrier fences shall not be deemed a violation of such non-competition covenant. During such period of time, Dealer will not employ or seek to employ any person who is employed by any business operated under the trademark or trade name of Invisible Fencing (or derivatives thereof) or by a licensee or sublicensee of Company in the business contemplated by this Agreement and will not, directly or indirectly, induce any such person to leave his or her employment unless Dealer has obtained the prior written approval of Company.

c. Dealer will execute and deliver all other documents reasonably required by Company to accomplish and evidence a complete termination of this Agreement and a surrender by Dealer of all rights hereunder.

d. The covenants contained in this Section shall be construed as independent of any other provision of this Agreement, and the existence of any claim or cause of action of Dealer against Company or Manufacturer whether predicated on this Agreement or otherwise shall not constitute a defense to the



enforcement of these provisions. Violation of any of these clauses shall authorize Company or Manufacturer to seek equitable relief as well as all other relief provided by law.

Section 17. Indemnification.

The Manufacturer agrees to defend and hold the Company or Dealer harmless with respect to any suits or claims arising solely out of an alleged product defect relating to an Invisible Fence System supplied by the Manufacturer and sold by Company or Dealer, provided that prompt notice is given by Company or Dealer to the Manufacturer of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct the defense of any such claim or suit, and that no settlement of any such claim or suit shall be made without the prior written consent of the Manufacturer. In addition, Company or Dealer shall furnish such information regarding itself and the claim in question as Manufacturer may reasonably request and as shall be reasonably required in connection with the defense of such claim or suit. If Manufacturer does not elect to assume the defense of any such claim or suit after notice from Company or Dealer, then Manufacturer will reimburse Company or Dealer for all costs and expenses, including reasonable counsel fees, as they are incurred in connection with investigating, preparing for or defending any such suit or claim.

Manufacturer will defend and hold the Dealer and Company harmless with respect to any suits or claims arising solely out of trademark, copyright or patent infringement relative to the Invisible Fence Systems supplied by the Company and not owned by Company or the use of the Proprietary Marks in connection therewith, provided that prompt notice is given to the Manufacturer and Company of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct defense of any such claim or suit, and that no settlement of any such claim shall be made without the prior written consent of the Manufacturer. Dealer agrees to promptly notify Manufacturer of any unauthorized use of the Proprietary marks or colorable imitations thereof by others. The Manufacturer shall have the sole right and discretion to bring infringement, unfair competition or other proceedings involving the Proprietary Marks or Invisible Fence Systems supplied by the Company and not owned by Company.

Dealer shall forever protect, save and keep Company and Manufacturer harmless and indemnify Company and Manufacturer against and from all claims, demands, losses, costs, damages, suits, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in connection with the operation of Dealer's business in a manner which constitutes negligence or willful misconduct, except as to any claims of

trademark, copyright or patent infringement with respect to Invisible Fence Systems supplied by Company.

Section 18. Assignment.

This Agreement shall be considered a personal agreement of Dealer and shall not be sold, assigned or transferred without the written consent of Company nor shall this Agreement or any right herein conferred be pledged or hypothecated in any manner whatsoever, nor may any sublicense be granted. Nothing to the contrary withstanding, all of the duties, covenants and obligations of Dealer and Company hereunder shall run in favor of Manufacturer.

Section 19. Trade Secrets.

Dealer during the term of this Agreement, and thereafter, will not use or communicate or divulge to, or for the benefit of, any person, partnership or corporation any trade secrets and confidential information including but not limited to information or knowledge concerning the methods, secret processes, sales or other skills used or employed by Company or Manufacturer which may be communicated to Dealer under the terms of this Agreement. Such knowledge shall include specific knowledge of the names of customers, Invisible Fence System design, any engineering developments or inventions of the Company or Manufacturer, forms of contracts and like information.

Section 20. Waiver of Breach.

No failure of the Company or Manufacturer to exercise any of the rights and options granted hereunder, or to insist upon strict compliance by Dealer, and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of Company's right to demand exact compliance with the terms hereof. A waiver by Company or Manufacturer of any specific default shall not affect or impair the rights of Company or Manufacturer with respect to any subsequent default of the same or different nature, nor shall any delay or omission to exercise any rights arising from a default affect or impair rights of Company or Manufacturer with respect to such default.

Section 21. Miscellaneous.

a. Dealer shall comply in all its actions with all applicable laws and regulations of all jurisdictions within which Dealer shall undertake to promote the sale of Invisible Fence Systems.

b. This Agreement shall be construed in accordance with and governed by the laws of the state of Connecticut.

c. This Agreement shall be binding on the parties hereto, their successors and assigns; provided, however, the right conferred upon Dealer hereunder is personal and may not be assigned or transferred, in whole or in part, directly or indirectly, by operation of law, or otherwise, without the prior written consent of the Company.

d. All notices, including any notice of termination pursuant to Section 17 hereof, shall be in writing and may be served personally, may be mailed by registered or certified mail, return receipt requested, postage prepaid letter, to either party at its address herein set forth or at such address as such party may provide in writing from time to time in the manner provided in this Section 21 (d). Such notices shall be effective immediately when delivered in person, on the fifth day after deposit in the mail in the United States or within the Territory as applicable.

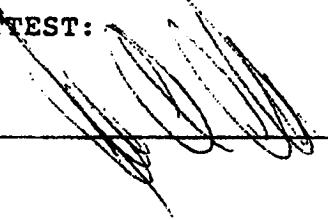
e. No provision of this Agreement may be changed, revised, or waived except by a written agreement signed by the authorized representatives of the parties hereto.

f. This Agreement constitutes the sole and entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, understandings, and communications, whether oral or written.

g. If any provision of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

THE CANINE FENCE COMPANY

ATTEST:   
\_\_\_\_\_

By: Carol Hill

Title: Pres

(Corporate Seal)

IF DEALER IS INCORPORATED

ATTEST:  
Kim Baer

By: X 

Title: \_\_\_\_\_

(Corporate Seal)

IF DEALER IS NOT INCORPORATED

Witness:  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT A

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: SERVICE

BACKGROUND:

The Invisible Fencing Organization has established a tradition of providing exemplary service to its customers. This ethic of dedicated service promotes an outstanding reputation for Invisible Fencing and the entire Organization. This reputation has distinct competitive advantages.

Therefore, the following policy is to be implemented:

Dealers are required to service what they sell. Specifically, that Dealers must provide a method for servicing the equipment they sell and the installations they perform.

Dealers must be able to provide customer-site service to any customer for whom they installed within two (2) working days of a request. For those customers who purchased a self-installation system, if on-site service is not practical, then service by mail must be performed with a turn-around time not to exceed three (3) working days.

Dealers are not permitted to charge a fee for the equipment exchanged under warranty. However, Dealers are permitted to charge a service fee for the labor associated with warranty servicing at customer's location.

Dealers are required to resolve, to the best of their ability, all customer complaints. Any customer complaint left unresolved for a period exceeding 60 days must be passed onto either the Manufacturer or Distributor.

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: LOCATION OF OPERATION

BACKGROUND:

Each Dealer enters into a contractual agreement with either the Manufacturer or an authorized Distributor Company. Each contract specifically lists a location where the Dealer's business is intended to be conducted. This constitutes a Dealer's location. A Dealer's location is established to achieve specific marketing purposes. The movement of location without approval may be counterproductive to achieving proper coverage for sales, service and installation. Business conditions sometimes dictate that a Dealer must change business location and it is not always practical to amend the Dealer agreement each time.

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A Dealer is not permitted to change the location of business beyond a radius of ten miles from the location listed on the Dealer Agreement, unless the change is mutually agreed to and such Agreement is set forth in writing and attached as an Addendum to the Dealer Agreement. Additional locations, annex offices or branch locations owned by the Dealership must be approved in advance and such approval evidenced by Addendum to the Dealer Agreement.

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INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

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COMMUNICATION

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Therefore, the following policy is to be implemented:

All advertising material which contains the name of Invisible Fencing must be approved before it appears in public. No approval needs to be obtained when using materials which the Manufacturer has produced.

Rule of Thumb: If the Manufacturer does not prepare it and/or supply it, and it contains the name Invisible Fencing, then it requires approval.

Any change in copy or form of Manufacturer-produced material must be approved before it appears in public. This includes advertisements, brochures, flyers, pamphlets, press releases or any other communication intended to appear in public.

Telephone directory listings or advertisements, bearing the Invisible Fencing brand name, must be approved before they appear in public. Placement of telephone directory listings or advertisements is limited to the Dealer's primary trading area. Placements outside this area must be authorized in writing by either the Manufacturer or Distributor.

All advertisements must carry the Dealer's location (city and state) and no advertising response is permitted to be directed to a location other than the Dealer's approved and/or authorized location(s). Responses are permitted to be collected by 800# services as long as the advertisements list the Dealer's and/or Distributor's location.

Letterheads, envelopes, business-cards, business forms and other such materials containing the name Invisible Fence or Invisible Fencing, must conform to a standard form as set forth in samples supplied by the Manufacturer.

**INVISIBLE FENCE COMPANY, INC.**

**STATEMENT OF OFFICIAL POLICY**

**EFFECTIVE DATE: APRIL 1, 1989**

**RE: SELF-INSTALLATION KITS**

**BACKGROUND:**

THE INVISIBLE FENCE COMPANY (IFCO) DESIRES THAT INVISIBLE FENCING BE DISTRIBUTED TO THE PUBLIC IN A CONSISTENT AND UNIFORM MANNER. IFCO RECOGNIZES THAT IT IS ECONOMICALLY IMPRACTICAL TO REQUIRE DEALERS TO PURCHASE PRE-ASSEMBLED SELF-INSTALLATION KITS. THEREFORE, DEALERS MUST BE RELIED UPON TO ASSEMBLE SELF-INSTALLATION KITS. TO INSURE THAT THE MATERIALS AND PACKAGING OF SELF-INSTALLATION KITS ARE UNIFORM AND CONSISTENT,

**THE FOLLOWING POLICY IS TO BE IMPLEMENTED:**

**DEALERS MUST MAKE AVAILABLE TO THE PUBLIC A SELF-INSTALLED VERSION OF INVISIBLE FENCING.**

**ALL SALES OF A SELF-INSTALLED VERSION OF INVISIBLE FENCING MUST BE MADE IN AN AUTHORIZED BOX SUPPLIED ONLY BY INVISIBLE FENCE COMPANY, INC., AND MUST CONTAIN, AT LEAST, THE MATERIALS LISTED ON THE BOX AND IN THE SELF-INSTALLATION MANUAL.**

**ALL SALES OF A SELF-INSTALLATION VERSION OF INVISIBLE FENCING MUST BE SUPPLIED WITH THE AUTHORIZED SELF-INSTALLATION MANUAL AND AN APPROVED TRAINING AID.**



APPENDIX A

Comprehensive Liability coverage of no less than \$1,000,000

Products and Completed Operations Coverage of no less than \$500,000

Applicable Workmans Comprehensive Coverage

**THE CANINE FENCE CO.**  
493 Danbury Rd., Wilton, CT 06897  
203-834-2777

January 26, 1992

ALL CANINE FENCE COMPANY DEALERS

STATEMENT OF OFFICIAL POLICY

This letter establishes an official policy as defined in your Dealer contract. It is the policy of The Canine Fence Company that all service and installation vehicles which are used by The Canine Fence Company and its Dealers to provide service and installations to retail customers will conform to established Invisible Fence Design Standards. Specifically, these vehicles will be enclosed vans, either full sized or mini's, painted bright white and liveried in current Invisible Fencing decals. Additional signage is limited to telephone numbers in the appropriate locations and dealer identification which is permitted on the forward passenger doors.

We have long considered the problems of individual choice and preference in vehicle selection and we are very, very sympathetic to the importance of independence to entrepreneurs. We also understand the economic reality of new businesses and the need to deploy existing resources during the formative years of each new Dealership. Because of these considerations we are exempting all currently operated vehicles from this policy.

However, we also recognize the tremendous impact of "one look" among the more than 40 vehicles that are currently traveling all over the markets we serve. Simply put we are professionals and we need to look like professionals. Our current "rag tag" fleet doesn't live up to that standard.

If you have any questions please contact me.

Henry

cc: Bill Annesley  
Jim Staples  
John Purtell

# **EXHIBIT 4**

9:56 AM

01/23/08

Accrual Basis

**Fidos Fences Inc.**

**Register QuickReport**

January 1, 2007 through January 17, 2008

Type	Date	Num	Memo	Account	Cir	Split	Amount
<b>Canine Fence Company</b>							
Check	1/12/2007	4062	110668 in full...	Fleet Bank	X	-SPLIT-	-1,579.95
Check	1/22/2007	4084	110908 on a/...	Fleet Bank	X	Equipment	-6,459.33
Check	2/13/2007	4120	Inv# 110908/...	Fleet Bank	X	Equipment	-7,800.31
Check	2/27/2007	4144	On a/c 11094...	Fleet Bank	X	Equipment	-5,000.00
Check	3/13/2007	4175	bal in full 110...	Fleet Bank	X	Equipment	-5,634.17
Check	3/26/2007	4196	110957-1111...	Fleet Bank	X	-SPLIT-	-4,887.28
Check	4/3/2007	4217	111020-034-...	Fleet Bank	X	-SPLIT-	-10,571.45
Check	4/11/2007	4238	111067-085-...	Fleet Bank	X	Equipment	-15,511.18
Check	4/20/2007	4249	#111065-\$50...	Fleet Bank	X	Equipment	-7,789.20
Check	4/27/2007	4262	inv 111214-2...	Fleet Bank	X	Equipment	-10,060.09
Check	5/4/2007	4278	On a/c 11121...	Fleet Bank	X	Equipment	-15,000.00
Check	5/9/2007	4289	in full #211-\$...	Fleet Bank	X	Equipment	-15,981.28
Check	5/21/2007	4310	111352-361-...	Fleet Bank	X	Equipment	-13,129.38
Check	5/25/2007	4324	111391-390-...	Fleet Bank	X	Equipment	-13,522.04
Check	6/4/2007	4338	111454-424-...	Fleet Bank	X	Equipment	-9,125.69
Check	6/7/2007	4345	111433-455-...	Fleet Bank	X	Equipment	-9,074.95
Check	6/13/2007	4354	111562	Fleet Bank	X	Equipment	-9,848.56
Check	6/21/2007	4371	111618-609-...	Fleet Bank	X	Equipment	-9,127.90
Check	6/30/2007	4382	Inv#111621 \$...	Fleet Bank	X	Equipment	-5,118.53
Check	7/9/2007	4396	bal due in full...	Fleet Bank	X	Equipment	-8,201.25
Check	7/16/2007	4412	111657-675-...	Fleet Bank	X	Equipment	-11,359.55
Check	7/20/2007	4425	111700 On a/...	Fleet Bank	X	Equipment	-9,926.84
Check	7/30/2007	4438	111700-\$853...	Fleet Bank	X	Equipment	-9,337.17
Check	8/3/2007	4453	111763-762-...	Fleet Bank	X	Equipment	-12,970.77
Check	8/13/2007	4462	111774-906-...	Fleet Bank	X	Equipment	-8,385.07
Check	8/20/2007	4473	111871 On a/...	Fleet Bank	X	Equipment	-7,014.58
Check	8/27/2007	4475	in full 111871...	Fleet Bank	X	Equipment	-8,948.97
Check	9/5/2007	4494		Fleet Bank	X	Equipment	-9,805.05
Check	9/12/2007	4504	111965 in full...	Fleet Bank	X	Equipment	-9,058.19
Check	9/19/2007	4521	112057-2042...	Fleet Bank	X	Equipment	-6,725.63
Check	9/27/2007	4534	12098 on a/c ...	Fleet Bank	X	Equipment	-8,707.62
Check	10/2/2007	4544	112098-paid i...	Fleet Bank	X	Equipment	-13,417.36
Check	10/9/2007	4564	Inv.112153 l...	Fleet Bank	X	Equipment	-9,930.79
Check	10/19/2007	4577	112140-152-...	Fleet Bank	X	Equipment	-9,055.47
Check	10/26/2007	4584	112214-Fina...	Fleet Bank	X	Equipment	-5,431.84
Check	11/5/2007	4608	112232-249-...	Fleet Bank	X	Equipment	-6,774.20
Check	11/9/2007	4614	112266-312-...	Fleet Bank	X	Equipment	-8,744.44
Check	11/19/2007	4634	112329 On a/...	Fleet Bank	X	Equipment	-9,000.00
Check	11/28/2007	4647	1112396-389...	Fleet Bank	X	Equipment	-10,411.33
Check	12/12/2007	4675		Fleet Bank	X	Equipment	-6,996.24
Check	12/28/2007	4696	in full #11239...	Fleet Bank	X	-SPLIT-	-23,724.46
Check	1/10/2008	4715	112533	Fleet Bank	X	Equipment	-7,173.75
Check	1/15/2008	4716	112647 on ac...	Fleet Bank	X	Equipment	-9,476.34
<b>Total Canine Fence Company</b>							<b>-404,598.20</b>

TOTAL

# **EXHIBIT 5**

From: Tracy Scarfi <TScarfi@caninefence.com>

To: wcfido@aol.com

Cc: Tallie Linse <TLinse@caninefence.com>

Subject: Annual Dealer Award

Date: Wed, 14 Nov 2007 3:13 pm

Attachments: 2007\_National\_Dealer\_Award\_Program.doc (169K), super\_dealer\_scorecard.doc (154K)

William -

I would like to nominate you for Super Dealer of the Year and need some info from you in order to do so. If you could please fill out the scorecard sheet and return it to me by 12/1/07 that would be great!

Tracy Scarfi  
Marketing Manager  
The Canine Fence Company  
203-834-2423 ext 131  
[tscarfi@caninefence.com](mailto:tscarfi@caninefence.com)  
[www.caninefence.com](http://www.caninefence.com)

493 Danbury Road, Wilton, CT 06897 800-818-DOGS  
www.caninefence.com

Dear William Cohen,

As promised earlier this year we are rewarding you for outstanding performance in 2007 with our program "\$10 for 10's". With this program you will receive \$10 for each "10" you receive on Overall Performance from your Invisible Fence® Brand customers' who complete the surveys we send out this year.

Enclosed is a check made out to Fido's Fences for \$570.00 in recognition of the excellent service and care you and your staff have provided to your customers. We strongly encourage you to use this as an opportunity to recognize your employees' and provide them with incentive to keep up the good work.

We at Canine Fence congratulate you on these jobs well done and hope to see even more in the future.

Best,

Tallie Linse

Featuring

**Invisible Fence**

**THE CANINE FENCE CO.**

Canine Fence Company, Inc.

51

VENDOR ID	NAME	PAYMENT NUMBER	CHECK DATE	51270			
FIDO'S FENCES	Fido's Fences	1060535	10/30/2007				
OUR VOUCHER NUMBER	YOUR VOUCHER NUMBER	DATE	AMOUNT	AMOUNT PAID	DISCOUNT	WRITE-OFF	NET
1063696	10/30/07-10 FOR 10'S	10/30/2007	\$570.00	\$570.00	\$0.00	\$0.00	\$57
			\$570.00	\$570.00	\$0.00	\$0.00	\$570

COMMENT

**THE CANINE FENCE CO.**  
 493 DANBURY ROAD  
 WILTON, CT 06897

CITIBANK, N.A. BR. #646  
 NORWALK, CT 06854  
 51-7281-2211

512

DATE 10/30/2007 AMOUNT \$570

PAY Five Hundred Seventy Dollars And 00 Cents

TO THE ORDER OF Fido's Fences  
 6278 Northern Boulevard  
 East Norwich NY 11732

*(Handwritten Signature)*

⑈051270⑈ ⑆221172610⑆ 44337959⑈



# **EXHIBIT 6**

493 Danbury Road, Wilton, CT 06897 800-818-DOGS  
www.caninefence.com

William Cohen  
Fido's Fences  
6278 Northern Blvd.  
East Norwich, NY 11732

January 17, 2008

Dear William,

Throughout 2007 your account has been consistently past due and you have been incurring finance charges due to your inability to remain current under the terms of our agreement. Canine Fence has made several attempts to contact you directly, left messages with your staff and has requested that you return our calls to discuss this matter further. You have been non-responsive to our requests.

As a result of your inability to maintain a current account balance and unresponsiveness to our requests, Canine Fence Company considers you in payment default and will be following the terms outlined in our agreement dated June 30, 1989. You have 5 days from the date of this letter to rectify the situation and pay your account balance in full. Failure to do so will result in the termination of your dealership agreement. Your account is currently on hold and will remain so until this situation is resolved to our satisfaction.

As of today, January 17, 2008, your total account balance is \$42,067.61 of which \$30,525.70 is past due. The remaining \$11,541.91 will remain current through January 24, 2007 at which time some or all will become past due.

The Dealer agreement you signed with The Canine Fence Company is personal to you, William Cohen, as is the liability. We are willing to discuss the issue with you face-to-face here in Wilton at your leisure. You may contact Tallie Linse at 203-834-2423 x125 to set up a meeting.

Regards,



Jennifer Hill

Featuring

**Invisible Fence**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FIDO'S FENCES INC., a New York  
Corporation,

Plaintiff,

v.

THE CANINE FENCE COMPANY,  
a Connecticut Corporation,

Defendant.

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**ANSWER, AFFIRMATIVE  
DEFENSES AND  
AMENDED COUNTER-  
CLAIM TO AMENDED  
COMPLAINT**

08 CV 754 (LDW) (WDW)

Defendant The Canine Fence Company ("Canine Fence"), by its attorneys Finn Dixon & Herling LLP and LaRusso & Conway, LLP, as and for its Answer, Affirmative Defenses and Amended Counterclaim to the Amended Complaint of plaintiff Fido's Fences, Inc. ("Fido's") (the "Amended Complaint") hereby answers and avers as follows:

**ANSWERING THE AMENDED COMPLAINT**

**ALLEGATIONS CONCERNING THE PARTIES**

1. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Amended Complaint and leaves plaintiff to its proof, except admits that Fido's is a domestic corporation organized under the laws of the State of New York.

2. Admits the allegations set forth in paragraph 2 of the Amended Complaint.

**ALLEGATIONS CONCERNING JURISDICTION AND VENUE**

3. Admits the allegations set forth in paragraph 3 of the Amended Complaint that plaintiff has alleged claims arising under federal statutes, that complete diversity of citizenship exists between the parties, and that jurisdiction is proper in this Court; in all other respects, said paragraph 3 is denied.

4. Admits the allegations set forth in paragraph 4 of the Amended Complaint that Canine Fence is authorized to do business in the State of New York and that this Court has personal jurisdiction over Canine Fence; in all other respects, said paragraph 4 is denied.

5. Admits the allegation set forth in paragraph 5 of the Amended Complaint that venue is proper in this Court; in all other respects, said paragraph 5 is denied.

**ALLEGATIONS CONCERNING FACTS COMMON TO ALL CLAIMS**

**I. ALLEGATIONS CONCERNING FIDO'S FENCES-BACKGROUND FACTS**

6. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Amended Complaint and leaves plaintiff to its proof.

7. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 7 of the Amended Complaint and leaves plaintiff to its proof.

8. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Amended Complaint and leaves plaintiff to its proof.

9. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Amended Complaint and leaves plaintiff to its proof.

10. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 10 of the Amended Complaint and leaves plaintiff to its proof.

11. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 11 of the Amended Complaint and leaves plaintiff to its proof.

12. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Amended Complaint and leaves plaintiff to its proof.

13. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the Amended Complaint and leaves plaintiff to its proof.

14. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 14 of the Amended Complaint and leaves plaintiff to its proof.

15. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 15 of the Amended Complaint and leaves plaintiff to its proof.

II. ALLEGATIONS CONCERNING DEFENDANT-BACKGROUND FACTS

16. Denies the allegations set forth in paragraph 16 of the Amended Complaint, except admits that Canine Fence is an exclusive distributor of the Invisible Fence® brand pet containment system (the "Invisible Fence® System"), an electronic containment system for pets, and offers pet consultants and pet trainers as a service to its customers.

17. Denies the allegations set forth in paragraph 17 of the Amended Complaint, except admits that Canine Fence is an exclusive distributor of the Invisible Fence® System, which system is manufactured by the Invisible Fence Company, Inc. ("IFC"); avers that IFC was formerly located in Wayne, Pennsylvania; and avers that IFC is currently owned by Radio Systems Corporation of Knoxville, Tennessee ("Radio Systems").

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Amended Complaint and leaves plaintiff to its proof, except admits that Richard Peck, creator of the Invisible Fence® System, is the inventor named on United States Patent No. 3,753,421, styled "METHOD AND APPARATUS FOR CONTROLLING AN ANIMAL."

19. Denies the allegations set forth in paragraph 19 of the Amended Complaint, except admits that an Invisible Fence® System may include antenna wiring, a radio receiver mounted on a collar designed to be worn by a pet and a radio transmitter.

20. Denies the allegations set forth in paragraph 20 of the Amended Complaint, except admits that installation of electronic pet containment systems may include digging a trench around the perimeter of a territory, laying and burying a radio antenna, installing a radio transmitter, securing a collar-bearing receiver and activating the system; and avers that with training an animal is taught to avoid the boundary.

21. Denies the allegations set forth in paragraph 21 of the Amended Complaint.

22. Admits the allegations set forth in paragraph 22 of the Amended Complaint, and avers that defendant sells or is licensed to sell the Invisible Fence® System at retail and sub-licenses other retailers within its territory.

III. ALLEGATIONS CONCERNING THE DEFENDANT'S ALLEGED ANTI-COMPETITIVE ACTIONS

23. Denies the allegations set forth in paragraph 23 of the Amended Complaint.

24. Denies the allegations set forth in paragraph 24 of the Amended Complaint.

25. Denies the allegations set forth in paragraph 25 of the Amended Complaint.

26. Denies the allegations set forth in paragraph 26 of the Amended Complaint.

IV. ALLEGATIONS CONCERNING FIDO'S FENCES' RELATIONSHIP TO THE DEFENDANT CANINE FENCE COMPANY AND ITS BREAKDOWN

27. Denies the allegations set forth in paragraph 27 of the Amended Complaint, except admits that defendant and William Coden, then known as William Cohen ("Coden") entered into an agreement on June 30, 1989 and that defendant and plaintiff entered into an agreement on December 1, 1996, the terms of which agreements (collectively, the "Agreement") speak for themselves.

28. Denies the allegations set forth in paragraph 28 of the Amended Complaint, except admits that the parties entered into the Agreement, the terms of which speak for themselves.

29. Denies the allegations set forth in paragraph 29 of the Amended Complaint, except admits that the parties entered into the Agreement, which was continuously renewed for over eighteen (18) years, and avers that the Agreement was terminated effective May 16, 2008.

30. Denies the allegations set forth in paragraph 30 of the Amended Complaint, except admits that plaintiff placed orders with defendant for Invisible Fence® System components and services, and defendant provided Invisible Fence® System components and services in accordance with the Agreement.

31. Denies the allegations set forth in paragraph 31 of the Amended Complaint, and avers that plaintiff was offered the same or better credits terms as other independent dealers.

32. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 32 of the Amended Complaint and leaves plaintiff to its proof, except admits that plaintiff references a document in said paragraph 32, the terms of which speak for themselves.

33. Denies the allegations set forth in paragraph 33 of the Amended Complaint.

34. Denies the allegations set forth in paragraph 34 of the Amended Complaint.

35. Denies the allegations set forth in paragraph 35 of the Amended Complaint.

36. Denies the allegations set forth in paragraph 36 of the Amended Complaint.

37. Denies the allegations set forth in paragraph 37 of the Amended Complaint, except admits that IFC had an award program which defendant implemented in its capacity as an exclusive distributor according to the terms of such award program; that defendant considered



having plaintiff nominated for dealer of the year in the Super Dealer category (a volume-measured category below Mega Dealer), but ultimately decided not to do so; that beginning in 2007 defendant conducted a reward program for cash back to independent licensed dealers based on customer survey responses; and that based upon such customer survey responses, plaintiff was entitled to certain sums back although it fell below the average of defendant's licensed independent dealers.

38. Denies the allegations set forth in paragraph 38 of the Amended Complaint.

39. Denies the allegations set forth in paragraph 39 of the Amended Complaint, except admits that defendant's letter of January 17, 2008 is attached to the Amended Complaint as Exhibit 6.

40. Denies the allegations set forth in paragraph 40 of the Amended Complaint.

41. Denies the allegations set forth in paragraph 41 of the Amended Complaint.

42. Denies the allegations set forth in paragraph 42 of the Amended Complaint, except admits that defendant sent a letter to plaintiff on January 17, 2008, as well as correspondence before that date and thereafter, the terms of which speak for themselves.

43. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 43 of the Amended Complaint and leaves plaintiff to its proof, except denies that plaintiff was unable to cure; admits that defendant sent a letter to plaintiff on January 17, 2008, as well as correspondence before that date and thereafter, the terms of which speak for themselves; and avers that plaintiff responded to the January 17, 2008 letter by telephone on January 18, 2008.

44. Denies the allegations set forth in paragraph 44 of the Amended Complaint; avers that plaintiff, unilaterally and without the required knowledge and approval of defendant, moved

its domain name www.fidosfence.com from an approved site hosted by defendant to an unauthorized site; and further avers that defendant forwarded all business leads and inquiries received, whether electronically, via the internet or by telephone, directly and by email to plaintiff to insure proper receipt, or directed potential customers to plaintiff, until the Agreement was terminated, effective May 16, 2008.

45. Denies the allegations set forth in paragraph 45 of the Amended Complaint; avers that plaintiff, unilaterally and without the required knowledge and approval of defendant, moved its domain name www.fidosfence.com from an approved site hosted by defendant to an unauthorized site; and further avers that defendant forwarded all business leads and inquiries received, whether electronically, via the internet or by telephone, directly and by email to plaintiff to insure proper receipt, or directed potential customers to plaintiff, until the Agreement was terminated, effective May 16, 2008.

46. Denies the allegations set forth in paragraph 46 of the Amended Complaint; avers that plaintiff, unilaterally and without the required knowledge and approval of defendant, moved its domain name www.fidosfence.com from an approved site hosted by defendant to an unauthorized site; and further avers that defendant forwarded all business leads and inquiries received, whether electronically, via the internet or by telephone, directly and by email to plaintiff to insure proper receipt, or directed potential customers to plaintiff, until the Agreement was terminated, effective May 16, 2008.

47. Denies the allegations set forth in paragraph 47 of the Amended Complaint.

48. Denies the allegations set forth in paragraph 48 of the Amended Complaint.

49. Denies the allegations set forth in paragraph 49 of the Amended Complaint.

50. Denies the allegations set forth in paragraph 50 of the Amended Complaint.

51. Denies the allegations set forth in paragraph 51 of the Amended Complaint.

52. Denies the allegations set forth in paragraph 52 of the Amended Complaint.

53. Denies the allegations set forth in paragraph 53 of the Amended Complaint, except admits that the parties entered into the Agreement, the terms of which speak for themselves.

54. Denies the allegations set forth in paragraph 54 of the Amended Complaint, except admits that the parties entered into the Agreement, the terms of which speak for themselves.

55. Denies the allegations set forth in paragraph 55 of the Amended Complaint; avers that plaintiff contacted defendant by telephone on January 18, 2008 and expressed renewed interest in being bought out, such interest having been communicated in the past; and further avers that defendant responded by inviting plaintiff to provide information on its business so that an appropriate valuation could be achieved for discussion.

56. Denies the allegations set forth in paragraph 56 of the Amended Complaint.

57. Denies the allegations set forth in paragraph 57 of the Amended Complaint.

58. Denies the allegations set forth in paragraph 58 of the Amended Complaint.

V. ALLEGATIONS CONCERNING EFFECT ON INTERSTATE TRADE AND COMMERCE

59. Denies the allegations set forth in paragraph 59 of the Amended Complaint.

60. Denies the allegations set forth in paragraph 60 of the Amended Complaint, except admits that defendant is an exclusive distributor of the Invisible Fence® System within seven (7) states located in the Northeastern United States and the Southeastern region of the State of New York, and avers that defendant sells or is licensed to sell at retail and sub-licenses other retailers within its territory.

61. Denies the allegations set forth in paragraph 61 of the Amended Complaint.

VI. ALLEGATIONS CONCERNING THE RELEVANT PRODUCT MARKET

62. Admits the allegations set forth in paragraph 62 of the Amended Complaint.

63. Admits the allegations set forth in paragraph 63 of the Amended Complaint.

64. Admits the allegations set forth in paragraph 64 of the Amended Complaint.

65. Denies the allegations set forth in paragraph 65 of the Amended Complaint, and avers that there are at least twelve (12) different brands of electronic pet containment products and systems that are sold at various prices through retail outlets, the internet, catalog companies and dealers.

66. Denies the allegations set forth in paragraph 66 of the Amended Complaint, except admits that electronic pet containment systems may include antenna wiring, a radio receiver mounted on a collar and a radio transmitter.

67. Denies the allegations set forth in paragraph 67 of the Amended Complaint, except admits that installation of electronic pet containment systems may include digging a trench around the perimeter of a territory, laying and burying a radio antenna, installing a radio transmitter, securing a collar-bearing receiver and activating the system; and avers that with training an animal is taught to avoid the boundary.

68. Denies the allegations set forth in paragraph 68 of the Amended Complaint.

VII. ALLEGATIONS CONCERNING EFFECT ON CONSUMERS AND INJURY TO FIDO'S FENCES

69. Denies the allegations set forth in paragraph 69 of the Amended Complaint.

70. Denies the allegations set forth in paragraph 70 of the Amended Complaint.

71. Denies the allegations set forth in paragraph 71 of the Amended Complaint.

**Answering the First Claim for Relief**  
**Breach of Contract**

72. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 71 of the Amended Complaint as if the same were set forth herein in full.

73. Denies the allegations set forth in paragraph 73 of the Amended Complaint.

74. Denies the allegations set forth in paragraph 74 of the Amended Complaint.

75. Denies the allegations set forth in paragraph 75 of the Amended Complaint.

**Answering the Second Claim for Relief**  
**New York Unfair Competition**

76. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 75 of the Amended Complaint as if the same were set forth herein in full.

77. Denies the allegations set forth in paragraph 77 of the Amended Complaint.

78. Denies the allegations set forth in paragraph 78 of the Amended Complaint.

79. Denies the allegations set forth in paragraph 79 of the Amended Complaint.

**Answering the Third Claim for Relief**  
**Deceptive Acts and Practices under N.Y. GBL § 349-350**

80. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 79 of the Amended Complaint as if the same were set forth herein in full.

81. Denies the allegations set forth in paragraph 81 of the Amended Complaint.

82. Denies the allegations set forth in paragraph 82 of the Amended Complaint.

**Answering the Fourth Claim for Relief**  
**Tortious Interference with Business Relations**

83. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 82 of the Amended Complaint as if the same were set forth herein in full.

84. Denies the allegations set forth in paragraph 84 of the Amended Complaint.

85. Denies the allegations set forth in paragraph 85 of the Amended Complaint.

86. Denies the allegations set forth in paragraph 86 of the Amended Complaint.

87. Denies the allegations set forth in paragraph 87 of the Amended Complaint.

**Answering the Fifth Claim for Relief**  
**Claim for Declaratory Judgment of No Default**

88. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 87 of the Amended Complaint as if the same were set forth herein in full.

89. Denies the allegations set forth in paragraph 89 of the Amended Complaint.

90. Denies the allegations set forth in paragraph 90 of the Amended Complaint.

91. Denies the allegations set forth in paragraph 91 of the Amended Complaint.

92. Denies the allegations set forth in paragraph 92 of the Amended Complaint.

**Answering the Sixth Claim for Relief**  
**Claim for Declaratory Judgment of No Breach**

93. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 92 of the Amended Complaint as if the same were set forth herein in full.

94. Denies the allegations set forth in paragraph 94 of the Amended Complaint.

95. Denies the allegations set forth in paragraph 95 of the Amended Complaint.

96. Denies the allegations set forth in paragraph 96 of the Amended Complaint.

97. Denies the allegations set forth in paragraph 97 of the Amended Complaint.

**Answering the Seventh Claim for Relief**  
**Claim for Declaratory Judgment that Agreement is Null and Void**

98. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 97 of the Amended Complaint as if the same were set forth herein in full.

99. Denies the allegations set forth in paragraph 99 of the Amended Complaint.

100. Denies the allegations set forth in paragraph 100 of the Amended Complaint.

101. Denies the allegations set forth in paragraph 101 of the Amended Complaint.

102. Denies the allegations set forth in paragraph 102 of the Amended Complaint.

**Answering the Eighth Claim for Relief**  
**Claim for Declaratory Judgment that the Non-Compete Clause of the Agreement is Null and Void and Unenforceable as it is Against Public Policy**

103. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 102 of the Amended Complaint as if the same were set forth herein in full.

104. Denies the allegations set forth in paragraph 104 of the Amended Complaint.

105. Denies the allegations set forth in paragraph 105 of the Amended Complaint.

106. Denies the allegations set forth in paragraph 106 of the Amended Complaint.

107. Denies the allegations set forth in paragraph 107 of the Amended Complaint.

**Answering the Ninth Claim for Relief**  
**Request for a Protective/Restraining Order Preventing Plaintiff's Hostile Take Over by Defendant and Misappropriation of Plaintiff's Trade Secret**

108. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 107 of the Amended Complaint as if the same were set forth herein in full.

109. Denies the allegations set forth in paragraph 109 of the Amended Complaint.

110. Denies the allegations set forth in paragraph 110 of the Amended Complaint.

111. Denies the allegations set forth in paragraph 111 of the Amended Complaint.

112. Denies the allegations set forth in paragraph 112 of the Amended Complaint.

**Answering the Tenth Claim for Relief**  
**Declaratory Judgment that Defendant Honor Its Warranties**

113. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 112 of the Amended Complaint as if the same were set forth herein in full.

114. Denies the allegations set forth in paragraph 114 of the Amended Complaint.

115. Denies the allegations set forth in paragraph 115 of the Amended Complaint.

116. Denies the allegations set forth in paragraph 116 of the Amended Complaint.

117. Denies the allegations set forth in paragraph 117 of the Amended Complaint.

**Answering the Eleventh Claim for Relief**  
**Attempted Monopolization of the Electronic Pet Containment System Market**  
**in Violation of § 2 of the Sherman Act**

118. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 117 of the Amended Complaint as if the same were set forth herein in full.

119. Denies the allegations set forth in paragraph 119 of the Amended Complaint.

120. Denies the allegations set forth in paragraph 120 of the Amended Complaint.

**Answering the Twelfth Claim for Relief**  
**Monopolization of the Electronic Pet Containment System Market**  
**in Violation of § 2 of the Sherman Act**

121. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 120 of the Amended Complaint as if the same were set forth herein in full.

122. Denies the allegations set forth in paragraph 122 of the Amended Complaint.

123. Denies the allegations set forth in paragraph 123 of the Amended Complaint.

**Answering the Thirteenth Claim for Relief**  
**Defendant's Illegal Pricing in Violation of the Robinson-Patman Act**  
**Section 2 of the Clayton Act – 15 U.S.C. § 13**

124. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 123 of the Amended Complaint as if the same were set forth herein in full.



125. Denies the allegations set forth in paragraph 125 of the Amended Complaint.

126. Denies the allegations set forth in paragraph 126 of the Amended Complaint.

127. Denies the allegations set forth in paragraph 127 of the Amended Complaint.

**Answering the Fourteenth Claim for Relief  
Defendant's Illegal Tying in Violation of § 3 of the Clayton Act  
15 U.S.C. § 14**

128. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 127 of the Amended Complaint as if the same were set forth herein in full.

129. Denies the allegations set forth in paragraph 129 of the Amended Complaint.

130. Denies the allegations set forth in paragraph 130 of the Amended Complaint.

131. Denies the allegations set forth in paragraph 131 of the Amended Complaint.

**Answering the Fifteenth Claim for Relief  
Defendant's Illegal Exclusive and Non-Compete Dealership Agreements  
Are in Violation of § 3 of the Clayton Act  
15 U.S.C. § 14**

132. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 131 of the Amended Complaint as if the same were set forth herein in full.

133. Denies the allegations set forth in paragraph 133 of the Amended Complaint, except admits that the parties entered into the Agreement, the terms of which speak for itself.

134. Denies the allegations set forth in paragraph 134 of the Amended Complaint.

135. Denies the allegations set forth in paragraph 135 of the Amended Complaint.

136. Denies the allegations set forth in paragraph 136 of the Amended Complaint.

137. Denies the allegations set forth in paragraph 137 of the Amended Complaint.

138. Denies the allegations set forth in paragraph 138 of the Amended Complaint.

139. Denies the allegations set forth in paragraph 139 of the Amended Complaint.

140. Denies the allegations set forth in paragraph 140 of the Amended Complaint.

**Answering the Sixteenth Claim for Relief  
Defendant's Illegal Acquisition of Dealerships  
Are in Violation of § 7 of the Clayton Act  
15 U.S.C.A. § 18**

141. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 140 of the Amended Complaint as if the same were set forth herein in full.

142. Denies the allegations set forth in paragraph 142 of the Amended Complaint.

143. Denies the allegations set forth in paragraph 143 of the Amended Complaint.

144. Denies the allegations set forth in paragraph 144 of the Amended Complaint.

145. Denies the allegations set forth in paragraph 145 of the Amended Complaint.

**Answering the Seventeenth Claim for Relief  
Tying Agreements, Restraint of Trade in Per Se Violation of the Donnelly Act**

146. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 145 of the Amended Complaint as if the same were set forth herein in full.

147. Denies the allegations set forth in paragraph 147 of the Amended Complaint.

148. Denies the allegations set forth in paragraph 148 of the Amended Complaint.

**Answering the Eighteenth Claim for Relief  
Conn. Antitrust Act § 35-24 et seq.**

149. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 148 of the Amended Complaint as if the same were set forth herein in full.

150. Denies the allegations set forth in paragraph 150 of the Amended Complaint.

151. Denies the allegations set forth in paragraph 151 of the Amended Complaint.

**Answering the Nineteenth Claim for Relief  
Declaratory Judgment**

152. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 151 of the Amended Complaint as if the same were set forth herein in full.

153. Denies the allegations set forth in paragraph 153 of the Amended Complaint.
154. Denies the allegations set forth in paragraph 154 of the Amended Complaint.
155. Denies the allegations set forth in paragraph 155 of the Amended Complaint.

**Answering the Twentieth Claim for Relief**  
**Injunctive Relief**

156. Repeats and realleges its responses to the allegations set forth in paragraphs 1 through 155 of the Amended Complaint as if the same were set forth herein in full.

157. Denies the allegations set forth in paragraph 157 of the Amended Complaint.
158. Denies the allegations set forth in paragraph 158 of the Amended Complaint.
159. Denies the allegations set forth in paragraph 159 of the Amended Complaint.
160. Denies the allegations set forth in paragraph 160 of the Amended Complaint.
161. Denies the allegations set forth in paragraph 161 of the Amended Complaint.
162. Denies the allegations set forth in paragraph 162 of the Amended Complaint.
163. Denies the allegations set forth in paragraph 163 of the Amended Complaint.
164. Denies the allegations set forth in paragraph 164 of the Amended Complaint.
165. Denies the allegations set forth in paragraph 165 of the Amended Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

1. The Amended Complaint fails to state a claim for violation of N.Y. GBL § 349 because, *inter alia*, said statute is intended to protect the public; private contract disputes, unique to the parties, do not fall within the ambit of the statute.

**SECOND AFFIRMATIVE DEFENSE**

2. The Amended Complaint fails to state a claim for violation of N.Y. GBL § 350 because, *inter alia*, plaintiff has not alleged false advertisement.

**THIRD AFFIRMATIVE DEFENSE**

3. Plaintiff is estopped from seeking a declaratory judgment that the Agreement is null and void while at the same time seeking damages for breach of the same Agreement.

**FOURTH AFFIRMATIVE DEFENSE**

4. Plaintiff's unclean hands, by reason of its breach of the Agreement, foreclose any claim against defendant.

**FIFTH AFFIRMATIVE DEFENSE**

5. Plaintiff does not have standing to prosecute a private antitrust claim.

**SIXTH AFFIRMATIVE DEFENSE**

6. Plaintiff's claims under 15 U.S.C. § 14 relating to the Agreement, including the non-compete provisions, fail to allege harm to competition generally.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiff has failed to state a claim for which relief can be granted.

### **AMENDED COUNTERCLAIM**

As and for its Amended Counterclaim, and without prejudice to its Affirmative Defenses, defendant Canine Fence alleges as follows:

#### **PARTIES**

1. Canine Fence is a corporation duly organized under the laws of the State of Connecticut, with its principal place of business located in Wilton, Connecticut.

2. Fido's is a corporation duly organized under the laws of the State of New York, having a regular and established place of business within the Eastern District of New York.

#### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

4. Venue is proper under 28 U.S.C. § 1391.

#### **BACKGROUND FACTS ALLEGED IN SUPPORT OF AMENDED COUNTERCLAIM**

5. Canine Fence is the distributor of a system designed to provide an electronic enclosure for animals – the Invisible Fence® brand pet containment system (the “Invisible Fence® System”) – which system is manufactured by the Invisible Fence Company, Inc. (“IFC”), formerly located in Wayne, Pennsylvania and currently owned by Radio Systems Corporation (“Radio Systems”) of Knoxville, Tennessee.

6. Canine Fence is an exclusive distributor of the Invisible Fence® System within seven (7) states in the Northeastern United States and the Southeastern region of the State of New York.

7. As an exclusive distributor, Canine Fence has authority to enter into distribution dealer agreements to engage independent dealers by contract within Canine Fence's exclusive distribution regions, including the ability to license, and thereby police, the use of the Invisible Fence® brand, which specifically includes the trademarks "Invisible®," "Invisible Fence®" and "Invisible Fencing®."

**EXCLUSIVE DEALING AGREEMENT WITH FIDO'S AND CODEN**

8. On June 30, 1989, Canine Fence entered into an agreement with William Coden, then known as William Cohen ("Coden"), appointing Coden as dealer to sell and install Invisible Fence® Systems pursuant to the terms and conditions set forth therein. A true and correct copy of said agreement is attached hereto as Exhibit A.

9. On December 1, 1996, Canine Fence entered into an agreement with Fido's, appointing Fido's as dealer to sell and install Invisible Fence® Systems pursuant to the terms and conditions set forth therein. A true and correct copy of said agreement is attached hereto as Exhibit B. The 1989 and 1996 agreements are collectively referred to herein as the "Agreement." The Agreement provides that it is to be construed in accordance with and governed by the laws of the State of Connecticut.

10. Upon information and belief, Coden is the owner of Fido's.

**PLAINTIFF'S DELINQUENT ACCOUNT**

11. Throughout 2007, Canine Fence continuously warned Fido's of the consequences of Fido's failure to bring its account current and made numerous attempts to set up payment arrangements with Fido's. The past due amount on Fido's account throughout the course of 2007, and more particularly and importantly, at the end of 2007, was dramatically higher than in previous years.

12. On May 2, 2007, Canine Fence notified Fido's that its account balance receivable was \$77,050.01, of which \$26,056.28 was twenty (20) days or more past due, and requested that Fido's bring its account balance down as soon as possible.

13. On May 25, 2007, Canine Fence notified all of its independent dealers, including Fido's, that Canine Fence intended to enforce payment terms and conditions for sale consistent with the terms of the independent dealership agreements and price lists.

14. Canine Fence similarly confirmed with its independent dealers that, beginning June 1, 2007, accounts past due or exceeding credit limits would specifically risk the withholding of sale orders until the account was brought current.

15. On September 5, 2007, Canine Fence notified Fido's that its account balance receivable was \$69,415.54, of which \$19,066.97 was over thirty (30) days past due, and requested payment as soon as possible, reminding Fido's that its account was at risk of being placed on hold.

16. Between September 5, 2007 and December 6, 2007, Canine Fence reminded Fido's on at least eight (8) occasions of its past due accounts, the need to come current in advance of year end and the consequences of not doing so, which included forfeiting the right to attend the company trip, which Coden had attended in previous years.

17. On December 17, 2007, Canine Fence notified Fido's again that its account balance was \$62,569.25, of which \$40,167.08 was past due, and reminded Fido's again that failure to bring the account current before year end would result in the account being placed on hold.

18. On December 28, 2007, Canine Fence reiterated the December 17, 2007 message and urged Fido's to bring its account current by year end and to contact Canine Fence to make payment arrangements.

19. Having its independent dealership accounts twenty (20) days current by year end was and remains critically important to Canine Fence for at least two (2) reasons. First, in connection with Canine Fence's year-end audited financials, Canine Fence must report its pledge of receivables to its lenders in keeping with credit agreements. Due to the nature of Canine Fence's business, Canine Fence's receivables trace directly to amounts owed by its independent dealership accounts. Aging beyond twenty (20) days has a direct negative impact upon Canine Fence's business operations. Second, given the cyclical and seasonal nature of the Invisible Fence® System business, Canine Fence and its independent dealerships, including Fido's, are well aware that year-end aged receivables are unacceptable because winter cash flows are *de minimus*, seasonal inventory increases raise receivables dramatically, and sales to pay down such receivables remain illiquid until late spring.

20. Having heard nothing from Fido's despite repeated requests and having received no payment arrangements from Fido's, Canine Fence notified Fido's on January 14, 2008 that its account had been put on hold.

21. A representative of Fido's contacted Canine Fence on January 17, 2008, asking for more product but admitting that Fido's was unable to pay for the product. Canine Fence told the representative that Fido's account was on hold and that product could not be provided until payment was received. The representative replied that Coden was out of town, and presumably unable to make payment, but nonetheless requested the additional product.



22. In response to Fido's request for more product on credit, Canine Fence wrote to Fido's on January 17, 2008, reiterating that Fido's account was placed on hold and notifying Fido's that it had five (5) days from the date of the letter to pay on the account.

23. In January 2008, Fido's sent two (2) checks to Canine Fence, but as of January 17, 2008, Fido's still had an account balance of \$31,725.17, of which \$21,049.36 was past due. Although Fido's promised another check to pay down its account balance, the check never arrived.

24. On Friday, January 18, 2008, Tracy Scarfi ("Scarfi") marketing manager for Canine Fence, and Coden spoke by telephone. During this conversation, Coden communicated a renewed interest in being bought out, an interest expressed by Fido's to Canine Fence in the past, and Scarfi invited him to provide information on Fido's business so that an appropriate valuation could be achieved for discussion.

25. Scarfi telephoned Coden again on January 21, 2008 to obtain Coden's personal email in deference to the confidential nature of the information requested for valuation, accommodating Coden's anticipated desire to keep such discussions private and away from employees at Fido's. Scarfi followed up with an email to Coden that day requesting business information by January 25, 2008 to facilitate the discussion on a possible buyout.

26. On January 25, 2008, Scarfi telephoned Coden to inquire as to the status of the material previously requested. The conversation was notably pleasant, and Coden promised to provide a written response shortly. Late that afternoon, Scarfi was surprised to receive an email communication from Coden citing "Fido's [sic] abrupt termination." Scarfi responded by assuring Coden that Canine Fence has not terminated the Agreement.

27. On the same day – January 25, 2008 – Jennifer Hill of Canine Fence received a letter from Coden dated January 18, 2008 (one week earlier), the date on which Coden purported to open amicable discussions on a possible buyout. Such correspondence, along with Coden's later email of January 25, 2008, reveals that his purportedly amicable desires for a business buyout was entirely contrived.

28. As of the close of business on January 25, 2008 and thereafter, Fido's refused to comply with the Agreement, falsely claimed unilateral termination (which is not even possible under the Agreement), refused to affirm that it was servicing existing customers with Invisible Fence® Systems, refused to assure or demonstrate action on new business leads forwarded by Canine Fence and interfered with Canine Fence's contractual relationship with IFC by, among other things, jeopardizing IFC's manufacturer's warranty to customers.

29. On January 29, 2008, Canine Fence notified Fido's that its account remained in arrears and was still on hold, but that the Agreement had not been terminated. Fido's was invited to Canine Fence's office to discuss resolution of the account but never responded.

30. Instead, Fido's wrote to Radio Systems (the parent company of IFC), in a deliberate attempt to wrongfully interfere with Canine Fence's exclusive distributorship relationship with IFC.

31. On February 5, 2008, Canine Fence reiterated yet again to Fido's that the Agreement was not terminated. Canine Fence also advised that it had learned that Fido's was telling others that Fido's was no longer an Invisible Fence® System dealer. Canine Fence reminded Fido's of its contractual duties and again offered arrangements and a means to provide Fido's with product so that Fido's could provide Invisible Fence® Systems and components to customers.

32. By letter dated February 14, 2008, Canine Fence communicated to Fido's that customers within Fido's territory were making inquiries and requests for service. Out of concern for the proper care of the Invisible Fence® System customers, Canine Fence specifically requested Fido's to confirm in writing its commitment to service existing and prospective customers under the Agreement. Additionally, Canine Fence represented that it would continue to forward inquiries, leads and requests with the expectation that Fido's would honor its commitment under the Agreement. Fido's never responded.

33. Canine Fence forwarded inquiries from several customers requesting service to Fido's the following day.

34. On February 18, 2008, Canine Fence forwarded a complaint by a customer so dissatisfied with Fido's inaccurate billing and failure to provide product that the customer stated that it did not want to deal with Fido's again under any circumstances whatsoever.

35. Two days later, on February 20, 2008, Fido's commenced a civil action against Canine Fence which was removed to this Court on February 22, 2008 pursuant to 28 U.S.C. § 1441.

**ADDITIONAL INTERFERENCE BY FIDO'S WITH CANINE FENCE'S CONTRACTUAL RELATIONS AND MISUSE OF THE INVISIBLE FENCE® BRAND AND SALES LEADS**

36. On January 28 2008, Coden contacted Michael Moriarty ("Moriarty"), one of Canine Fence's exclusive dealers, stating that he no longer considered himself an Invisible Fence® System dealer and was planning to initiate legal action against Canine Fence. Coden sought Moriarty's participation in the lawsuit against Canine Fence.

37. Similarly, sometime in January 2008, Coden also contacted Gary Dellert ("Dellert"), another of Canine Fence's exclusive dealers, stating that he no longer considered

himself an Invisible Fence® System dealer and was planning to initiate legal action against Canine Fence, presumably seeking participation from Dellert.

38. By March 2008, Canine Fence was concerned about the service of existing customers with Invisible Fence® Systems and what action, if any, Fido's was taking to pursue new sales leads forwarded by Canine Fence.

39. Fido's refused to confirm that it was servicing existing customers in Fido's territory and thereby maintaining customer warranties. As a result, Canine Fence had no choice but to send free replacement batteries to all known Invisible Fence® Systems customers in Fido's territory, because Invisible Fence® Systems require IFC replacement batteries every ninety (90) days in order to ensure proper performance. Only batteries manufactured by IFC are approved for this purpose; otherwise customers lose the protections of the manufacturer's warranty. The prospect of system failures due to dead batteries place customers' pets at grave risk.

40. Between January 17, 2008 and May 16, 2008, Canine Fence forwarded 102 sales leads to Fido's to pursue installation of Invisible Fence® Systems in accordance with the Agreement. In early May 2008, Canine Fence discovered that Fido's was installing systems that were not Invisible Fence® Systems and was purchasing rogue non-Invisible Fence® brand batteries (which, again, would void the customers' warranties from IFC if installed into an Invisible Fence® System).

41. Having confirmed that Fido's was in flagrant breach of its obligations under the Agreement, Canine Fence gave written notice that the Agreement was terminated, effective May 16, 2008.

42. Under the terms of the Agreement, Fido's was obligated upon termination to, among other things, "immediately discontinue the use of all trade names, service marks, Proprietary Marks, signs and forms of advertising indicative of Invisible Fencing, or any other name or designation then in use" by Fido's or Canine Fence "in connection with the business contemplated by this Agreement unless such other name or designation is not confusingly similar to the trademark 'Invisible Fencing' or any other trademark, service mark or Proprietary Mark developed, owned or licensed" by Canine Fence. (See Exhibit B at 9).

43. Fido's was further obligated, upon termination, to "execute and deliver all other documents reasonably required by [Canine Fence] to accomplish and evidence a complete termination of this Agreement and a surrender by [Fido's] of all right." (See Exhibit B at 9).

44. The Agreement also provided that upon termination, Fido's would not, without Canine Fence's written consent "conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the continental United States during the term of this Agreement and for a period of two (2) years after the date of termination . . . ." (See Exhibit B. at p. 9).

45. Rather than honor its continuing obligations under the Agreement (set forth above), Fido's has violated and continues to violate the Agreement by, among other things, failing to (i) immediately discontinue use of the service marks, trademarks and other proprietary marks under the Agreement, including but not limited to linking its telephone numbers, website and other advertising media from the Invisible Fence® proprietary marks; (ii) adhere to the two-year non-compete provision in the Agreement; (iii) deliver to Canine Fence documents transferring all customer files regarding the sale and support of all Invisible Fence® Systems and

related products sold by Fido's during the term of the Agreement; (iv) deliver to Canine Fence all advertising materials using any of the Invisible Fence® proprietary marks.

**FIRST COUNT**  
**(Breach of Contract prior to Termination)**

46. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 45 of this Amended Complaint as if the same were set forth herein in full.

47. The Agreement was a contract between the parties, supported by consideration, under which Canine Fence fully performed.

48. Before Canine Fence terminated the Agreement, Fido's had breached the Agreement by, among other things, installing pet containment systems manufactured by companies other than IFC and failing to pay sums owed to Canine Fence, failing to service existing accounts, and failing to pursue new sales leads.

49. As a result of Fido's breach of the Agreement, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

**SECOND COUNT**  
**(Breach of Contract after Termination)**

50. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 49 of this Amended Counterclaim as if the same were set forth herein in full.

51. After Canine Fence terminated the Agreement, Fido's continued to violate its obligations under the Agreement by, among other things, failing to immediately discontinue use of the service marks, trademarks and other proprietary marks under the Agreement and continuing to link its telephone numbers, website and other advertising media to the Invisible Fence® proprietary marks.

52. As a result of Fido's breach of the Agreement, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

**THIRD COUNT**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

53. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 52 of this Amended Counterclaim as if the same were set forth herein in full.

54. Implied in the Agreement is the covenant of good faith and fair dealing.

55. By its actions, Fido's has breached and continues to breach the covenant of good faith and fair dealing implied in the Agreement.

56. As a result of Fido's breach of the covenant of good faith and fair dealing implied in the Agreement, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

**FOURTH COUNT**  
**(Tortious Interference with Contractual Relations with IFC)**

57. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 56 of this Amended Counterclaim as if the same were set forth herein in full.

58. Canine Fence has a contractual relationship with IFC, the manufacturer of the Invisible Fence® System.

59. Fido's was well aware of the contractual relationship between Canine Fence and IFC and intentionally attempted to interfere with Canine Fence's contractual relationship with IFC.

60. Fido's actions have jeopardized Canine Fence's contractual relationship with IFC and exposed Canine Fence to financial loss.

**FIFTH COUNT**

**(Tortious Interference with Contractual Relations with Michael Moriarty)**

61. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 60 of this Amended Counterclaim as if the same were set forth herein in full.

62. Canine Fence has a contractual relationship with Moriarty, one of its exclusive dealers located in Warwick, Rhode Island.

63. Fido's was well aware of the contractual relationship between Canine Fence and Moriarty and intentionally attempted to interfere with Canine Fence's contractual relations with Moriarty.

64. Fido's actions have jeopardized Canine Fence's contractual relationship with Moriarty and exposed Canine Fence to financial loss.

**SIXTH COUNT**

**(Tortious Interference with Contractual Relations with Gary Dellert)**

65. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 64 of this Amended Counterclaim as if the same were set forth herein in full.

66. Canine Fence has a contractual relationship with Dellert, one of its exclusive dealers located in Falmouth, Maine.

67. Fido's was well aware of the contractual relationship between Canine Fence and Dellert and intentionally attempted to interfere with Canine Fence's contractual relations with Dellert.

68. Fido's actions have jeopardized Canine Fence's contractual relationship with Dellert and exposed Canine Fence to financial loss.



**SEVENTH COUNT**  
**(Tortious Interference with Business Relationship)**

69. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 68 of this Amended Complaint as if the same were set forth herein in full.

70. Canine Fence had a direct financial interest in Fido's proper service of existing customers.

71. In addition, Canine Fence remains obligated, as distributor, to honor the warranty with Fido's Invisible Fence® System customers.

72. Fido's is well aware of Canine Fence's obligation to Fido's customers, and it has intentionally interfered with the business relationship between Canine Fence and Fido's Invisible Fence® System customers.

73. Upon information and belief, in an attempt to induce its Invisible Fence® Systems customers to convert to a different system, Fido's recently mailed postcards to them containing the following: "**BE AWARE:** The Canine Fence Company (Invisible Fence® Brand Distributor in Wilton, Connecticut is currently being sued in Federal Court regarding allegations of Federal antitrust and unfair trade practices. We are strongly advising our customers to disregard any information they may provide and to continue to deal directly with Fido's Fences Inc. to insure the proper service and maintenance of your pet system."

74. As a result of Fido's tortious interference with Canine Fence's business relationships, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

**EIGHTH COUNT**  
**(Tortious Interference with Business Expectancies)**

75. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 73 of this Amended Complaint as if the same were set forth herein in full.

76. As Fido's was well aware, Canine Fence had a business expectancy arising from Fido's proper pursuit of the sales leads that Canine Fence forwarded to Fido's.

77. Fido's tortiously interfered with Canine Fence's business expectancy in the sales leads by diverting such sales leads for its own profit and installing pet containment systems manufactured by companies other than IFC.

78. As a result of Fido's tortious interference with Canine Fence's business expectancies, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

**NINTH COUNT**  
**(Violation of the Connecticut Uniform Trade Secrets Act)**

79. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 77 of this Amended Counterclaim as if the same were set forth herein in full.

80. The sales leads that Canine Fence forwarded to Fido's were treated as confidential by Canine Fence, in that such information was not publicly disclosed nor was it shared with competitors.

81. Fido's was well aware that the sales leads were treated as confidential by Canine Fence.

82. The sales leads that Canine Fence forwarded to Fido's constituted trade secrets under the Connecticut Uniform Trade Secrets Act ("CUTSA"), CONN. GEN. STAT. § 35-51, *et seq.*

83. Upon information and belief, Fido's has installed pet containment systems manufactured by companies other than IFC for customers who were sales leads forwarded by Canine Fence, thus misappropriating trade secrets belonging to Canine Fence in violation of CUTSA.

84. Fido's misappropriation of trade secrets belonging to Canine Fence was willful and malicious.

85. As a result of Fido's violation of CUTSA, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

**TENTH COUNT**  
**(Violation of Connecticut Unfair Trade Practices Act)**

86. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 84 of this Amended Counterclaim as if the same were set forth herein in full.

87. During the period relevant to the events set forth herein, Fido's committed unfair or deceptive acts or practices in the conduct of trade or commerce which continue to harm Canine Fence in Connecticut, in violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), CONN. GEN. STAT. § 42-110a, *et seq.*

88. Canine Fence has suffered an ascertainable loss of money or property as a result of Fido's unfair or deceptive acts as set forth above in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

89. Upon filing of this Amended Counterclaim, a copy will be mailed to the Connecticut Attorney General and the Commissioner of Consumer Protection as pursuant to CONN. GEN. STAT. § 42-110g(c).

90. Fido's acted willfully, knowingly and fraudulently so as to warrant an award of punitive damages to Canine Fence pursuant to CONN. GEN. STAT. § 42-110g(a).

91. Further, Fido's CUTPA violations will continue unless enjoined by this Court pursuant to CONN. GEN. STAT. § 42-110m, and, therefore, Canine Fence does not have an adequate remedy solely at law.

**ELEVENTH COUNT**  
**(Violation of N.Y. GEN. BUS. LAW § 349)**

92. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 90 of this Amended Counterclaim as if the same were set forth herein in full.

93. During the period relevant to the events set forth herein, Fido's willfully and knowingly committed unlawful acts or practices in the conduct of its business, trade or commerce or in the furnishing of any service in New York which harmed and continued to harm Canine Fence, in violation of N.Y. GEN. BUS. LAW § 349.

94. Canine Fence has suffered an ascertainable loss of money or property as a result of Fido's unlawful acts or practices as set forth above in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

95. Fido's acted willfully and knowingly so as to warrant treble damages pursuant to N.Y. GEN. BUS. LAW § 349.

96. Further, Fido's willful and knowing violations will continue unless enjoined by this Court pursuant to N.Y. GEN. BUS. LAW § 349, and, therefore, Canine Fence does not have an adequate remedy solely at law.

**TWELFTH COUNT**  
**(Misappropriation of Trade Secrets)**

97. Defendant repeats and realleges the allegations set forth in paragraphs 1 through 95 of this Amended Counterclaim as if the same were set forth herein in full.

98. The sales leads that Canine Fence forwarded to Fido's were treated as confidential by Canine Fence, in that such information was not publicly disclosed nor was it shared with competitors.

99. Fido's was well aware that the sales leads were treated as confidential by Canine Fence.

100. The sales leads that Canine Fence forwarded to Fido's constituted trade secrets under New York common law.

101. Upon information and belief, Fido's has installed pet containment systems manufactured by companies other than IFC for customers who were sales leads forwarded by Canine Fence, thus misappropriating trade secrets belonging to Canine Fence in violation of New York common law.

102. Fido's gross and wanton conduct warrants an award of punitive damages.

103. As a result of Fido's misappropriation of Canine Fence's trade secrets, Canine Fence has suffered monetary damages in an amount to be determined at trial but believed to be well in excess of \$1,000,000, exclusive of interest and costs.

WHEREFORE, defendant The Canine Fence Company respectfully requests that this Court:

1. Enter judgment in favor of defendant The Canine Fence Company and against plaintiff Fido's Fences Inc. on the Amended Complaint as follows:

(a) Adjudge and decree that all of plaintiff's claims are denied;

- (b) Adjudge and decree that plaintiff's Amended Complaint be dismissed with prejudice; and
- (c) Award defendant all costs of suit; and
- 2. Enter judgment in favor of defendant The Canine Fence Company and against plaintiff Fido's Fences Inc. on the Amended Counterclaim as follows:
  - (a) With respect to the First Count, awarding monetary damages, together with interest thereon;
  - (b) With respect to the Second Count, awarding monetary damages, together with interest thereon;
  - (c) With respect to the Third Count, awarding monetary damages, together with interest thereon;
  - (d) With respect to the Fourth Count, awarding monetary damages, together with interest thereon;
  - (e) With respect to the Fifth Count, awarding monetary damages, together with interest thereon;
  - (f) With respect to the Sixth Count, awarding monetary damages, together with interest thereon;
  - (g) With respect to the Seventh Count, awarding monetary damages, together with interest thereon;
  - (h) With respect to the Eighth Count, awarding monetary damages, together with interest thereon;

(i) With respect to the Ninth Count, awarding monetary damages, together with interest thereon, punitive damages and attorneys' fees as a result of plaintiff's willful and malicious violation of CUTSA, pursuant to CONN. GEN. STAT. § 35-53;

(j) With respect to the Tenth Count:

(1) granting monetary damages pursuant to CONN. GEN. STAT. § 42-110g, together with interest thereon, in an amount to be determined at trial, but believed to be in excess of \$1,000,000, exclusive of interest and costs;

(2) granting injunctive relief preliminary and permanently enjoining plaintiff from engaging in future violations of CUTPA, pursuant to CONN. GEN. STAT. § 42-110g(d);

(3) granting punitive damages in an amount to be determined at trial pursuant to CONN. GEN. STAT. § 42-110g(a); and

(4) awarding reasonable attorneys' fees pursuant to CONN. GEN. STAT. § 42-110g(d);

(k) With respect to the Eleventh Count:

(1) granting monetary damages pursuant to N.Y. GEN. BUS. LAW § 349(h), together with interest thereon, in an amount to be determined at trial, but believed to be in excess of \$1,000,000, exclusive of interest and costs;

(2) granting injunctive relief preliminary and permanently enjoining plaintiff from engaging in future violations of N.Y. GEN. BUS. LAW § 349(h);

(3) granting punitive damages in an amount to be determined at trial pursuant to N.Y. GEN. BUS. LAW § 349(h); and

(4) awarding reasonable attorneys' fees pursuant to N.Y. GEN. BUS. LAW § 349(h);

(l) With respect to the Twelfth Count, awarding monetary damages, together with interest thereon, punitive damages and attorneys' fees as a result of plaintiff's gross and wanton conduct;

(m) Awarding costs of suit, and

(n) Such other and further relief as this Court may deem just and proper.

Dated: August 14, 2008

FINN DIXON & HERLING LLP

/s/ Richard S. Gora

Patrick J. McHugh (PM 7087)

Richard S. Gora (RG 0431)

FINN DIXON & HERLING LLP

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- and -

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E-mail: law@larussoandconway.com

Attorneys for defendant The Canine Fence  
Company



**CERTIFICATION**

I hereby certify that on August 14, 2008, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon the following parties and participants:

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/s/ Richard S. Gora  
Richard S. Gora

# EXHIBIT A

DISTRIBUTOR DEALER AGREEMENT

Agreement made as of this 30<sup>th</sup> day of JUNE,  
19 89, by and between The Canine Fence Company,  
a Connecticut corporation,  
having its principal place of business at 22 Heritage Lane, Weston, Connecticut,  
(hereinafter referred to as the "Company,") and WILLIAM  
COHEN  
having its principal place of business at ROSLYN, N.J.  
(hereinafter referred to as "Dealer").

*WPA  
WC  
OK  
key*

RECITALS:

WHEREAS, Company is the distributor of a system designed to provide an electronic enclosure for animals ("Invisible Fence System") which System is manufactured by Invisible Fence Company, Inc. of Wayne, PA ("Manufacturer") and covered by U. S. Letters Patent 3,753,421 issued August 21, 1973, United Kingdom Letters Patent No. 1417086 issued May 24, 1973, Bermuda Certificate of Registration of Patent No. 346 issued October 7, 1975 and Canada Letters Patent No. 975841 issued October 7, 1975 and the trademark "Invisible Fencing";

WHEREAS, the Company seeks to appoint Dealer to sell and install the Invisible Fence System, but only upon the terms and conditions set forth herein;

WHEREAS, Dealer wishes, upon the terms and conditions hereinafter set forth, to sell and install Invisible Fence Systems;

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, and intending to be legally bound hereby, Company and Dealer hereby agree as follows:

Section 1. Invisible Fence System Defined.

The term "Invisible Fence System" means the system distributed by the Company at any time during the term of this Agreement which is designed to provide an electronic enclosure for animals through the use of an apparatus containing a receiver which is worn by the animal, a transmitter which produces a radio signal and related electronic apparatus.

Section 2. Grant of License to Use Trademark.

The Company hereby grants to Dealer permission to use the trademark "Invisible Fencing", in connection with Dealer's sale, installation and service of Invisible Fence Systems

hereunder, to the extent and in the manner set forth in written guidelines supplied to Dealer by the Company. Dealer shall immediately cease to use the trademark "Invisible Fencing" upon the expiration or termination of this Agreement for any reason.

Dealer shall not use the words "Invisible Fencing", "Invisible Fence" or any combination of such words in its corporate or partnership name, nor allow such use by others. Dealer will sell or provide no products or services under the trademark "Invisible Fencing" other than the Invisible Fence System.

Section 3. Assuring Quality and Performance Standards.

a. The Invisible Fence System has been developed and tested to assure good quality and dependable performance based upon the use of components of a given level of performance and quality. The Manufacturer has also developed considerable goodwill in connection with the trademark "Invisible Fencing" by providing quality products and service to customers purchasing Invisible Fence Systems. In order to protect the goodwill associated with the Manufacturer, the Invisible Fence System and the "Invisible Fencing" trademark, Dealer agrees: (i) to purchase Invisible Fence Systems, components thereof and similar systems solely from the Company; (ii) to install and service all Invisible Fence Systems sold by Dealer; (iii) to maintain the same high standards as are maintained by the Manufacturer and the Company in selling, installing and servicing Invisible Fence Systems; (iv) not to sell systems similar in nature to the Invisible Fence System (electronic animal containment systems) which are distributed by persons other than the Manufacturer or the Company; and (v) to comply with such customer service and other standards as may be established from time to time by the Manufacturer or the Company regarding the sale, installation and provision of customer service in connection with the Invisible Fence System.

b. Wire and other materials used in the installation of Invisible Fence Systems may be purchased from the Company or from other parties provided that any such wire or other materials must comply with specifications established by the Manufacturer.

c. Dealer agrees to cooperate with the Company in facilitating the Company's control over the nature and quality of services rendered by Dealer in connection with the sale, installation and service of Invisible Fence Systems in order to insure that such sales, installation and service meet the established standards of the Manufacturer and the Company as set forth in the Dealer Manual or otherwise. In furtherance of this purpose, Dealer agrees to permit inspections of the Dealer's operation during business hours and upon reasonable notice to Dealer.

Section 4. Price and Quantity.

a. The Company agrees to sell to Dealer, at the price in the Company's wholesale price list from time to time established by the Company, such quantities of Invisible Fence Systems and components thereof as Dealer may order from the Company provided that the Company reserves the right to fulfill temporarily less than the total of such orders if the capacity of the Manufacturer is less than that required to meet the requirements of the Company. The wholesale price list shall be established from time to time by the Company. The Company reserves the right to make any change in the wholesale price list at any time on thirty (30) days' notice to Dealer. Any such change shall have application to any unshipped portion of an order previously issued by Dealer except in those cases where the Company has already received an assurance of payment accepted by the Company with respect to such order.

b. No purchase order or other written order or acknowledgment shall vary the terms and conditions herein, or otherwise increase the obligations of the Company provided for herein. Dealer agrees that its employees, agents and representatives will represent to each prospective customer each Invisible Fence System and its capabilities and the Company's warranty obligation with respect thereto only as authorized in writing by the Company.

Section 5. Payment and Delivery.

a. Prices to Dealer shall be F.O.B. Company's point of shipment, freight prepaid and added to invoice. Credit limits, if credit is extended to Dealer, and all payment terms shall be established separately for Dealer by the Company in its sole discretion. All prices, discounts, credit and payment terms shall be subject to change prior to acceptance by the Company of any order.

b. Dealer shall be obligated to accept delivery of Invisible Fence Systems as indicated on each order. Title shall pass to Dealer upon delivery to the carrier, and Dealer will assume the risk of loss upon delivery to carrier. In no event shall the Company be responsible to hold or store Invisible Fence Systems ordered for the account of Dealer.

c. The Company shall use its best efforts to fill orders placed with it by Dealer hereunder with reasonable promptness; provided, however, that notwithstanding any provision contained herein to the contrary, the Company shall have no obligation to furnish any Invisible Fence Systems hereunder after it shall have ceased to sell the same in the ordinary course of its business operations, nor shall the Company nor the Manufacturer be responsible or liable for acts or failures to act by its manufacturing facilities or for any loss;

damage, or delay caused by acts of God, war, blockades, embargoes, strikes, lockouts, governmental priorities or any other cause beyond the control of the Company or the Manufacturer.

Section 6. Product Warranty.

Company shall grant to Dealer the same warranty, as the same shall be in effect from time to time, which Manufacturer grants to retail customers; provided, however, that Dealer must return to Company a warranty card giving the name and address of the customer in order for the warranty to be extended to Dealer. No other representations or warranties have been made by the Company or the Manufacturer or relied upon by the Dealer. THE WARRANTY CONTAINED IN THIS SECTION 6 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall Company or Manufacturer be liable for consequential damages sustained in connection with any Invisible Fence System, and Company or Manufacturer neither assumes nor authorizes any representative or other person to assume for it any obligation or liability other than as expressly set forth herein. Dealer may extend any additional warranty protection to its customers in excess of that extended by the Company and Manufacturer to its retail customers; provided, however, that the Company or Manufacturer shall have no responsibility to Dealer or Dealer's customers for such additional warranty protection.

Section 7. Compliance with Laws.

Dealer agrees to make no sale in violation of any law, rule, regulation or order applicable within the Territory or of the United States provided that Dealer has been informed of such law, rule, regulation or order of the United States or otherwise has knowledge thereof.

Section 8. Relationship; Authority.

This Agreement does not in any way create the relationship of joint venture, partnership, employment, or principal and agent between Company and Dealer. Dealer acknowledges and agrees that neither Dealer nor any person acting on behalf of Dealer is or shall be considered an employee of the Company for any reason whatsoever and does not and shall not have any rights to, or participate in, any pension or welfare plans, or any other benefits which the Company now or hereafter maintains for or provides to its employees. Neither Dealer nor any person acting on behalf of Dealer is or shall be deemed to be the legal representative or agent of the Company for any purpose whatsoever, and Dealer is not authorized by the Company to transact business, incur obligations, express or implied, or otherwise act in any manner, in the name of or on behalf of the

Company or the Manufacturer, or to make any promise, warranty, or representation with respect to Invisible Fence Systems or any other matter in the name of or on behalf of the Company. DEALER IS ENGAGED IN ITS OWN INDEPENDENT BUSINESS AND SHALL INDEMNIFY THE COMPANY AND THE MANUFACTURER FROM AND AGAINST ANY DETERMINATION BY ANY COURT OR GOVERNMENT AGENCY IN THE UNITED STATES OR THE TERRITORY THAT DEALER OR ANY PERSON ACTING ON BEHALF OF DEALER IS AN EMPLOYEE OF THE COMPANY CONTRARY TO THE INTENT OF THE PARTIES HERETO. NEITHER THE COMPANY NOR THE MANUFACTURER HAS NO RESPONSIBILITY WITH RESPECT TO ANY EXPENSES OR OBLIGATIONS INCURRED BY DEALER IN CONNECTION WITH THE CARRYING ON OF ITS BUSINESS.

Section 9. Trademarks and Trade Names.

a. Dealer shall use such trade names, trademarks, service marks, designs, slogans and similar property of the Company and Manufacturer, including the trademark "Invisible Fencing" (herein called "Proprietary Marks"), as Company shall designate in marketing the Invisible Fence System. Company hereby represents that it is authorized by the owner or licensee of the Proprietary Marks and that the Company has the rights to the use of such Proprietary Marks.

b. Dealer acknowledges the validity of the Proprietary Marks and agrees that it shall not do anything to infringe upon, harm or contest the rights of Company or Manufacturer in the Proprietary Marks owned by Manufacturer or Company, respectively, or in any other mark or name which incorporates the name "Invisible Fencing". Dealer shall not use any mark or name other than as herein permitted in connection with the advertising or sale of the Invisible Fence System. Dealer shall not place any name or mark, other than the names and marks originally appearing thereon and Dealer's name, address and telephone number, on any products or packages or other materials which Dealer obtains from Company or Manufacturer.

c. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OR OF ANY OTHER MARK OR NAME THAT INCORPORATES THE NAME "INVISIBLE FENCING" INURES TO THE BENEFIT OF THE MANUFACTURER AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE MANUFACTURER SHOULD THIS AGREEMENT BE TERMINATED BY EITHER PARTY FOR ANY REASON.

d. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OWNED BY COMPANY INURES TO THE BENEFIT OF COMPANY AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE COMPANY AT THE TERMINATION OF THIS AGREEMENT.

e. Upon termination of this Agreement for whatever cause, the permission for the use of the Proprietary Marks and names as aforesaid and any interest of Dealer therein shall cease forthwith, and Dealer will not use or claim the right to use any

such Proprietary Marks or colorable imitations thereof. Dealer shall take such action and sign such documents as are reasonably required by Company or Manufacturer to evidence the fact that Dealer has ceased all use of and interest in such property.

Section 10. Policies of Company.

Dealer shall abide by such reasonable and lawful policies and regulations issued from time to time by the Company and by Manufacturer, and such sales quotas as issued by the Company, in connection with Dealer's operations under this Agreement and all matters arising under this Agreement, including but not limited to the policies of the Manufacturer attached hereto as Exhibit "A".

Section 11. Training of Dealer Personnel.

Dealer will attend, at Dealer's own expense (including costs of transportation and lodging), initial training classes to be conducted by Manufacturer, as well as any additional training classes established by the Company. Dealer shall train each of Dealer's employees involved in the sale or installation of Invisible Fence Systems with the same training provided Dealer by the Company. The Company shall have the right to supervise Dealer's in-house training program and to establish the regulations and requirements of such training. Dealer shall continuously operate full-time a sales and installation business with an adequate number of trained personnel, using Dealer's best efforts, skills and diligence in the conduct thereof and in the regulation of Dealer's employees. Dealer shall employ only those persons who are fit and competent to do such work.

Section 12. Advertising.

a. All advertising relating to Invisible Fence Systems used by Dealer shall be submitted to Company and approved or rejected by Company within thirty (30) working days after receipt by Company, prior to any use thereof by Dealer, which approval shall not be unreasonably withheld. If Company does not reject the advertisement within the said thirty (30) days, then the advertisement shall be deemed approved. Dealer shall not use any advertising material rejected by Company.

b. The Manufacturer shall own all copyrights in the advertising and other materials produced by Dealer relative to the Invisible Fence Systems and Dealer hereby assigns all right, title and interest in and to such copyrights to the Manufacturer. In connection with all such advertisements, Dealer shall use a copyright notice in the following form: "Invisible Fence Company, Inc., 1986 (or the year of first publication)" on all such material produced by Dealer. Dealer shall use the notation "R" with all federally registered marks of the Manufacturer.



Section 13. Insurance.

a. Dealer shall procure and maintain in full force and effect such liability insurance policies as Company and Manufacturer shall designate in such amounts as may be designated from time to time by Company and Manufacturer, protecting Dealer and its officers, employees, representatives and agents against any loss, liability or expense whatsoever from personal injury, death, property damage or loss otherwise arising or occurring from the operation of Dealer's business as it relates to the Invisible Fence Systems, including, but not limited to, the sale, installation and servicing of the Invisible Fence Systems. Dealer is presently required to carry a minimum of \$ SEE Appendix A. of products and completed operations insurance coverage, subject to change in the future upon notice by the Company or Manufacturer. Dealer shall make provision for workmen's compensation, unemployment and similar coverage with respect to the operation of its business.

b. Certificates of insurance shall be delivered by the carrier to the Company and Manufacturer showing Dealer's compliance herewith, and certificates shall state that the policies will not be cancelled or materially altered without at least thirty (30) days prior written notice to Company and Manufacturer.

Section 14. Term and Renewal.

The term of this Agreement shall be for a period of one (1) year from the date hereof unless sooner terminated by either party hereto on 90 days' written notice to the other party. The term of this Agreement shall continue from year to year thereafter unless terminated by written notice to the other party at least 90 days prior to the expiration of any one-year term. It is expressly understood that neither party has an expectation of renewal or a unilateral option to renew.

Section 15. Termination.

a. Without prejudice to any other remedy the Company may have for the breach or non-performance of any undertaking or obligation of Dealer hereunder, the Company may terminate this Agreement and refuse to make further sales to Dealer prior to the Expiration of the term set forth in Section 14, by written notice to the Dealer if any of the following events occur, and Dealer acknowledges that termination for any such reason shall constitute just cause for termination:

- (i) If Dealer does not conform to any credit terms or policies established by Company;

(ii) If Dealer defaults in the payment of any sums due Company;

(iii) If Dealer defaults in the performance of any agreement made hereunder or breaches this Agreement or any covenant hereunder, and such default is not remedied to the Company's satisfaction within thirty (30) days after written notice thereof to Dealer;

(iv) If Dealer discontinues the business contemplated hereunder for a period of thirty (30) days and the Company provides Dealer with written notice of termination five (5) days prior to the termination date;

(v) Upon termination for any reason whatsoever of the Company's license to distribute Invisible Fence Systems; or

(vi) Upon transfer of ownership of any equity securities of Dealer, except in cases where Dealer has given notice in writing to Company of a proposed transfer of such equity securities and Company has given its written consent thereto.

b. This Agreement shall automatically terminate upon the insolvency of Dealer or if Dealer is declared bankrupt or makes an assignment for the benefit of creditors, or in the event a receiver is appointed or any proceeding is demanded by, for or against Dealer under any provision of any bankruptcy law.

IF DEALER'S APPOINTMENT IS TERMINATED OR IS NOT EXTENDED AT THE END OF THE TERM OF THIS AGREEMENT OR ANY SUCCESSIVE TERM, NEITHER PARTY SHALL BE ENTITLED TO ANY COMPENSATION OR REIMBURSEMENT FOR LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR OTHER LOSSES OCCASIONED BY TERMINATION OF THE RELATIONSHIP.

c. Notice of termination shall be given in the manner provided in Section 21 (d) hereof, and the date of termination shall be the date upon which the notice is effective as provided in Section 21 (d) hereof.

d. Termination of this Agreement shall not affect the rights of the Company to receive, or the obligation of Dealer to make payment for, Invisible Fence Systems ordered by Dealer hereunder prior to the termination date, whether shipped by the Company before or after the termination date.

e. In the event of termination of this Agreement, the Company shall have the first option, but no obligation, to repurchase from Dealer any or all of the Invisible Fence Systems as may then be owned by Dealer at the net price paid by the

Dealer including the cost of insurance and shipping. If the Company does not repurchase from Dealer any of the unsold Invisible Fence Systems, Company will notify other Dealers, if any, that Dealer has unused Invisible Fence Systems available for purchase. Sales terms shall be agreed upon between such other Dealers and Dealer.

Section 16. Duties of Dealer Upon Termination.

Upon the termination of this Agreement for any cause or reason:

a. Dealer will immediately discontinue the use of all trade names, service marks, Proprietary Marks, signs and forms of advertising indicative of Invisible Fencing, or any other name or designation then in use by Dealer, Manufacturer or Company in connection with the business contemplated by this Agreement unless such other name or designation is not confusingly similar to the trademark "Invisible Fencing" or any other trademark, service mark or Proprietary Mark developed, owned or licensed by the Company or Manufacturer.

b. Dealer will not, without the written consent of Company, conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the continental United States during the term of this Agreement and for a period of two (2) years after the date of termination. Sale of chain link or similar physical barrier fences shall not be deemed a violation of such non-competition covenant. During such period of time, Dealer will not employ or seek to employ any person who is employed by any business operated under the trademark or trade name of Invisible Fencing (or derivatives thereof) or by a licensee or sublicensee of Company in the business contemplated by this Agreement and will not, directly or indirectly, induce any such person to leave his or her employment unless Dealer has obtained the prior written approval of Company.

c. Dealer will execute and deliver all other documents reasonably required by Company to accomplish and evidence a complete termination of this Agreement and a surrender by Dealer of all rights hereunder.

d. The covenants contained in this Section shall be construed as independent of any other provision of this Agreement, and the existence of any claim or cause of action of Dealer against Company or Manufacturer whether predicated on this Agreement or otherwise shall not constitute a defense to the

enforcement of these provisions. Violation of any of these clauses shall authorize Company or Manufacturer to seek equitable relief as well as all other relief provided by law.

Section 17. Indemnification.

The Manufacturer agrees to defend and hold the Company or Dealer harmless with respect to any suits or claims arising solely out of an alleged product defect relating to an Invisible Fence System supplied by the Manufacturer and sold by Company or Dealer, provided that prompt notice is given by Company or Dealer to the Manufacturer of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct the defense of any such claim or suit, and that no settlement of any such claim or suit shall be made without the prior written consent of the Manufacturer. In addition, Company or Dealer shall furnish such information regarding itself and the claim in question as Manufacturer may reasonably request and as shall be reasonably required in connection with the defense of such claim or suit. If Manufacturer does not elect to assume the defense of any such claim or suit after notice from Company or Dealer, then Manufacturer will reimburse Company or Dealer for all costs and expenses, including reasonable counsel fees, as they are incurred in connection with investigating, preparing for or defending any such suit or claim.

Manufacturer will defend and hold the Dealer and Company harmless with respect to any suits or claims arising solely out of trademark, copyright or patent infringement relative to the Invisible Fence Systems supplied by the Company and not owned by Company or the use of the Proprietary Marks in connection therewith, provided that prompt notice is given to the Manufacturer and Company of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct defense of any such claim or suit, and that no settlement of any such claim shall be made without the prior written consent of the Manufacturer. Dealer agrees to promptly notify Manufacturer of any unauthorized use of the Proprietary marks or colorable imitations thereof by others. The Manufacturer shall have the sole right and discretion to bring infringement, unfair competition or other proceedings involving the Proprietary Marks or Invisible Fence Systems supplied by the Company and not owned by Company.

Dealer shall forever protect, save and keep Company and Manufacturer harmless and indemnify Company and Manufacturer against and from all claims, demands, losses, costs, damages, suits, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in connection with the operation of Dealer's business in a manner which constitutes negligence or willful misconduct, except as to any claims of

trademark, copyright or patent infringement with respect to Invisible Fence Systems supplied by Company.

Section 18. Assignment.

This Agreement shall be considered a personal agreement of Dealer and shall not be sold, assigned or transferred without the written consent of Company nor shall this Agreement or any right herein conferred be pledged or hypothecated in any manner whatsoever, nor may any sublicense be granted. Nothing to the contrary withstanding, all of the duties, covenants and obligations of Dealer and Company hereunder shall run in favor of Manufacturer.

Section 19. Trade Secrets.

Dealer during the term of this Agreement, and thereafter, will not use or communicate or divulge to, or for the benefit of, any person, partnership or corporation any trade secrets and confidential information including but not limited to information or knowledge concerning the methods, secret processes, sales or other skills used or employed by Company or Manufacturer which may be communicated to Dealer under the terms of this Agreement. Such knowledge shall include specific knowledge of the names of customers, Invisible Fence System design, any engineering developments or inventions of the Company or Manufacturer, forms of contracts and like information.

Section 20. Waiver of Breach.

No failure of the Company or Manufacturer to exercise any of the rights and options granted hereunder, or to insist upon strict compliance by Dealer, and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of Company's right to demand exact compliance with the terms hereof. A waiver by Company or Manufacturer of any specific default shall not affect or impair the rights of Company or Manufacturer with respect to any subsequent default of the same or different nature, nor shall any delay or omission to exercise any rights arising from a default affect or impair rights of Company or Manufacturer with respect to such default.

Section 21. Miscellaneous.

a. Dealer shall comply in all its actions with all applicable laws and regulations of all jurisdictions within which Dealer shall undertake to promote the sale of Invisible Fence Systems.

b. This Agreement shall be construed in accordance with and governed by the laws of the state of Connecticut.

c. This Agreement shall be binding on the parties hereto, their successors and assigns; provided, however, the right conferred upon Dealer hereunder is personal and may not be assigned or transferred, in whole or in part, directly or indirectly, by operation of law, or otherwise, without the prior written consent of the Company.

d. All notices, including any notice of termination pursuant to Section 17 hereof, shall be in writing and may be served personally, may be mailed by registered or certified mail, return receipt requested, postage prepaid letter, to either party at its address herein set forth or at such address as such party may provide in writing from time to time in the manner provided in this Section 21 (d). Such notices shall be effective immediately when delivered in person, on the fifth day after deposit in the mail in the United States or within the Territory as applicable.

e. No provision of this Agreement may be changed, revised, or waived except by a written agreement signed by the authorized representatives of the parties hereto.

f. This Agreement constitutes the sole and entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, understandings, and communications, whether oral or written.

g. If any provision of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

THE CANINE FENCE COMPANY

ATTEST:

Carol Hill

By: [Signature]

Title: Secretary

(Corporate Seal)

IF DEALER IS INCORPORATED

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

IF DEALER IS NOT INCORPORATED

Witness:

William L. Johnson

By: [Signature]

By: \_\_\_\_\_

EXHIBIT A

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: SERVICE

BACKGROUND:

The Invisible Fencing Organization has established a tradition of providing exemplary service to its customers. This ethic of dedicated service promotes an outstanding reputation for Invisible Fencing and the entire Organization. This reputation has distinct competitive advantages.

Therefore, the following policy is to be implemented:

Dealers are required to service what they sell. Specifically, that Dealers must provide a method for servicing the equipment they sell and the installations they perform.

Dealers must be able to provide customer-site service to any customer for whom they installed within two (2) working days of a request. For those customers who purchased a self-installation system, if on-site service is not practical, then service by mail must be performed with a turn-around time not to exceed three (3) working days.

Dealers are not permitted to charge a fee for the equipment exchanged under warranty. However, Dealers are permitted to charge a service fee for the labor associated with warranty servicing at customer's location.

Dealers are required to resolve, to the best of their ability, all customer complaints. Any customer complaint left unresolved for a period exceeding 60 days must be passed onto either the Manufacturer or Distributor.



STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: LOCATION OF OPERATION

BACKGROUND:

Each Dealer enters into a contractual agreement with either the Manufacturer or an authorized Distributor Company. Each contract specifically lists a location where the Dealer's business is intended to be conducted. This constitutes a Dealer's location. A Dealer's location is established to achieve specific marketing purposes. The movement of location without approval may be counterproductive to achieving proper coverage for sales, service and installation. Business conditions sometimes dictate that a Dealer must change business location and it is not always practical to amend the Dealer agreement each time.

Therefore, the following policy is to be implemented:

A Dealer is not permitted to change the location of business beyond a radius of ten miles from the location listed on the Dealer's Agreement, unless the change is mutually agreed to and such Agreement is set forth in writing and attached as an Addendum to the Dealer Agreement. Additional locations, annex offices or branch locations owned by the Dealership must be approved in advance and such approval evidenced by Addendum to the Dealer Agreement.

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: USE OF THE INVISIBLE FENCING BRAND NAME FOR CONSUMER  
COMMUNICATION

Invisible Fencing is a registered trademark owned by Invisible Fence Company, Inc. (hereinafter known as Manufacturer).

It is the responsibility of Invisible Fence Company to control the use of the name Invisible Fencing and to govern its use by its representatives. It is to the benefit of everyone involved in the marketing of Invisible Fencing that the name appear in a clear and consistent fashion. This will generate product recognition and avoid brand name confusion.

Therefore, the following policy is to be implemented:

All advertising material which contains the name of Invisible Fencing must be approved before it appears in public. No approval needs to be obtained when using materials which the Manufacturer has produced.

Rule of Thumb: If the Manufacturer does not prepare it and/or supply it, and it contains the name Invisible Fencing, then it requires approval.

Any change in copy or form of Manufacturer-produced material must be approved before it appears in public. This includes advertisements, brochures, flyers, pamphlets, press releases or any other communication intended to appear in public.

Telephone directory listings or advertisements, bearing the Invisible Fencing brand name, must be approved before they appear in public. Placement of telephone directory listings or advertisements is limited to the Dealer's primary trading area. Placements outside this area must be authorized in writing by either the Manufacturer or Distributor.

All advertisements must carry the Dealer's location (city and state) and no advertising response is permitted to be directed to a location other than the Dealer's approved and/or authorized location(s). Responses are permitted to be collected by 800# services as long as the advertisements list the Dealer's and/or Distributor's location.

Letterheads, envelopes, business-cards, business forms and other such materials containing the name Invisible Fence or Invisible Fencing, must conform to a standard form as set forth in samples supplied by the Manufacturer.

APPENDIX A

Comprehensive Liability coverage of no less than \$1,000,000

Products and Completed Operations Coverage of no less than  
\$500,000

Applicable Workmans Comprehensive Coverage

# EXHIBIT B

DISTRIBUTOR DEALER AGREEMENT

Agreement made as of this 1<sup>st</sup> day of December,  
19 96, by and between The Canine Fence Company  
, a Connecticut corporation,  
having its principal place of business at \_\_\_\_\_  
22 Heritage Lane, Weston, Connecticut  
(hereinafter referred to as the "Company,") and \_\_\_\_\_  
Fido's Fences, Inc  
having its principal place of business at \_\_\_\_\_  
42 Jeffrey Lane Hicksville NY 11801  
(hereinafter referred to as "Dealer").

RECITALS:

WHEREAS, Company is the distributor of a system designed to provide an electronic enclosure for animals ("Invisible Fence System") which System is manufactured by Invisible Fence Company, Inc. of Wayne, PA ("Manufacturer") and covered by U. S. Letters Patent 3,753,421 issued August 21, 1973, United Kingdom Letters Patent No. 1417086 issued May 24, 1973, Bermuda Certificate of Registration of Patent No. 346 issued October 7, 1975 and Canada Letters Patent No. 975841 issued October 7, 1975 and the trademark "Invisible Fencing";

WHEREAS, the Company seeks to appoint Dealer to sell and install the Invisible Fence System, but only upon the terms and conditions set forth herein;

WHEREAS, Dealer wishes, upon the terms and conditions hereinafter set forth, to sell and install Invisible Fence Systems;

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, and intending to be legally bound hereby, Company and Dealer hereby agree as follows:

Section 1. Invisible Fence System Defined.

The term "Invisible Fence System" means the system distributed by the Company at any time during the term of this Agreement which is designed to provide an electronic enclosure for animals through the use of an apparatus containing a receiver which is worn by the animal, a transmitter which produces a radio signal and related electronic apparatus.

Section 2. Grant of License to Use Trademark.

The Company hereby grants to Dealer permission to use the trademark "Invisible Fencing", in connection with Dealer's sale, installation and service of Invisible Fence Systems

hereunder, to the extent and in the manner set forth in written guidelines supplied to Dealer by the Company. Dealer shall immediately cease to use the trademark "Invisible Fencing" upon the expiration or termination of this Agreement for any reason.

Dealer shall not use the words "Invisible Fencing", "Invisible Fence" or any combination of such words in its corporate or partnership name, nor allow such use by others. Dealer will sell or provide no products or services under the trademark "Invisible Fencing" other than the Invisible Fence System.

Section 3. Assuring Quality and Performance Standards.

a. The Invisible Fence System has been developed and tested to assure good quality and dependable performance based upon the use of components of a given level of performance and quality. The Manufacturer has also developed considerable goodwill in connection with the trademark "Invisible Fencing" by providing quality products and service to customers purchasing Invisible Fence Systems. In order to protect the goodwill associated with the Manufacturer, the Invisible Fence System and the "Invisible Fencing" trademark, Dealer agrees: (i) to purchase Invisible Fence Systems, components thereof and similar systems solely from the Company; (ii) to install and service all Invisible Fence Systems sold by Dealer; (iii) to maintain the same high standards as are maintained by the Manufacturer and the Company in selling, installing and servicing Invisible Fence Systems; (iv) not to sell systems similar in nature to the Invisible Fence System (electronic animal containment systems) which are distributed by persons other than the Manufacturer or the Company; and (v) to comply with such customer service and other standards as may be established from time to time by the Manufacturer or the Company regarding the sale, installation and provision of customer service in connection with the Invisible Fence System.

b. Wire and other materials used in the installation of Invisible Fence Systems may be purchased from the Company or from other parties provided that any such wire or other materials must comply with specifications established by the Manufacturer.

c. Dealer agrees to cooperate with the Company in facilitating the Company's control over the nature and quality of services rendered by Dealer in connection with the sale, installation and service of Invisible Fence Systems in order to insure that such sales, installation and service meet the established standards of the Manufacturer and the Company as set forth in the Dealer Manual or otherwise. In furtherance of this purpose, Dealer agrees to permit inspections of the Dealer's operation during business hours and upon reasonable notice to Dealer.

Section 4. Price and Quantity.

a. The Company agrees to sell to Dealer, at the price in the Company's wholesale price list from time to time established by the Company, such quantities of Invisible Fence Systems and components thereof as Dealer may order from the Company provided that the Company reserves the right to fulfill temporarily less than the total of such orders if the capacity of the Manufacturer is less than that required to meet the requirements of the Company. The wholesale price list shall be established from time to time by the Company. The Company reserves the right to make any change in the wholesale price list at any time on thirty (30) days' notice to Dealer. Any such change shall have application to any unshipped portion of an order previously issued by Dealer except in those cases where the Company has already received an assurance of payment accepted by the Company with respect to such order.

b. No purchase order or other written order or acknowledgment shall vary the terms and conditions herein, or otherwise increase the obligations of the Company provided for herein. Dealer agrees that its employees, agents and representatives will represent to each prospective customer each Invisible Fence System and its capabilities and the Company's warranty obligation with respect thereto only as authorized in writing by the Company.

Section 5. Payment and Delivery.

a. Prices to Dealer shall be F.O.B. Company's point of shipment, freight prepaid and added to invoice. Credit limits, if credit is extended to Dealer, and all payment terms shall be established separately for Dealer by the Company in its sole discretion. All prices, discounts, credit and payment terms shall be subject to change prior to acceptance by the Company of any order.

b. Dealer shall be obligated to accept delivery of Invisible Fence Systems as indicated on each order. Title shall pass to Dealer upon delivery to the carrier, and Dealer will assume the risk of loss upon delivery to carrier. In no event shall the Company be responsible to hold or store Invisible Fence Systems ordered for the account of Dealer.

c. The Company shall use its best efforts to fill orders placed with it by Dealer hereunder with reasonable promptness; provided, however, that notwithstanding any provision contained herein to the contrary, the Company shall have no obligation to furnish any Invisible Fence Systems hereunder after it shall have ceased to sell the same in the ordinary course of its business operations, nor shall the Company nor the Manufacturer be responsible or liable for acts or failures to act by its manufacturing facilities or for any loss,

damage, or delay caused by acts of God, war, blockades, embargoes, strikes, lockouts, governmental priorities or any other cause beyond the control of the Company or the Manufacturer.

Section 6. Product Warranty.

Company shall grant to Dealer the same warranty, as the same shall be in effect from time to time, which Manufacturer grants to retail customers; provided, however, that Dealer must return to Company a warranty card giving the name and address of the customer in order for the warranty to be extended to Dealer. No other representations or warranties have been made by the Company or the Manufacturer or relied upon by the Dealer. THE WARRANTY CONTAINED IN THIS SECTION 6 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall Company or Manufacturer be liable for consequential damages sustained in connection with any Invisible Fence System, and Company or Manufacturer neither assumes nor authorizes any representative or other person to assume for it any obligation or liability other than as expressly set forth herein. Dealer may extend any additional warranty protection to its customers in excess of that extended by the Company and Manufacturer to its retail customers; provided, however, that the Company or Manufacturer shall have no responsibility to Dealer or Dealer's customers for such additional warranty protection.

Section 7. Compliance with Laws.

Dealer agrees to make no sale in violation of any law, rule, regulation or order applicable within the Territory or of the United States provided that Dealer has been informed of such law, rule, regulation or order of the United States or otherwise has knowledge thereof.

Section 8. Relationship; Authority.

This Agreement does not in any way create the relationship of joint venture, partnership, employment, or principal and agent between Company and Dealer. Dealer acknowledges and agrees that neither Dealer nor any person acting on behalf of Dealer is or shall be considered an employee of the Company for any reason whatsoever and does not and shall not have any rights to, or participate in, any pension or welfare plans, or any other benefits which the Company now or hereafter maintains for or provides to its employees. Neither Dealer nor any person acting on behalf of Dealer is or shall be deemed to be the legal representative or agent of the Company for any purpose whatsoever, and Dealer is not authorized by the Company to transact business, incur obligations, express or implied, or otherwise act in any manner, in the name of or on behalf of the



Company or the Manufacturer, or to make any promise, warranty, or representation with respect to Invisible Fence Systems or any other matter in the name of or on behalf of the Company. DEALER IS ENGAGED IN ITS OWN INDEPENDENT BUSINESS AND SHALL INDEMNIFY THE COMPANY AND THE MANUFACTURER FROM AND AGAINST ANY DETERMINATION BY ANY COURT OR GOVERNMENT AGENCY IN THE UNITED STATES OR THE TERRITORY THAT DEALER OR ANY PERSON ACTING ON BEHALF OF DEALER IS AN EMPLOYEE OF THE COMPANY CONTRARY TO THE INTENT OF THE PARTIES HERETO. NEITHER THE COMPANY NOR THE MANUFACTURER HAS NO RESPONSIBILITY WITH RESPECT TO ANY EXPENSES OR OBLIGATIONS INCURRED BY DEALER IN CONNECTION WITH THE CARRYING ON OF ITS BUSINESS.

Section 9. Trademarks and Trade Names.

a. Dealer shall use such trade names, trademarks, service marks, designs, slogans and similar property of the Company and Manufacturer, including the trademark "Invisible Fencing" (herein called "Proprietary Marks"), as Company shall designate in marketing the Invisible Fence System. Company hereby represents that it is authorized by the owner or licensee of the Proprietary Marks and that the Company has the rights to the use of such Proprietary Marks.

b. Dealer acknowledges the validity of the Proprietary Marks and agrees that it shall not do anything to infringe upon, harm or contest the rights of Company or Manufacturer in the Proprietary Marks owned by Manufacturer or Company, respectively, or in any other mark or name which incorporates the name "Invisible Fencing". Dealer shall not use any mark or name other than as herein permitted in connection with the advertising or sale of the Invisible Fence System. Dealer shall not place any name or mark, other than the names and marks originally appearing thereon and Dealer's name, address and telephone number, on any products or packages or other materials which Dealer obtains from Company or Manufacturer.

c. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OR OF ANY OTHER MARK OR NAME THAT INCORPORATES THE NAME "INVISIBLE FENCING" INURES TO THE BENEFIT OF THE MANUFACTURER AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE MANUFACTURER SHOULD THIS AGREEMENT BE TERMINATED BY EITHER PARTY FOR ANY REASON.

d. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OWNED BY COMPANY INURES TO THE BENEFIT OF COMPANY AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE COMPANY AT THE TERMINATION OF THIS AGREEMENT.

e. Upon termination of this Agreement for whatever cause, the permission for the use of the Proprietary Marks and names as aforesaid and any interest of Dealer therein shall cease forthwith, and Dealer will not use or claim the right to use any

such Proprietary Marks or colorable imitations thereof. Dealer shall take such action and sign such documents as are reasonably required by Company or Manufacturer to evidence the fact that Dealer has ceased all use of and interest in such property.

Section 10. Policies of Company.

Dealer shall abide by such reasonable and lawful policies and regulations issued from time to time by the Company and by Manufacturer, and such sales quotas as issued by the Company, in connection with Dealer's operations under this Agreement and all matters arising under this Agreement, including but not limited to the policies of the Manufacturer attached hereto as Exhibit "A".

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WC

Section 11. Training of Dealer Personnel.

Dealer will attend, at Dealer's own expense (including costs of transportation and lodging), initial training classes to be conducted by Manufacturer, as well as any additional training classes established by the Company. Dealer shall train each of Dealer's employees involved in the sale or installation of Invisible Fence Systems with the same training provided Dealer by the Company. The Company shall have the right to supervise Dealer's in-house training program and to establish the regulations and requirements of such training. Dealer shall continuously operate full-time a sales and installation business with an adequate number of trained personnel, using Dealer's best efforts, skills and diligence in the conduct thereof and in the regulation of Dealer's employees. Dealer shall employ only those persons who are fit and competent to do such work.

Section 12. Advertising.

a. All advertising relating to Invisible Fence Systems used by Dealer shall be submitted to Company and approved or rejected by Company within thirty (30) working days after receipt by Company, prior to any use thereof by Dealer, which approval shall not be unreasonably withheld. If Company does not reject the advertisement within the said thirty (30) days, then the advertisement shall be deemed approved. Dealer shall not use any advertising material rejected by Company.

b. The Manufacturer shall own all copyrights in the advertising and other materials produced by Dealer relative to the Invisible Fence Systems and Dealer hereby assigns all right, title and interest in and to such copyrights to the Manufacturer. In connection with all such advertisements, Dealer shall use a copyright notice in the following form: "Invisible Fence Company, Inc., 1986 (or the year of first publication)" on all such material produced by Dealer. Dealer shall use the notation "R" with all federally registered marks of the Manufacturer.

Section 13. Insurance.

a. Dealer shall procure and maintain in full force and effect such liability insurance policies as Company and Manufacturer shall designate in such amounts as may be designated from time to time by Company and Manufacturer, protecting Dealer and its officers, employees, representatives and agents against any loss, liability or expense whatsoever from personal injury, death, property damage or loss otherwise arising or occurring from the operation of Dealer's business as it relates to the Invisible Fence Systems, including, but not limited to, the sale, installation and servicing of the Invisible Fence Systems. Dealer is presently required to carry a minimum of \$ \_\_\_\_\_ of products and completed operations insurance coverage, subject to change in the future upon notice by the Company or Manufacturer. Dealer shall make provision for workmen's compensation, unemployment and similar coverage with respect to the operation of its business.

b. Certificates of insurance shall be delivered by the carrier to the Company and Manufacturer showing Dealer's compliance herewith, and certificates shall state that the policies will not be cancelled or materially altered without at least thirty (30) days prior written notice to Company and Manufacturer.

Section 14. Term and Renewal.

The term of this Agreement shall be for a period of one (1) year from the date hereof unless sooner terminated by either party hereto on 90 days' written notice to the other party. The term of this Agreement shall continue from year to year thereafter unless terminated by written notice to the other party at least 90 days prior to the expiration of any one-year term. It is expressly understood that neither party has an expectation of renewal or a unilateral option to renew.

Section 15. Termination.

a. Without prejudice to any other remedy the Company may have for the breach or non-performance of any undertaking or obligation of Dealer hereunder, the Company may terminate this Agreement and refuse to make further sales to Dealer prior to the Expiration of the term set forth in Section 14, by written notice to the Dealer if any of the following events occur, and Dealer acknowledges that termination for any such reason shall constitute just cause for termination:

(i) If Dealer does not conform to any credit terms or policies established by Company;

(ii) If Dealer defaults in the payment of any sums due Company;

(iii) If Dealer defaults in the performance of any agreement made hereunder or breaches this Agreement or any covenant hereunder, and such default is not remedied to the Company's satisfaction within thirty (30) days after written notice thereof to Dealer;

(iv) If Dealer discontinues the business contemplated hereunder for a period of thirty (30) days and the Company provides Dealer with written notice of termination five (5) days prior to the termination date;

(v) Upon termination for any reason whatsoever of the Company's license to distribute Invisible Fence Systems; or

(vi) Upon transfer of ownership of any equity securities of Dealer, except in cases where Dealer has given notice in writing to Company of a proposed transfer of such equity securities and Company has given its written consent thereto.

b. This Agreement shall automatically terminate upon the insolvency of Dealer or if Dealer is declared bankrupt or makes an assignment for the benefit of creditors, or in the event a receiver is appointed or any proceeding is demanded by, for or against Dealer under any provision of any bankruptcy law.

IF DEALER'S APPOINTMENT IS TERMINATED OR IS NOT EXTENDED AT THE END OF THE TERM OF THIS AGREEMENT OR ANY SUCCESSIVE TERM, NEITHER PARTY SHALL BE ENTITLED TO ANY COMPENSATION OR REIMBURSEMENT FOR LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR OTHER LOSSES OCCASIONED BY TERMINATION OF THE RELATIONSHIP.

c. Notice of termination shall be given in the manner provided in Section 21 (d) hereof, and the date of termination shall be the date upon which the notice is effective as provided in Section 21 (d) hereof.

d. Termination of this Agreement shall not affect the rights of the Company to receive, or the obligation of Dealer to make payment for, Invisible Fence Systems ordered by Dealer hereunder prior to the termination date, whether shipped by the Company before or after the termination date.

e. In the event of termination of this Agreement, the Company shall have the first option, but no obligation, to repurchase from Dealer any or all of the Invisible Fence Systems as may then be owned by Dealer at the net price paid by the

Dealer including the cost of insurance and shipping. If the Company does not repurchase from Dealer any of the unsold Invisible Fence Systems, Company will notify other Dealers, if any, that Dealer has unused Invisible Fence Systems available for purchase. Sales terms shall be agreed upon between such other Dealers and Dealer.

Section 16. Duties of Dealer Upon Termination.

Upon the termination of this Agreement for any cause or reason:

a. Dealer will immediately discontinue the use of all trade names, service marks, Proprietary Marks, signs and forms of advertising indicative of Invisible Fencing, or any other name or designation then in use by Dealer, Manufacturer or Company in connection with the business contemplated by this Agreement unless such other name or designation is not confusingly similar to the trademark "Invisible Fencing" or any other trademark, service mark or Proprietary Mark developed, owned or licensed by the Company or Manufacturer.

b. Dealer will not, without the written consent of Company, conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the continental United States during the term of this Agreement and for a period of two (2) years after the date of termination. Sale or chain link or similar physical barrier fences shall not be deemed a violation of such non-competition covenant. During such period of time, Dealer will not employ or seek to employ any person who is employed by any business operated under the trademark or trade name of Invisible Fencing (or derivatives thereof) or by a licensee or sublicensee of Company in the business contemplated by this Agreement and will not, directly or indirectly, induce any such person to leave his or her employment unless Dealer has obtained the prior written approval of Company.

c. Dealer will execute and deliver all other documents reasonably required by Company to accomplish and evidence a complete termination of this Agreement and a surrender by Dealer of all rights hereunder.

d. The covenants contained in this Section shall be construed as independent of any other provision of this Agreement, and the existence of any claim or cause of action of Dealer against Company or Manufacturer whether predicated on this Agreement or otherwise shall not constitute a defense to the

enforcement of these provisions. Violation of any of these clauses shall authorize Company or Manufacturer to seek equitable relief as well as all other relief provided by law.

Section 17. Indemnification.

The Manufacturer agrees to defend and hold the Company or Dealer harmless with respect to any suits or claims arising solely out of an alleged product defect relating to an Invisible Fence System supplied by the Manufacturer and sold by Company or Dealer, provided that prompt notice is given by Company or Dealer to the Manufacturer of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct the defense of any such claim or suit, and that no settlement of any such claim or suit shall be made without the prior written consent of the Manufacturer. In addition, Company or Dealer shall furnish such information regarding itself and the claim in question as Manufacturer may reasonably request and as shall be reasonably required in connection with the defense of such claim or suit. If Manufacturer does not elect to assume the defense of any such claim or suit after notice from Company or Dealer, then Manufacturer will reimburse Company or Dealer for all costs and expenses, including reasonable counsel fees, as they are incurred in connection with investigating, preparing for or defending any such suit or claim.

Manufacturer will defend and hold the Dealer and Company harmless with respect to any suits or claims arising solely out of trademark, copyright or patent infringement relative to the Invisible Fence Systems supplied by the Company and not owned by Company or the use of the Proprietary Marks in connection therewith, provided that prompt notice is given to the Manufacturer and Company of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct defense of any such claim or suit, and that no settlement of any such claim shall be made without the prior written consent of the Manufacturer. Dealer agrees to promptly notify Manufacturer of any unauthorized use of the Proprietary marks or colorable imitations thereof by others. The Manufacturer shall have the sole right and discretion to bring infringement, unfair competition or other proceedings involving the Proprietary Marks or Invisible Fence Systems supplied by the Company and not owned by Company.

Dealer shall forever protect, save and keep Company and Manufacturer harmless and indemnify Company and Manufacturer against and from all claims, demands, losses, costs, damages, suits, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in connection with the operation of Dealer's business in a manner which constitutes negligence or willful misconduct, except as to any claims of

trademark, copyright or patent infringement with respect to Invisible Fence Systems supplied by Company.

Section 18. Assignment.

This Agreement shall be considered a personal agreement of Dealer and shall not be sold, assigned or transferred without the written consent of Company nor shall this Agreement or any right herein conferred be pledged or hypothecated in any manner whatsoever, nor may any sublicense be granted. Nothing to the contrary withstanding, all of the duties, covenants and obligations of Dealer and Company hereunder shall run in favor of Manufacturer.

Section 19. Trade Secrets.

Dealer during the term of this Agreement, and thereafter, will not use or communicate or divulge to, or for the benefit of, any person, partnership or corporation any trade secrets and confidential information including but not limited to information or knowledge concerning the methods, secret processes, sales or other skills used or employed by Company or Manufacturer which may be communicated to Dealer under the terms of this Agreement. Such knowledge shall include specific knowledge of the names of customers, Invisible Fence System design, any engineering developments or inventions of the Company or Manufacturer, forms of contracts and like information.

Section 20. Waiver of Breach.

No failure of the Company or Manufacturer to exercise any of the rights and options granted hereunder, or to insist upon strict compliance by Dealer, and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of Company's right to demand exact compliance with the terms hereof. A waiver by Company or Manufacturer of any specific default shall not affect or impair the rights of Company or Manufacturer with respect to any subsequent default of the same or different nature, nor shall any delay or omission to exercise any rights arising from a default affect or impair rights of Company or Manufacturer with respect to such default.

Section 21. Miscellaneous.

a. Dealer shall comply in all its actions with all applicable laws and regulations of all jurisdictions within which Dealer shall undertake to promote the sale of Invisible Fence Systems.

b. This Agreement shall be construed in accordance with and governed by the laws of the state of Connecticut.

c. This Agreement shall be binding on the parties hereto, their successors and assigns; provided, however, the right conferred upon Dealer hereunder is personal and may not be assigned or transferred, in whole or in part, directly or indirectly, by operation of law, or otherwise, without the prior written consent of the Company.

d. All notices, including any notice of termination pursuant to Section 17 hereof, shall be in writing and may be served personally, may be mailed by registered or certified mail, return receipt requested; postage prepaid letter, to either party at its address herein set forth or at such address as such party may provide in writing from time to time in the manner provided in this Section 21 (d). Such notices shall be effective immediately when delivered in person, on the fifth day after deposit in the mail in the United States or within the Territory as applicable.

e. No provision of this Agreement may be changed, revised, or waived except by a written agreement signed by the authorized representatives of the parties hereto.

f. This Agreement constitutes the sole and entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, understandings, and communications, whether oral or written.

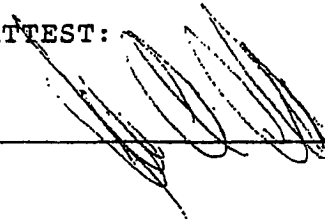
g. If any provision of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.



IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

THE CANINE FENCE COMPANY

ATTEST:

  
\_\_\_\_\_

By: Carol Hill

Title: Pres

(Corporate Seal)

IF DEALER IS INCORPORATED

ATTEST:

Kim Baer  
\_\_\_\_\_

By: X 

Title: \_\_\_\_\_

(Corporate Seal)

IF DEALER IS NOT INCORPORATED

Witness:

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT A

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: SERVICE

BACKGROUND:

The Invisible Fencing Organization has established a tradition of providing exemplary service to its customers. This ethic of dedicated service promotes an outstanding reputation for Invisible Fencing and the entire Organization. This reputation has distinct competitive advantages.

Therefore, the following policy is to be implemented:

Dealers are required to service what they sell. Specifically, that Dealers must provide a method for servicing the equipment they sell and the installations they perform.

Dealers must be able to provide customer-site service to any customer for whom they installed within two (2) working days of a request. For those customers who purchased a self-installation system, if on-site service is not practical, then service by mail must be performed with a turn-around time not to exceed three (3) working days.

Dealers are not permitted to charge a fee for the equipment exchanged under warranty. However, Dealers are permitted to charge a service fee for the labor associated with warranty servicing at customer's location.

Dealers are required to resolve, to the best of their ability, all customer complaints. Any customer complaint left unresolved for a period exceeding 60 days must be passed onto either the Manufacturer or Distributor.

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: LOCATION OF OPERATION

BACKGROUND:

Each Dealer enters into a contractual agreement with either the Manufacturer or an authorized Distributor Company. Each contract specifically lists a location where the Dealer's business is intended to be conducted. This constitutes a Dealer's location. A Dealer's location is established to achieve specific marketing purposes. The movement of location without approval may be counterproductive to achieving proper coverage for sales, service and installation. Business conditions sometimes dictate that a Dealer must change business location and it is not always practical to amend the Dealer agreement each time.

Therefore, the following policy is to be implemented:

A Dealer is not permitted to change the location of business beyond a radius of ten miles from the location listed on the Dealer Agreement, unless the change is mutually agreed to and such Agreement is set forth in writing and attached as an Addendum to the Dealer Agreement. Additional locations, annex offices or branch locations owned by the Dealership must be approved in advance and such approval evidenced by Addendum to the Dealer Agreement.

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: USE OF THE INVISIBLE FENCING BRAND NAME FOR CONSUMER  
COMMUNICATION

Invisible Fencing is a registered trademark owned by Invisible Fence Company, Inc. (hereinafter known as Manufacturer).

It is the responsibility of Invisible Fence Company to control the use of the name Invisible Fencing and to govern its use by its representatives. It is to the benefit of everyone involved in the marketing of Invisible Fencing that the name appear in a clear and consistent fashion. This will generate product recognition and avoid brand name confusion.

Therefore, the following policy is to be implemented:

All advertising material which contains the name of Invisible Fencing must be approved before it appears in public. No approval needs to be obtained when using materials which the Manufacturer has produced.

Rule of Thumb: If the Manufacturer does not prepare it and/or supply it, and it contains the name Invisible Fencing, then it requires approval.

Any change in copy or form of Manufacturer-produced material must be approved before it appears in public. This includes advertisements, brochures, flyers, pamphlets, press releases or any other communication intended to appear in public.

Telephone directory listings or advertisements, bearing the Invisible Fencing brand name, must be approved before they appear in public. Placement of telephone directory listings or advertisements is limited to the Dealer's primary trading area. Placements outside this area must be authorized in writing by either the Manufacturer or Distributor.

All advertisements must carry the Dealer's location (city and state) and no advertising response is permitted to be directed to a location other than the Dealer's approved and/or authorized location(s). Responses are permitted to be collected by 800# services as long as the advertisements list the Dealer's and/or Distributor's location.

Letterheads, envelopes, business-cards, business forms and other such materials containing the name Invisible Fence or Invisible Fencing, must conform to a standard form as set forth in samples supplied by the Manufacturer.

INVISIBLE FENCE COMPANY, INC.

STATEMENT OF OFFICIAL POLICY

EFFECTIVE DATE: APRIL 1, 1989

RE: SELF-INSTALLATION KITS

BACKGROUND:

THE INVISIBLE FENCE COMPANY (IFCO) DESIRES THAT INVISIBLE FENCING BE DISTRIBUTED TO THE PUBLIC IN A CONSISTENT AND UNIFORM MANNER. IFCO RECOGNIZES THAT IT IS ECONOMICALLY IMPRACTICAL TO REQUIRE DEALERS TO PURCHASE PRE-ASSEMBLED SELF-INSTALLATION KITS. THEREFORE, DEALERS MUST BE RELIED UPON TO ASSEMBLE SELF-INSTALLATION KITS. TO INSURE THAT THE MATERIALS AND PACKAGING OF SELF - INSTALLATION KITS ARE UNIFORM AND CONSISTENT,

THE FOLLOWING POLICY IS TO BE IMPLEMENTED:

DEALERS MUST MAKE AVAILABLE TO THE PUBLIC A SELF - INSTALLED VERSION OF INVISIBLE FENCING.

ALL SALES OF A SELF-INSTALLED VERSION OF INVISIBLE FENCING MUST BE MADE IN AN AUTHORIZED BOX SUPPLIED ONLY BY INVISIBLE FENCE COMPANY, INC., AND MUST CONTAIN, AT LEAST, THE MATERIALS LISTED ON THE BOX AND IN THE SELF-INSTALLATION MANUAL.

ALL SALES OF A SELF-INSTALLATION VERSION OF INVISIBLE FENCING MUST BE SUPPLIED WITH THE AUTHORIZED SELF-INSTALLATION MANUAL AND AN APPROVED TRAINING AID.

APPENDIX A

Comprehensive Liability coverage of no less than \$1,000,000

Products and Completed Operations Coverage of no less than  
\$500,000

Applicable Workmans Comprehensive Coverage

THE CANINE FENCE CO.  
493 Danbury Rd., Wilton, CT 06897  
203-834-2777

January 26, 1992

ALL CANINE FENCE COMPANY DEALERS'

STATEMENT OF OFFICIAL POLICY

This letter establishes an official policy as defined in your Dealer contract. It is the policy of The Canine Fence Company that all service and installation vehicles which are used by The Canine Fence Company and its Dealers to provide service and installations to retail customers will conform to established Invisible Fence Design Standards. Specifically, these vehicles will be enclosed vans, either full sized or mini's, painted bright white and liveried in current Invisible Fencing decals. Additional sinage is limited to telephone numbers in the appropriate locations and dealer identification which is permitted on the forward passenger doors.

We have long considered the problems of individual choice and preference in vehicle selection and we are very, very sympathetic to the importance of independence to entrepreneurs. We also understand the economic reality of new businesses and the need to deploy existing resources during the formative years of each new Dealership. Because of these considerations we are exempting all currently operated vehicles from this policy.

However, we also recognize the tremendous impact of "one look" among the more than 40 vehicles that are currently traveling all over the markets we serve. Simply put we are professionals and we need to look like professionals. Our current "rag tag" fleet doesn't live up to that standard.

If you have any questions please contact me.

Henry

cc: Bill Annesley  
Jim Staples  
John Purtell





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION

Invisible Fence, Inc. )

Plaintiffs, )

v. )

Fido's Fences, Inc. )

Defendant. )

Case No. 3:09 CV 05

COMPLAINT

The Plaintiff, Invisible Fence, Inc., alleges as follows:

Parties

1. Plaintiff Invisible Fence, Inc. ("Invisible Fence") is a corporation organized under the laws of the State of Delaware having a principal place of business at 10427 Electric Avenue, Knoxville, Tennessee 37932.

2. Upon information and belief, Defendant Fido's Fences, Inc. ("Fido's Fences") is a corporation organized under the laws of the State of New York and has a principal place of business at 405 West Main Street, Smithtown, New York 11787-2612.

Jurisdiction and Venue

3. This is an action for a Declaratory Judgment that Plaintiff's trademarks, "INVISIBLE<sup>®</sup>," "INVISIBLE FENCE<sup>®</sup>," and "INVISIBLE FENCING<sup>®</sup>," and United States Trademark Registration Number 1,765,230 (for "INVISIBLE<sup>®</sup>"), United States Trademark Registration Number 1,600,470 (for "INVISIBLE FENCE<sup>®</sup>"), and United States Trademark Registration Number 1,371,021 (for "INVISIBLE FENCING<sup>®</sup>") are valid and enforceable, such trademarks collectively being referred to at times as the "Invisible Fence trademarks." This

action arises under the Trademark Laws of the United States and the federal Declaratory Judgment Act. This Court has proper subject matter jurisdiction under 28 U.S.C. §§ 1338(a), 2201 and 2202.

4. This is also an action for Trademark infringement and unfair competition arising under the Laws of the United States. This Court has proper subject matter jurisdiction under 15 U.S.C. §§ 1117 and 1125(a).

5. This action alleges state law violations that are part of the same case or controversy as those claims arising under the Laws of the United States. Accordingly, this Court has proper supplemental subject matter jurisdiction under 28 U.S.C. § 1367(a).

6. This Court has personal jurisdiction over Fido's Fences. In this regard, Fido's Fences has sent correspondence into this judicial district addressed to Invisible Fence threatening to sue Invisible Fence to invalidate the Invisible Fence trademarks, as evidence by Exhibit A attached hereto. Defendant has also availed itself of the powers of this Court by issuing a subpoena from this Court seeking to compel the attendance by a representative of Invisible Fence at a deposition and seeking to compel the production of documents. Defendant purposefully directed its attempts to interfere with Plaintiff's business and lawful use of its trademarks by petitioning for cancellation of all three marks identified in paragraph 3 in the United States Patent and Trademark Office, Trademark Trial and Appeal Board. Moreover, Fido's Fences has sent a representative into Tennessee, and to the facilities of Invisible Fence, on business in connection with the duties of Fido's Fences as a Dealer of Invisible Fence products.

7. Personal jurisdiction over Fido's Fences is further conferred in that the damages to the Plaintiffs' interests were and are occurring in Tennessee.

8. Personal jurisdiction over Fido's Fences is further conferred in that Defendant maintains a website accessible from computers in Tennessee.

9. Venue is proper under 28 U.S.C. § 1391.

**Facts Common to All Claims**

10. Invisible Fence was founded in 1973 and is in the business of making and selling pet products, including animal containment systems.

11. The Canine Fence Company ("Canine") is a corporation organized under the laws of the State of Connecticut and has a principal place of business at 493 Danbury Road, Wilton, Connecticut 06987. Canine is a regional distributor for Invisible Fence products, and by contract has been authorized to use the Invisible Fence trademarks and to sublicense its dealers to use the Invisible Fence trademarks.

~~12. Upon information and belief, Fido's Fences is in the business of selling and installing electronic animal containment systems and in the business of pet obedience training.~~

13. On December 1, 1996, Canine and Fido's Fences entered into a Distributor Dealer Agreement ("the Agreement") under which Canine (the "Distributor" or "Company" within the language of the Agreement) agreed to supply Fido's Fences (the "Dealer") with Invisible Fence animal containment systems for resale and installation by Fido's Fences. A copy of the Agreement is attached hereto as **Exhibit B**. Pursuant to the Agreement Fido's Fences acknowledged the validity of the Invisible Fence trademarks, and agreed not to contest the validity of such trademarks. Fido's Fences also agreed to terminate use of the Invisible Fence trademarks on any termination of the Agreement and agreed that upon any termination it would not "claim the right to use" the Invisible Fence trademarks. Moreover, pursuant to the

Agreement Fido's Fences agreed not to compete with Canine for a period of two (2) years after any termination.

14. In or around May of 2008, Canine terminated the Agreement with Fido's Fences based on Fido's Fences breach of the Agreement.

15. Subsequent to the termination of its contractual relationship with Canine, Fido's Fences continued to use the Invisible Fence trademarks, and/or trademarks confusingly similar thereto, in connection with its sale, installation and servicing of electronic animal containment systems in breach of the Agreement. Subsequent to the termination of its contractual relationship with Canine, Fido's Fences also continued to compete with Canine in breach of the Agreement. Moreover, on information and belief, Fido's Fences has sold the products of competitors of Canine and Invisible Fence to Fido's Fences' customers without advising such customers that it is no longer an Invisible Fence dealer, thereby confusing such customers and palming off Fido's Fences products as those of Invisible Fence.

16. On December 2, 2008, in breach of the Agreement, Fido's Fences filed a Petition For Cancellation in the United States Trademark Office Trademark Trial and Appeal Board seeking to cancel Invisible Fence's United States Trademark Registration Number 1,765,230 for "INVISIBLE<sup>®</sup>," alleging that the trademark associated therewith is invalid. See Exhibit C.

17. On December 2, 2008, in breach of the Agreement, Fido's Fences filed a Petition For Cancellation in the United States Trademark Office Trademark Trial and Appeal Board seeking to cancel Invisible Fence's United States Trademark Registration Number 1,600,470 for "INVISIBLE FENCE<sup>®</sup>," alleging that the trademark associated therewith is invalid. See Exhibit D.

18. On December 2, 2008, in breach of the Agreement, Fido's Fences filed a Petition For Cancellation in the United States Trademark Office Trademark Trial and Appeal Board seeking to cancel Invisible Fence's and United States Trademark Registration Number 1,371,021 for "INVISIBLE FENCING®," alleging that the trademark associated therewith is invalid. See Exhibit E.

Count I

Declaration of Validity of U.S. Trademark Registration Number 1,371,021

19. Paragraphs 1 through 18 above are incorporated into this Count by reference.

20. Invisible Fence is the owner of United States Trademark Registration Number 1,371,021 for the trademark "INVISIBLE FENCING®" and the associated trademark. Such trademark and the goodwill associated therewith are of great value to Invisible Fence. Such registration and the associated trademark are valid and enforceable, and Fido's Fences' allegations to the contrary are without merit.

21. There is an actual justiciable controversy between the parties as to the validity and enforceability of the "INVISIBLE FENCING®" trademark, and Invisible Fence has a well-founded fear that Fido's Fences will initiate litigation attacking the validity of such trademark. Therefore, Invisible Fence seeks a declaration from this Court that United States Trademark Registration Number 1,371,021 for the trademark "INVISIBLE FENCING®", and the associated trademark, are valid and enforceable.

22. Further, by reason of the Agreement, Fido's Fences is estopped from asserting that the Invisible Fence trademarks are invalid or unenforceable.

## Count II

### Declaration of Validity of U.S. Trademark Registration Number 1,600,470

23. Paragraphs 1 through 22 above are incorporated into this Count by reference.

24. Invisible Fence is the owner of United States Trademark Registration Number 1,600,470 for the trademark "INVISIBLE FENCE<sup>®</sup>" and the associated trademark. Such trademark and the goodwill associated therewith are of great value to Invisible Fence. Such registration and the associated trademark are valid and enforceable, and Fido's Fences' allegations to the contrary are without merit.

25. There is an actual justiciable controversy between the parties as to the validity and enforceability of the "INVISIBLE FENCE<sup>®</sup>" trademark, and Invisible Fence has a well-founded fear that Fido's Fences will initiate litigation attacking the validity of such trademark. Therefore, Invisible Fence seeks a declaration from this Court that United States Trademark Registration Number 1,600,470 for the word mark "INVISIBLE FENCE<sup>®</sup>", and the associated trademark, are valid and enforceable.

26. Further, by reason of the Agreement, Fido's Fences is estopped from asserting that the Invisible Fence trademarks are invalid or unenforceable.

## Count III

### Declaration of Validity of U.S. Trademark Registration Number 1,765,230

27. Paragraphs 1 through 26 above are incorporated into this Count by reference.

28. Invisible Fence is the owner of United States Trademark Registration Number 1,765,230 for the trademark "INVISIBLE<sup>®</sup>" and the associated trademark. Such trademark and the goodwill associated therewith are of great value to Invisible Fence. Such registration and the

associated trademark are valid and enforceable, and Fido's Fences' allegations to the contrary are without merit.

29. There is an actual justiciable controversy between the parties as to the validity and enforceability of the "INVISIBLE<sup>®</sup>" trademark, and Invisible Fence has a well-founded fear that Fido's Fences will initiate litigation attacking the validity of such trademark. Therefore, Invisible Fence seeks a declaration from this Court that United States Trademark Registration Number 1,765,230 for the mark "INVISIBLE<sup>®</sup>" and the associated trademark are valid and enforceable.

30. Further, by reason of the Agreement, Fido's Fences is estopped from asserting that the Invisible Fence trademarks are invalid or unenforceable.

#### Count IV

##### Federal and Common Law Unfair Competition

31. Paragraphs 1 through 30 above are incorporated into this Count by reference.

32. As set forth above, subsequent to the termination of its contractual relationship with Canine, Defendant continued to use the Invisible Fence trademarks, or marks confusingly similar thereto, in connection with its sale, installation and servicing of electronic animal containment systems. Moreover, on information and belief, Fido's Fences failed to tell customers that they were being provided with products that were not Invisible Fence brand products, thereby palming off its goods as those of Invisible Fence, all to the great damage of Invisible Fence.

33. Defendant's unauthorized use of the Invisible Fence trademarks, and marks confusingly similar thereto, and its above-referenced palming off activities, have caused, and are

likely to cause, confusion among consumers, and misrepresents the origin of the goods and services offered by Fido's Fences.

34. Said acts of Defendant set forth above, including, without limitation, Defendant's unauthorized use of Invisible Fence trademarks, constitute false designations of origin which are likely to cause confusion, to cause mistake and to deceive the public and potential customers as to the affiliation, connection or association of Plaintiff with Defendant and as to the origin, ~~sponsorship, or approval of goods sold by Defendant and/or goods/services offered by~~ Defendant. These acts are in violation of 15 U.S.C. § 1125(a), in that Defendant has used in connection with goods and services a false designation of origin, a false or misleading description and representation of fact which is likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, or association of Defendant with Plaintiff and as ~~to the origin, sponsorship, and approval of Defendant's goods, services and commercial activities~~ by Plaintiff. Such activities by Defendant also constitute acts of common law unfair competition.

35. Defendant's acts of federal and common law unfair competition were committed with the intent to cause confusion, mistake and to deceive the public.

36. Defendant's acts of federal and common law unfair competition have greatly damaged Plaintiff. Further, Defendant's failure to cease its wrongful activities after receiving notice thereof evidences intent on the part of Defendant to continue to do the acts complained of herein unless restrained and enjoined. It would be difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief for such continuing acts. Accordingly, Plaintiff's remedy at law is not adequate to compensate it for injuries threatened.



**Count V**

**Trademark Infringement**

37. Paragraphs 1 through 36 above are incorporated into this Count by reference.

38. Fido's Fences continued use of the Invisible Fence trademarks, and trademarks confusingly similar thereto, after the termination of the Agreement constitutes trademark infringement in violation of 15 U.S.C. § 1114. Such activities by Defendant also constitute acts of common law trademark infringement.

39. Although Defendant alleges that they have terminated all use of the Invisible Fence trademarks, Defendant's attacks on the validity of such trademarks evidence an intent on the part of the Defendant to reinitiate use of the marks, and Plaintiff is entitled to injunctive relief under 15 U.S.C. § 1116.

40. Defendant's acts of federal and common law trademark infringement entitle Plaintiff to damages under 15 U.S.C. § 1117.

41. Defendant's acts of federal and common law trademark infringement were committed with the intent to cause confusion, mistake and to deceive the public.

42. Defendant's acts of federal and common law trademark infringement have greatly damaged the Plaintiff.

**Count VI**

**Breach of Contract**  
**(Prior to Termination)**

43. Paragraphs 1 through 42 above are incorporated by references in this Count.

44. Invisible Fence, successor in interest to Invisible Fence Company, Inc., was an intended third-party beneficiary of the Agreement, Exhibit B.

45. The Agreement is a valid contract between Canine and Fido's Fences.

46. It was the clear intent of Canine Fence and Fido's Fences in entering into the Agreement to protect the trade names, trademarks, service marks, designs, slogans and similar property of Invisible Fence.

47. Invisible Fence, as a third-party beneficiary to the Agreement, is entitled to enforce the Agreement.

48. The Agreement was a contract between the parties, supported by consideration, under which Canine Fence fully performed.

49. Before Canine Fence terminated the Agreement, Fido's Fences had breached the Agreement by, among other things, installing pet containment systems manufactured by companies other than Invisible Fence and failing to pay sums owed to Canine Fence, failing to service existing accounts, and failing to pursue new sales leads.

50. As a result of Fido's Fences breach of the Agreement, Invisible Fence has suffered monetary damages in an amount to be determined at trial exclusive of interest and costs.

**Count VII**

**Breach of Contract**  
**(After Termination)**

51. Paragraphs 1 through 50 above are incorporated by reference in this Count.

52. After Canine Fence terminated the Agreement, Fido's Fence continued to violate its obligations under the Agreement by, among other things, failing to immediately discontinue use of the service marks, trademarks and other proprietary marks under the Agreement and continuing to link its telephone numbers, website and other advertising media to the Invisible Fence® proprietary marks.

53. As a result of Fido's Fences breach of the Agreement, Invisible Fence has suffered monetary damages in an amount to be determined at trial exclusive of interest and costs.

**Count VIII**

**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

54. Paragraphs 1 through 53 above are incorporated by reference in this Count.

55. Implied in the Agreement is the covenant of good faith and fair dealing.

56. By its actions, Fido's Fences has breached and continues to breach the covenant of good faith and fair dealing implied in the Agreement.

~~57. As a result of Fido's Fences breach of the covenant of good faith and fair dealing implied in the Agreement, Invisible Fences has suffered monetary damages in an amount to be determined at trial exclusive of interest and costs.~~

**Prayer for Relief**

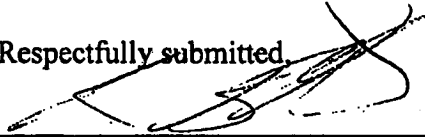
WHEREFORE, Plaintiff Invisible Fence, Inc. prays this honorable Court enter an order of Judgment:

- a. Issuing a declaration that United States Trademark Registration Number 1,371,021 and the associated trademark are valid and enforceable;
- b. Issuing a declaration that United States Trademark Registration Number 1,600,470 and the associated trademark are valid and enforceable;
- c. Issuing a declaration that United States Trademark Registration Number 1,765,230 and the associated trademark are valid and enforceable;
- d. Permanently enjoining Fido's Fences, and its officers, agents, servants, subcontractors, and employees, and others controlled by Fido's Fences, from any further use of the trademarks "Invisible Fencing," "Invisible Fence," "Invisible," or any confusingly similar variant of those marks, pursuant to 15 U.S.C. § 1116, and enjoining Fido's Fences from

unfairly competing with Plaintiff by palming off its goods and services of those of Plaintiff;

- e. Awarding Plaintiff damages for federal and common law trademark infringement, pursuant to 15 U.S.C. § 1117, and for Fido's Fences unfair competition;
- f. Declaring this case to be exceptional and awarding Plaintiff its reasonable attorney fees, expert fees, and costs;
- ~~g. An accounting to determine Plaintiff's damages for breach of the Agreement;~~
- h. Awarding Plaintiff damages for breach of the covenant of good faith and fair dealing implied in the Agreement;
- i. A permanent injunction requiring that Defendant perform its obligations under the Agreement, including the requirements of Section 16 of the Agreement, and
- ~~j. Awarding Plaintiffs such other and further relief as the Court may deem justified.~~

Respectfully submitted,



---

Robert E. Pitts (Reg. # 1,610)  
R. Bradford Brittan (Reg. # 7,130)  
Paul A. Forsyth (Reg. # 26,307)  
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Fax: (865) 540-1988

*Attorneys for the Plaintiff*  
*Invisible Fence, Inc.*

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 INVISIBLE FENCE, INC.

(b) County of Residence of First Listed Plaintiff Knox  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm) Name, Address, and Telephone Number:  
 R. Bradford Brittan, Pitts & Brittan, P.C.  
 P.O. Box 51295, Knoxville, TN 37950-1295  
 (865) 584-0105

**DEFENDANTS**  
 FIDO'S FENCE, INC.

County of Residence of First Listed Defendant Suffolk  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>not</i> Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airlinc Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habens Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habens Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Sections 2201 and 2202

Brief description of cause:  
Declaratory judgment for valid and enforceable use of Trademarks

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 01/22/2009

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**EXHIBIT A**

**Megan Fee**

---

**From:** Betty Tufariello [24yellow@optonline.net]  
**Sent:** Thursday, January 08, 2009 4:47 PM  
**To:** 'Patrick McHugh'; Robert E. Pitts  
**Cc:** jcoden@jennifercodenlaw.com; wcfido@aol.com  
**Subject:** re FIDO'S FENCES LETTER MOTION REQUESTING PERMISSION TO AMEND PLEADINGS AND JOIN PARTIES

**Attachments:** LETTER MOTION TO MAGISTRATE JUDGE WALL SEEKING TO EXTEND TIME TO AMEND PLEADINGS AND JOIN PARTIES.pdf; CERTIFICATE OF SERVICE CONFIRMING SERVICE OF JANUARY 8 LETTER TO MCHUGH.pdf; CERTIFICATE OF SERVICE TO RADIO SYSTEMS CORPORATION'S COUNSEL.pdf



LETTER CERTIFICATE OF SERVICE TO I  
TO MAGISTRATE JUDGE WALL

Ladies and Gentlemen:

Please see attached Fido's Fences' Letter Motion addressed to Magistrate Judge Wall.

Very Truly Yours,

Betty Tufariello

P. Betty Tufariello  
Intellectulaw™  
The Law Offices of P.B. Tufariello, P.C.  
25 Little Harbor Road  
Mount Sinai, NY 11766  
Telephone: 631-476-8734  
Fax: 631-476-8737

On the web at [www.intellectulaw.com](http://www.intellectulaw.com) <<http://www.intellectulaw.com>> [betty@intellectulaw.com](mailto:betty@intellectulaw.com)  
<<mailto:betty@intellectulaw.com>> [24yellow@optonline.com](mailto:24yellow@optonline.com) <<mailto:24yellow@optonline.com>>  
[info@intellectulaw.com](mailto:info@intellectulaw.com) <<mailto:info@intellectulaw.com>>

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**INTELLECTUAL LAW**  
**LAW OFFICES OF P.B. TUFARIELLO, P.C.**  
**ATTORNEYS AT LAW**

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24yellow@optonline.net  
betty@intellectulaw.com

25 LITTLE HARBOR ROAD • MT. SINAI, NEW YORK 11766  
TELEPHONE 631-476-8734 • FAX 631-476-8737

SPECIALIZING IN PATENTS,  
TRADEMARKS,  
COPYRIGHTS, AND ALL  
MATTERS RELATED  
THERE TO

January 8, 2009

**VIA ELECTRONIC FILING**

Honorable Magistrate Judge William D. Wall  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
Central Islip, NY 11722

Re: **FIDO'S FENCES INC. v. THE CANINE FENCE COMPANY**  
**CASE NO: CV-08-754; Our File No: 7212-1**

Dear Magistrate Judge Wall:

We represent the Plaintiff Fido's Fences, Inc. (hereinafter "Fido's Fences") in the matter referenced herein above.

Pursuant to Fed. R. Civ. P. 15(a), Fed. R. Civ. P. 16(b)(4), Fed. R. Civ. P. 19, the Local Rules of the E.D.N.Y. and your Honor's Rules, we are writing to respectfully request and pray that for the good cause set forth in detail below, Your Honor modify the Scheduling Order by extending the time to Amend the Pleadings and Join Parties, which expired on October 17, 2008, to permit Fido's Fences to amend its Answer to Defendant's Counterclaims by: (i) asserting a new affirmative defense to one of Defendant's Counterclaims not heretofore known to Fido's Fences; (ii) asserting a new Counterclaim and (iii) by joining third parties Invisible Fence Company and Radio Systems as Mandatory Parties to the case, since Fido's Fences affirmative defense and new counterclaim will implicate their interests, and might impede or impair their ability to protect those interests in the future.

The affirmative defense and Counterclaim, which Fido's Fences wishes to raise at this time, in response to Defendant's Second Counterclaim, is that it has not committed breach of contract because the federally registered trademarks INVISIBLE, INVISIBLE FENCE and INVISIBLE FENCING (hereinafter "the Marks") are generic and therefore invalid and unenforceable, and as such deserve to be expunged from the Principal Register of the U.S. Trademark Office.

Defendant filed its Answer and Counterclaims to Fido's Fences April 21, 2008, Amended Complaint on August 14, 2008 *see Court's Docket Entry No. 47*. Fido's Fences respectfully



The Honorable Magistrate Judge Wall  
January 8, 2009  
Page 2

requests and prays that your Honor take judicial notice of the fact that Defendant's August 14, 2008, filing of its Answer and Counterclaims, arbitrarily and unilaterally disregarded this Court's Rules, because such filing was done almost a full four (4) months after this Court's deadline to do so, without asking Fido's Fences or your Honor for an extension of time, and without a single solitary explanation of a good cause as to why it filed so late.

The second of Defendant's counterclaims is for Breach of Contract due to Fido's Fences alleged failure to cease and desist from using the Marks, following the termination of its relationship with Defendant, and that such continued use constitutes trademark infringement and/or unfair competition. Permission was granted to Defendant to enforce the Marks against Fido's Fences by the manufacturing companies of which Defendant is a distributor and owners of the Marks, Invisible Fence Company and Radio Systems, Inc. on August 11, 2008. *see Court Docket Entry No. 44, Radio Systems, Aff.*

The process of determining trademark infringement consists of two steps: a) determining whether a plaintiff's mark merits protection; and if the mark merits protection, then b) determining whether in fact there is a likelihood of confusion. Louis Vuitton Malletier v. Dooney & Bourke, Inc., 454 F.3d 108 (2d Cir. 2006); Gruner + Jahr USA Publishing v. Meredith Corporation, 991 F.2d 1072, 1075 (2d Cir. 1993). A trademark registration is only presumed valid. 15 U.S.C. § 1115(a). "A generic term is a common name, like an automobile or aspirin, that describes a kind of product." Gruner + Jahr, 991 F.2d at 1075 (citing Banff Ltd. v. Federated Dep't Stores, Inc., 841 F.2d 486, 489 (2d Cir. 1988)). "A common name available to anyone is never entitled to trademark protection." *Id.*

It is Fido's Fences' affirmative defense and counterclaim, *inter alia*, based on the evidence already of record in this matter, *see Court Docket Entry No. 45 Exhibit 1; see also Court Docket Entry no.63, Transcript of September 4 Hearing., page 116-17*, that it has committed no trademark infringement and therefore no breach of contract because the Marks are generic and therefore invalid and unenforceable; and as such must be expunged.

The Amendment of Fido's Answer to Defendant's Counterclaims to include Fido's Fences proposed affirmative defense and counterclaim will conform the pleadings to the evidence already of record before this Court. Further, the adjudication of whether the Marks are generic and therefore invalid and unenforceable may severely impair or impede Invisible Fence Company's and Radio Systems Inc.'s ability to protect or enforce their interests in the Marks. Accordingly, Invisible Fence Company and Radio Systems must be joined as parties pursuant to Fed. Rule. Civ. Procedure 19.

Fido's Fences did not realize that it could in fact raise the affirmative defense and bring the counterclaim set forth herein above in the present matter, until such time as it decided, due to serious financial constraints, to terminate its representation by the Firm of Ingram Yuzek in this

The Honorable Magistrate Judge Wall  
January 8, 2009  
Page 3

matter, and to fully engage the undersigned's firm in the present matter, on December 31, 2008. While the undersigned's firm continued to remain of record, it was not actively engaged therein, for the very same financial constraints that forced Fido's Fences to terminate Ingram Yuzek.

In addition Fido's Fences was totally de-focused by Defendants' tactical decision to bring their July 11, 2008, Motion for a Preliminary Injunction against Fido's Fences. As a result, on August 4, 2008, Fido's Fences filed its Opposition to Defendants' Motion and on August 11, 2008-August 14, 2008, the very same day as Defendant's Counterclaims were filed, to review Defendant's Reply in Further Support of its Motion. It also had to prepare and attend the September 4 and 5, 2008, Hearing on the Motion. On September 11, 2008, Fido's Fences filed an Appeal of the Court's granting of a modified injunction. On September 12, 2008, Fido's Fences sought a stay of the injunction pending the Appeal. On September 17, 2008, the Court denied the Stay. Thereafter, Fido's Fences sought a stay of the Injunction at the Appellate level and a briefing schedule was set for the Appeal. On November 7, 2008 Fido's Fences filed its Appeal Brief. Defendants filed their Opposition/Appeal Brief on December 2, 2008. On December 15, 2008, Fido's Fences filed its Reply Brief in further support of its Appeal.

Thus, Fido's Fences' has been diligent in connection with all of the issues in this matter, and has not engaged in any dilatory tactics. Accordingly, its present letter motion within five days of realizing that it had an additional affirmative defense and counterclaim, excluding weekend and holidays is reasonable and for good cause. See Parker v. Columbia Pictures Industries 204 F.3d 326, 339-41 (2d Cir. 2000). Further, it is not being brought two years after the original complaint was filed. See Nas Electronics, Inc. v. Transtech Electronics PTE Ltd., 262 F. Supp. 2d 134, 151 (S.D.N.Y. 2003) [citations omitted]. Nor is it being brought after the end of discovery. Id. There are no dispositive motions pending before the Court. Discovery is still pending. The person most knowledgeable about the issues embodied in the proposed affirmative defense, Mr. Randy Boyd, has already been noticed for his deposition and Requests for Documents have already been served upon him. If Mr. Boyd complies with Fido's Fences requests, discovery proceedings should not be delayed or prolonged, thereby causing no prejudice to Defendant.

For the foregoing reasons, good cause exists for the modification of the Scheduling Order to permit Fido's Fences to amend its Answer to Defendant's Counterclaims by asserting its "generic trademarks" affirmative defense and counterclaim and by joining Invisible Fence Company and Radio Systems as Mandatory Parties to the case; and such is respectfully requested and prayed for.

Respectfully Submitted  
  
Panagiotis Betty Tufariello

cc. Patrick J. McHugh, Esq.  
Robert E. Pitts, Esq. (Attorney for Radio Systems)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FIDO'S FENCES, INC., a New York  
Corporation,

Plaintiff,

v.

THE CANINE FENCE COMPANY,  
a Connecticut Corporation,

Defendant.

08 CV 754 (LDW)(WDW)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of FIDO'S FENCES' JANUARY 8, 2009, LETTER TO MAGISTRATE JUDGE WALL REQUESTING PERMISSION TO AMEND PLEADINGS AND JOIN PARTIES has been served upon the Attorneys for Defendant THE CANINE FENCE COMPANY via Electronic Mail and via First Class Mail, addressed to:

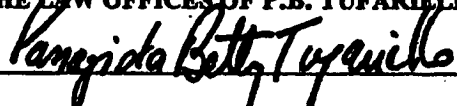
Patrick J. McHugh, Esq.  
FINN, DIXON & HERLING LLP  
177 Broad street, 15<sup>th</sup> Floor  
Stamford, Connecticut 06901

Joseph R. Conway, Esq.  
LARUSSO & CONWAY, LLP  
300 Old Country Road, Suite 341  
Mincola, New York 11501

on Thursday, January 8, 2009

INTELLECTULAW  
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 01/08/2009

  
Panagiota Betty Tufariello (PBT 3429)  
25 Little Harbor Road  
Mount Sinai, NY 11766  
631-476-8734  
631-476-8737(FAX)  
[24yellow@optonline.net](mailto:24yellow@optonline.net)  
[betty@intellectulaw.com](mailto:betty@intellectulaw.com)  
Attorneys for the Plaintiff FIDO'S FENCES, INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FIDO'S FENCES, INC., a New York  
Corporation,

Plaintiff,

08 CV 754 (LDW)(WDW)

v.

THE CANINE FENCE COMPANY,  
a Connecticut Corporation,

**CERTIFICATE OF SERVICE**

Defendant.

I hereby certify that a true and correct copy of FIDO'S FENCES' JANUARY 8, 2009,  
LETTER TO MAGISTRATE JUDGE WALL REQUESTING PERMISSION TO AMEND  
PLEADINGS AND JOIN PARTIES has been served upon the Attorneys for RADIO SYSTEMS  
CORPORATION and INVISIBLE FENCE via Electronic Mail and via First Class Mail,  
addressed to:

Robert E. Pitts  
Pitts & Brittian, P.C.  
P.O. Box 51295  
Knoxville, TN 37950-1295  
Tel.:(865) 584-0105  
Fax:(865) 584-0104  
E-mail: rpitts@pitts-brittian.com

on Thursday, January 8, 2009

INTELLECTULAW  
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 01/08/2009

*Panagiota Betty Tufariello*  
Panagiota Betty Tufariello (PBT 3429)  
25 Little Harbor Road  
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[24yellow@optonline.net](mailto:24yellow@optonline.net)  
[betty@intellectulaw.com](mailto:betty@intellectulaw.com)  
Attorneys for the Plaintiff FIDO'S FENCES, INC.

**EXHIBIT B**

DISTRIBUTOR DEALER AGREEMENT

Agreement made as of this 1<sup>st</sup> day of December,  
19 96, by and between The Canine Fence Company  
, a Connecticut corporation,  
having its principal place of business at 22 Heritage Lane, Weston, Connecticut  
(hereinafter referred to as the "Company," ) and Fido's Fences, Inc.  
having its principal place of business at 42 Jeffrey Lane Hicksville NY 11801  
(hereinafter referred to as "Dealer").

RECITALS:

WHEREAS, ~~Company~~ is the distributor of a system designed to provide an electronic enclosure for animals ("Invisible Fence System") which System is manufactured by Invisible Fence Company, Inc. of Wayne, PA ("Manufacturer") and covered by U. S. Letters Patent 3,753,421 issued August 21, 1973, United Kingdom Letters Patent No. 1417086 issued May 24, 1973, Bermuda Certificate of Registration of Patent No. 346 issued October 7, 1975 and Canada Letters Patent No. 975841 issued October 7, 1975 and the trademark "Invisible Fencing";

WHEREAS, the Company seeks to appoint Dealer to sell and install the Invisible Fence System, but only upon the terms and conditions set forth herein;

WHEREAS, Dealer wishes, upon the terms and conditions hereinafter set forth, to sell and install Invisible Fence Systems;

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, and intending to be legally bound hereby, Company and Dealer hereby agree as follows:

Section 1. Invisible Fence System Defined.

The term "Invisible Fence System" means the system distributed by the Company at any time during the term of this Agreement which is designed to provide an electronic enclosure for animals through the use of an apparatus containing a receiver which is worn by the animal, a transmitter which produces a radio signal and related electronic apparatus.

Section 2. Grant of License to Use Trademark.

The Company hereby grants to Dealer permission to use the trademark "Invisible Fencing", in connection with Dealer's sale, installation and service of Invisible Fence Systems

hereunder, to the extent and in the manner set forth in written guidelines supplied to Dealer by the Company. Dealer shall immediately cease to use the trademark "Invisible Fencing" upon the expiration or termination of this Agreement for any reason.

Dealer shall not use the words "Invisible Fencing", "Invisible Fence" or any combination of such words in its corporate or partnership name, nor allow such use by others. Dealer will sell or provide no products or services under the trademark "Invisible Fencing" other than the Invisible Fence System.

Section 3. Assuring Quality and Performance Standards.

a. The Invisible Fence System has been developed and tested to assure good quality and dependable performance based upon the use of components of a given level of performance and quality. The Manufacturer has also developed considerable goodwill in connection with the trademark "Invisible Fencing" by providing quality products and service to customers purchasing Invisible Fence Systems. In order to protect the goodwill associated with the Manufacturer, the Invisible Fence System and the "Invisible Fencing" trademark, Dealer agrees: (i) to purchase Invisible Fence Systems, components thereof and similar systems solely from the Company; (ii) to install and service all Invisible Fence Systems sold by Dealer; (iii) to maintain the same high standards as are maintained by the Manufacturer and the Company in selling, installing and servicing Invisible Fence Systems; (iv) not to sell systems similar in nature to the Invisible Fence System (electronic animal containment systems) which are distributed by persons other than the Manufacturer or the Company; and (v) to comply with such customer service and other standards as may be established from time to time by the Manufacturer or the Company regarding the sale, installation and provision of customer service in connection with the Invisible Fence System.

b. Wire and other materials used in the installation of Invisible Fence Systems may be purchased from the Company or from other parties provided that any such wire or other materials must comply with specifications established by the Manufacturer.

c. Dealer agrees to cooperate with the Company in facilitating the Company's control over the nature and quality of services rendered by Dealer in connection with the sale, installation and service of Invisible Fence Systems in order to insure that such sales, installation and service meet the established standards of the Manufacturer and the Company as set forth in the Dealer Manual or otherwise. In furtherance of this purpose, Dealer agrees to permit inspections of the Dealer's operation during business hours and upon reasonable notice to Dealer.

Section 4. Price and Quantity.

a. The Company agrees to sell to Dealer, at the price in the Company's wholesale price list from time to time established by the Company, such quantities of Invisible Fence Systems and components thereof as Dealer may order from the Company provided that the Company reserves the right to fulfill temporarily less than the total of such orders if the capacity of the Manufacturer is less than that required to meet the requirements of the Company. The wholesale price list shall be established from time to time by the Company. The Company reserves the right to make any change in the wholesale price list at any time on thirty (30) days' notice to Dealer. Any such change shall have application to any unshipped portion of an order previously issued by Dealer except in those cases where the ~~Company has already received an assurance of payment accepted by the Company with respect to such order.~~

b. No purchase order or other written order or acknowledgment shall vary the terms and conditions herein, or otherwise increase the obligations of the Company provided for herein. Dealer agrees that its employees, agents and representatives will represent to each prospective customer each Invisible Fence System and its capabilities and the Company's warranty obligation with respect thereto only as authorized in writing by the Company.

Section 5. Payment and Delivery.

a. Prices to Dealer shall be F.O.B. Company's point of shipment, freight prepaid and added to invoice. Credit limits, if credit is extended to Dealer, and all payment terms shall be established separately for Dealer by the Company in its sole discretion. All prices, discounts, credit and payment terms shall be subject to change prior to acceptance by the Company of any order.

b. Dealer shall be obligated to accept delivery of Invisible Fence Systems as indicated on each order. Title shall pass to Dealer upon delivery to the carrier, and Dealer will assume the risk of loss upon delivery to carrier. In no event shall the Company be responsible to hold or store Invisible Fence Systems ordered for the account of Dealer.

c. The Company shall use its best efforts to fill orders placed with it by Dealer hereunder with reasonable promptness; provided, however, that notwithstanding any provision contained herein to the contrary, the Company shall have no obligation to furnish any Invisible Fence Systems hereunder after it shall have ceased to sell the same in the ordinary course of its business operations, nor shall the Company nor the Manufacturer be responsible or liable for acts or failures to act by its manufacturing facilities or for any loss,



damage, or delay caused by acts of God, war, blockades, embargoes, strikes, lockouts, governmental priorities or any other cause beyond the control of the Company or the Manufacturer.

Section 6. Product Warranty.

Company shall grant to Dealer the same warranty, as the same shall be in effect from time to time, which Manufacturer grants to retail customers; provided, however, that Dealer must return to Company a warranty card giving the name and address of the customer in order for the warranty to be extended to Dealer. No other representations or warranties have been made by the Company or the Manufacturer or relied upon by the Dealer. THE WARRANTY CONTAINED IN THIS SECTION 6 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall Company or Manufacturer be liable for consequential damages sustained in connection with any Invisible Fence System, and Company or Manufacturer neither assumes nor authorizes any representative or other person to assume for it any obligation or liability other than as expressly set forth herein. Dealer may extend any additional warranty protection to its customers in excess of that extended by the Company and Manufacturer to its retail customers; provided, however, that the Company or Manufacturer shall have no responsibility to Dealer or Dealer's customers for such additional warranty protection.

Section 7. Compliance with Laws.

Dealer agrees to make no sale in violation of any law, rule, regulation or order applicable within the Territory or of the United States provided that Dealer has been informed of such law, rule, regulation or order of the United States or otherwise has knowledge thereof.

Section 8. Relationship; Authority.

This Agreement does not in any way create the relationship of joint venture, partnership, employment, or principal and agent between Company and Dealer. Dealer acknowledges and agrees that neither Dealer nor any person acting on behalf of Dealer is or shall be considered an employee of the Company for any reason whatsoever and does not and shall not have any rights to, or participate in, any pension or welfare plans, or any other benefits which the Company now or hereafter maintains for or provides to its employees. Neither Dealer nor any person acting on behalf of Dealer is or shall be deemed to be the legal representative or agent of the Company for any purpose whatsoever, and Dealer is not authorized by the Company to transact business, incur obligations, express or implied, or otherwise act in any manner, in the name of or on behalf of the

Company or the Manufacturer, or to make any promise, warranty, or representation with respect to Invisible Fence Systems or any other matter in the name of or on behalf of the Company. DEALER IS ENGAGED IN ITS OWN INDEPENDENT BUSINESS AND SHALL INDEMNIFY THE COMPANY AND THE MANUFACTURER FROM AND AGAINST ANY DETERMINATION BY ANY COURT OR GOVERNMENT AGENCY IN THE UNITED STATES OR THE TERRITORY THAT DEALER OR ANY PERSON ACTING ON BEHALF OF DEALER IS AN EMPLOYEE OF THE COMPANY CONTRARY TO THE INTENT OF THE PARTIES HERETO. NEITHER THE COMPANY NOR THE MANUFACTURER HAS NO RESPONSIBILITY WITH RESPECT TO ANY EXPENSES OR OBLIGATIONS INCURRED BY DEALER IN CONNECTION WITH THE CARRYING ON OF ITS BUSINESS.

**Section 9. Trademarks and Trade Names.**

a. ~~Dealer shall use such trade names, trademarks, service marks, designs, slogans and similar property of the Company and Manufacturer, including the trademark "Invisible Fencing" (herein called "Proprietary Marks"), as Company shall designate in marketing the Invisible Fence System. Company hereby represents that it is authorized by the owner or licensee of the Proprietary Marks and that the Company has the rights to the use of such Proprietary Marks.~~

b. Dealer acknowledges the validity of the Proprietary Marks and agrees that it shall not do anything to infringe upon, harm or contest the rights of Company or Manufacturer in the Proprietary Marks owned by Manufacturer or Company, respectively, or in any other mark or name which incorporates the name "Invisible Fencing". Dealer shall not use any mark or name other than as herein permitted in connection with the advertising or sale of the Invisible Fence System. Dealer shall not place any name or mark, other than the names and marks originally appearing thereon and Dealer's name, address and telephone number, on any products or packages or other materials which Dealer obtains from Company or Manufacturer.

c. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OR OF ANY OTHER MARK OR NAME THAT INCORPORATES THE NAME "INVISIBLE FENCING" INURES TO THE BENEFIT OF THE MANUFACTURER AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE MANUFACTURER SHOULD THIS AGREEMENT BE TERMINATED BY EITHER PARTY FOR ANY REASON.

d. DEALER RECOGNIZES THAT THE USE BY DEALER OF ANY OF THE PROPRIETARY MARKS OWNED BY COMPANY INURES TO THE BENEFIT OF COMPANY AND THAT ANY GOODWILL ARISING FROM SUCH USE BY DEALER SHALL REVERT TO THE COMPANY AT THE TERMINATION OF THIS AGREEMENT.

e. Upon termination of this Agreement for whatever cause, the permission for the use of the Proprietary Marks and names as aforesaid and any interest of Dealer therein shall cease forthwith, and Dealer will not use or claim the right to use any

such Proprietary Marks or colorable imitations thereof. Dealer shall take such action and sign such documents as are reasonably required by Company or Manufacturer to evidence the fact that Dealer has ceased all use of and interest in such property.

Section 10. Policies of Company.

Dealer shall abide by such reasonable and lawful policies and regulations issued from time to time by the Company and by Manufacturer, and such sales quotas as issued by the Company, in connection with Dealer's operations under this Agreement and all matters arising under this Agreement, including but not limited to the policies of the Manufacturer attached hereto as Exhibit "A".

CH  
WC

Section 11. Training of Dealer Personnel.

Dealer will attend, at Dealer's own expense (including costs of transportation and lodging), initial training classes to be conducted by Manufacturer, as well as any additional training classes established by the Company. Dealer shall train each of Dealer's employees involved in the sale or installation of Invisible Fence Systems with the same training provided Dealer by the Company. The Company shall have the right to supervise Dealer's in-house training program and to establish the regulations and requirements of such training. Dealer shall continuously operate full-time a sales and installation business with an adequate number of trained personnel, using Dealer's best efforts, skills and diligence in the conduct thereof and in the regulation of Dealer's employees. Dealer shall employ only those persons who are fit and competent to do such work.

Section 12. Advertising.

a. All advertising relating to Invisible Fence Systems used by Dealer shall be submitted to Company and approved or rejected by Company within thirty (30) working days after receipt by Company, prior to any use thereof by Dealer, which approval shall not be unreasonably withheld. If Company does not reject the advertisement within the said thirty (30) days, then the advertisement shall be deemed approved. Dealer shall not use any advertising material rejected by Company.

b. The Manufacturer shall own all copyrights in the advertising and other materials produced by Dealer relative to the Invisible Fence Systems and Dealer hereby assigns all right, title and interest in and to such copyrights to the Manufacturer. In connection with all such advertisements, Dealer shall use a copyright notice in the following form: "Invisible Fence Company, Inc.; 1986 (or the year of first publication)" on all such material produced by Dealer. Dealer shall use the notation "R" with all federally registered marks of the Manufacturer.

Section 13. Insurance.

a. Dealer shall procure and maintain in full force and effect such liability insurance policies as Company and Manufacturer shall designate in such amounts as may be designated from time to time by Company and Manufacturer, protecting Dealer and its officers, employees, representatives and agents against any loss, liability or expense whatsoever from personal injury, death, property damage or loss otherwise arising or occurring from the operation of Dealer's business as it relates to the Invisible Fence Systems, including, but not limited to, the sale, installation and servicing of the Invisible Fence Systems. Dealer is presently required to carry a minimum of \$ \_\_\_\_\_ of products and completed operations insurance coverage, subject to change in the future upon notice by the Company or Manufacturer. ~~Dealer shall make provision for workmen's compensation, unemployment and similar coverage with respect to the operation of its business.~~

b. ~~Certificates of insurance shall be delivered by the carrier to the Company and Manufacturer showing Dealer's compliance herewith, and certificates shall state that the policies will not be cancelled or materially altered without at least thirty (30) days prior written notice to Company and Manufacturer.~~

Section 14. Term and Renewal.

The term of this Agreement shall be for a period of one (1) year from the date hereof unless sooner terminated by either party hereto on 90 days' written notice to the other party. The term of this Agreement shall continue from year to year thereafter unless terminated by written notice to the other party at least 90 days prior to the expiration of any one-year term. It is expressly understood that neither party has an expectation of renewal or a unilateral option to renew.

Section 15. Termination.

a. Without prejudice to any other remedy the Company may have for the breach or non-performance of any undertaking or obligation of Dealer hereunder, the Company may terminate this Agreement and refuse to make further sales to Dealer prior to the Expiration of the term set forth in Section 14, by written notice to the Dealer if any of the following events occur, and Dealer acknowledges that termination for any such reason shall constitute just cause for termination:

(i) If Dealer does not conform to any credit terms or policies established by Company;

(ii) If Dealer defaults in the payment of any sums due Company;

(iii) If Dealer defaults in the performance of any agreement made hereunder or breaches this Agreement or any covenant hereunder, and such default is not remedied to the Company's satisfaction within thirty (30) days after written notice thereof to Dealer;

(iv) If Dealer discontinues the business contemplated hereunder for a period of thirty (30) days and the Company provides Dealer with written notice of termination five (5) days prior to the termination date;

~~(v) Upon termination for any reason whatsoever of the Company's license to distribute Invisible Fence Systems; or~~

~~(vi) Upon transfer of ownership of any equity securities of Dealer, except in cases where Dealer has given notice in writing to Company of a proposed transfer of such equity securities and Company has given its written consent thereto.~~

b. This Agreement shall automatically terminate upon the insolvency of Dealer or if Dealer is declared bankrupt or makes an assignment for the benefit of creditors, or in the event a receiver is appointed or any proceeding is demanded by, for or against Dealer under any provision of any bankruptcy law.

IF DEALER'S APPOINTMENT IS TERMINATED OR IS NOT EXTENDED AT THE END OF THE TERM OF THIS AGREEMENT OR ANY SUCCESSIVE TERM, NEITHER PARTY SHALL BE ENTITLED TO ANY COMPENSATION OR REIMBURSEMENT FOR LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR OTHER LOSSES OCCASIONED BY TERMINATION OF THE RELATIONSHIP.

c. Notice of termination shall be given in the manner provided in Section 21 (d) hereof, and the date of termination shall be the date upon which the notice is effective as provided in Section 21 (d) hereof.

d. Termination of this Agreement shall not affect the rights of the Company to receive, or the obligation of Dealer to make payment for, Invisible Fence Systems ordered by Dealer hereunder prior to the termination date, whether shipped by the Company before or after the termination date.

e. In the event of termination of this Agreement, the Company shall have the first option, but no obligation, to repurchase from Dealer any or all of the Invisible Fence Systems as may then be owned by Dealer at the net price paid by the

Dealer including the cost of insurance and shipping. If the Company does not repurchase from Dealer any of the unsold Invisible Fence Systems, Company will notify other Dealers, if any, that Dealer has unused Invisible Fence Systems available for purchase. Sales terms shall be agreed upon between such other Dealers and Dealer.

Section 16. Duties of Dealer Upon Termination.

Upon the termination of this Agreement for any cause or reason:

a. Dealer will immediately discontinue the use of all trade names, service marks, Proprietary Marks, signs and forms of advertising indicative of Invisible Fencing, or any other name or designation then in use by Dealer, Manufacturer or Company in connection with the business contemplated by this Agreement unless such other name or designation is not confusingly similar to the trademark "Invisible Fencing" or any other trademark, service mark or Proprietary Mark developed, owned or licensed by the Company or Manufacturer.

b. Dealer will not, without the written consent of Company, conduct or engage in, either directly or indirectly, as owner, officer, employee or otherwise any business similar to that covered by this Agreement within the continental United States during the term of this Agreement and for a period of two (2) years after the date of termination. Sale of chain link or similar physical barrier fences shall not be deemed a violation of such non-competition covenant. During such period of time, Dealer will not employ or seek to employ any person who is employed by any business operated under the trademark or trade name of Invisible Fencing (or derivatives thereof) or by a licensee or sublicensee of Company in the business contemplated by this Agreement and will not, directly or indirectly, induce any such person to leave his or her employment unless Dealer has obtained the prior written approval of Company.

c. Dealer will execute and deliver all other documents reasonably required by Company to accomplish and evidence a complete termination of this Agreement and a surrender by Dealer of all rights hereunder.

d. The covenants contained in this Section shall be construed as independent of any other provision of this Agreement, and the existence of any claim or cause of action of Dealer against Company or Manufacturer whether predicated on this Agreement or otherwise shall not constitute a defense to the

enforcement of these provisions. Violation of any of these clauses shall authorize Company or Manufacturer to seek equitable relief as well as all other relief provided by law.

Section 17. Indemnification.

The Manufacturer agrees to defend and hold the Company or Dealer harmless with respect to any suits or claims arising solely out of an alleged product defect relating to an Invisible Fence System supplied by the Manufacturer and sold by Company or Dealer, provided that prompt notice is given by Company or Dealer to the Manufacturer of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct the defense of any such claim or suit, and that no settlement of any such claim or suit shall be made without the prior written consent of the Manufacturer. In addition, Company or Dealer shall furnish such information regarding itself and the claim in question as Manufacturer may reasonably request and as shall be reasonably required in connection with the defense of such claim or suit. If Manufacturer does not elect to assume the defense of any such claim or suit after notice from Company or Dealer, then Manufacturer will reimburse Company or Dealer for all costs and expenses, including reasonable counsel fees, as they are incurred in connection with investigating, preparing for or defending any such suit or claim.

Manufacturer will defend and hold the Dealer and Company harmless with respect to any suits or claims arising solely out of trademark, copyright or patent infringement relative to the Invisible Fence Systems supplied by the Company and not owned by Company or the use of the Proprietary Marks in connection therewith, provided that prompt notice is given to the Manufacturer and Company of any such claim or suit and provided further that the Manufacturer shall have the option to undertake, control and conduct defense of any such claim or suit, and that no settlement of any such claim shall be made without the prior written consent of the Manufacturer. Dealer agrees to promptly notify Manufacturer of any unauthorized use of the Proprietary marks or colorable imitations thereof by others. The Manufacturer shall have the sole right and discretion to bring infringement, unfair competition or other proceedings involving the Proprietary Marks or Invisible Fence Systems supplied by the Company and not owned by Company.

Dealer shall forever protect, save and keep Company and Manufacturer harmless and indemnify Company and Manufacturer against and from all claims, demands, losses, costs, damages, suits, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in connection with the operation of Dealer's business in a manner which constitutes negligence or willful misconduct, except as to any claims of

trademark, copyright or patent infringement with respect to Invisible Fence Systems supplied by Company.

**Section 18. Assignment.**

This Agreement shall be considered a personal agreement of Dealer and shall not be sold, assigned or transferred without the written consent of Company nor shall this Agreement or any right herein conferred be pledged or hypothecated in any manner whatsoever, nor may any sublicense be granted. Nothing to the contrary withstanding, all of the duties, covenants and obligations of Dealer and Company hereunder shall run in favor of Manufacturer.

**Section 19. Trade Secrets.**

Dealer during the term of this Agreement, and thereafter, will not use or communicate or divulge to, or for the benefit of, any person, partnership or corporation any trade secrets and confidential information including but not limited to information or knowledge concerning the methods, secret processes, sales or other skills used or employed by Company or Manufacturer which may be communicated to Dealer under the terms of this Agreement. Such knowledge shall include specific knowledge of the names of customers, Invisible Fence System design, any engineering developments or inventions of the Company or Manufacturer, forms of contracts and like information.

**Section 20. Waiver of Breach.**

No failure of the Company or Manufacturer to exercise any of the rights and options granted hereunder, or to insist upon strict compliance by Dealer, and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of Company's right to demand exact compliance with the terms hereof. A waiver by Company or Manufacturer of any specific default shall not affect or impair the rights of Company or Manufacturer with respect to any subsequent default of the same or different nature, nor shall any delay or omission to exercise any rights arising from a default affect or impair rights of Company or Manufacturer with respect to such default.

**Section 21. Miscellaneous.**

a. Dealer shall comply in all its actions with all applicable laws and regulations of all jurisdictions within which Dealer shall undertake to promote the sale of Invisible Fence Systems.

b. This Agreement shall be construed in accordance with and governed by the laws of the state of Connecticut.



c. This Agreement shall be binding on the parties hereto, their successors and assigns; provided, however, the right conferred upon Dealer hereunder is personal and may not be assigned or transferred, in whole or in part, directly or indirectly, by operation of law, or otherwise, without the prior written consent of the Company.

d. All notices, including any notice of termination pursuant to Section 17 hereof, shall be in writing and may be served personally, may be mailed by registered or certified mail, return receipt requested, postage prepaid letter, to either party at its address herein set forth or at such address as such party may provide in writing from time to time in the manner provided in this Section 21 (d). ~~Such notices shall be effective immediately when delivered in person, on the fifth day after deposit in the mail in the United States or within the Territory as applicable.~~

e. No provision of this Agreement may be changed, revised, or waived except by a written agreement signed by the authorized representatives of the parties hereto.

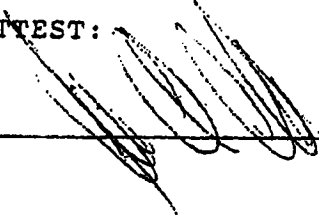
f. This Agreement constitutes the sole and entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, understandings, and communications, whether oral or written.

g. If any provision of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

THE CANINE FENCE COMPANY

ATTEST:

  
\_\_\_\_\_

By: Carol Hill

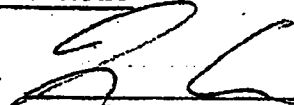
Title: Pres

(Corporate Seal)

IF DEALER IS INCORPORATED

ATTEST:

Kim Baer  
\_\_\_\_\_

By: X 

Title: \_\_\_\_\_

(Corporate Seal)

IF DEALER IS NOT INCORPORATED

Witness:

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT A

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: SERVICE

BACKGROUND:

The Invisible Fencing Organization has established a tradition of providing exemplary service to its customers. This ethic of dedicated service promotes an outstanding reputation for Invisible Fencing and the entire Organization. This reputation has distinct competitive advantages.

Therefore, the following policy is to be implemented:

Dealers are required to service what they sell. Specifically, that Dealers must provide a method for servicing the equipment they sell and the installations they perform.

Dealers must be able to provide customer-site service to any customer for whom they installed within two (2) working days of a request. For those customers who purchased a self-installation system, if on-site service is not practical, then service by mail must be performed with a turn-around time not to exceed three (3) working days.

Dealers are not permitted to charge a fee for the equipment exchanged under warranty. However, Dealers are permitted to charge a service fee for the labor associated with warranty servicing at customer's location.

Dealers are required to resolve, to the best of their ability, all customer complaints. Any customer complaint left unresolved for a period exceeding 60 days must be passed onto either the Manufacturer or Distributor.

STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.

EFFECTIVE DATE: September 1, 1987

RE: LOCATION OF OPERATION

BACKGROUND:

Each Dealer enters into a contractual agreement with either the Manufacturer or an authorized Distributor Company. Each contract specifically lists a location where the Dealer's business is intended to be conducted. This constitutes a Dealer's location. A Dealer's location is established to achieve specific marketing purposes. The movement of location without approval may be counterproductive to achieving proper coverage for sales, service and installation. Business conditions sometimes dictate that a Dealer must change business location and it is not always practical to amend the Dealer agreement each time.

Therefore, the following policy is to be implemented:

A Dealer is not permitted to change the location of business beyond a radius of ten miles from the location listed on the Dealer Agreement, unless the change is mutually agreed to and such Agreement is set forth in writing and attached as an Addendum to the Dealer Agreement. Additional locations, annex offices or branch locations owned by the Dealership must be approved in advance and such approval evidenced by Addendum to the Dealer Agreement.

**STATEMENT OF OFFICIAL POLICY  
INVISIBLE FENCE COMPANY, INC.**

EFFECTIVE DATE: September 1, 1987

RE: USE OF THE INVISIBLE FENCING BRAND NAME FOR CONSUMER  
COMMUNICATION

Invisible Fencing is a registered trademark owned by Invisible Fence Company, Inc. (hereinafter known as Manufacturer).

It is the responsibility of Invisible Fence Company to control the use of the name Invisible Fencing and to govern its use by its representatives. It is to the benefit of everyone involved in the marketing of Invisible Fencing that the name appear in a ~~clear and consistent fashion. This will generate product~~ recognition and avoid brand name confusion.

Therefore, the following policy is to be implemented:

All advertising material which contains the name of Invisible Fencing must be approved before it appears in public. No approval needs to be obtained when using materials which the Manufacturer has produced.

Rule of Thumb: If the Manufacturer does not prepare it and/or supply it, and it contains the name Invisible Fencing, then it requires approval.

Any change in copy or form of Manufacturer-produced material must be approved before it appears in public. This includes advertisements, brochures, flyers, pamphlets, press releases or any other communication intended to appear in public.

Telephone directory listings or advertisements, bearing the Invisible Fencing brand name, must be approved before they appear in public. Placement of telephone directory listings or advertisements is limited to the Dealer's primary trading area. Placements outside this area must be authorized in writing by either the Manufacturer or Distributor.

All advertisements must carry the Dealer's location (city and state) and no advertising response is permitted to be directed to a location other than the Dealer's approved and/or authorized location(s). Responses are permitted to be collected by 800# services as long as the advertisements list the Dealer's and/or Distributor's location.

Letterheads, envelopes, business-cards, business forms and other such materials containing the name Invisible Fence or Invisible Fencing, must conform to a standard form as set forth in samples supplied by the Manufacturer.

INVISIBLE FENCE COMPANY, INC.

STATEMENT OF OFFICIAL POLICY

EFFECTIVE DATE: APRIL 1, 1989

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RE: SELF-INSTALLATION KITS

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BACKGROUND:

THE INVISIBLE FENCE COMPANY (IFCO) DESIRES THAT INVISIBLE FENCING BE DISTRIBUTED TO THE PUBLIC IN A CONSISTENT AND UNIFORM MANNER. IFCO RECOGNIZES THAT IT IS ECONOMICALLY IMPRACTICAL TO REQUIRE DEALERS TO PURCHASE PRE-ASSEMBLED SELF-INSTALLATION KITS. THEREFORE, DEALERS MUST BE RELIED UPON TO ASSEMBLE SELF-INSTALLATION KITS. TO INSURE THAT THE MATERIALS AND PACKAGING OF SELF - INSTALLATION KITS ARE UNIFORM AND CONSISTENT,

THE FOLLOWING POLICY IS TO BE IMPLEMENTED:

DEALERS MUST MAKE AVAILABLE TO THE PUBLIC A SELF - INSTALLED VERSION OF INVISIBLE FENCING.

ALL SALES OF A SELF-INSTALLED VERSION OF INVISIBLE FENCING MUST BE MADE IN AN AUTHORIZED BOX SUPPLIED ONLY BY INVISIBLE FENCE COMPANY, INC., AND MUST CONTAIN, AT LEAST, THE MATERIALS LISTED ON THE BOX AND IN THE SELF-INSTALLATION MANUAL.

ALL SALES OF A SELF-INSTALLATION VERSION OF INVISIBLE FENCING MUST BE SUPPLIED WITH THE AUTHORIZED SELF-INSTALLATION MANUAL AND AN APPROVED TRAINING AID.

APPENDIX A

Comprehensive Liability coverage of no less than \$1,000,000

Products and Completed Operations Coverage of no less than  
\$500,000

Applicable Workmans Comprehensive Coverage

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THE CANINE FENCE CO.  
493 Danbury Rd., Wilton, CT 06897  
203-834-2777

January 26, 1992

ALL CANINE FENCE COMPANY DEALERS

STATEMENT OF OFFICIAL POLICY

This letter establishes an official policy as defined in your Dealer contract. It is the policy of The Canine Fence Company that all service and installation vehicles which are used by The Canine Fence Company and its Dealers to provide service and installations to retail customers will conform to established Invisible Fence Design Standards. Specifically, these vehicles will be enclosed vans, either full sized or mini's, painted bright white and liveried in current Invisible Fencing decals. Additional signage is limited to telephone numbers in the appropriate locations and dealer identification which is permitted on the forward passenger doors.

We have long considered the problems of individual choice and preference in vehicle selection and we are very, very sympathetic to the importance of independence to entrepreneurs. We also understand the economic reality of new businesses and the need to deploy existing resources during the formative years of each new Dealership. Because of these considerations we are exempting all currently operated vehicles from this policy.

However, we also recognize the tremendous impact of "one look" among the more than 40 vehicles that are currently traveling all over the markets we serve. Simply put we are professionals and we need to look like professionals. Our current "rag tag" fleet doesn't live up to that standard.

If you have any questions please contact me.

Henry

cc: Bill Annesley  
Jim Staples  
John Purtell



**EXHIBIT C**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

\_\_\_\_\_ X  
FIDO'S FENCES

Petitioner

v.

**PETITION FOR  
CANCELLATION**

\_\_\_\_\_ X  
In re: U.S. Registration No: 1,765,230  
Date of Registration: April 13, 1993

----- X  
Trademark: **INVISIBLE**

INVISIBLE FENCE, INC.

Respondent  
\_\_\_\_\_ X

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH 404821095 US in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board on Tuesday, December 2, 2008

DATED: 12/02/08  
Name:

*Panagiotis Betty Tufarillo*  
Panagiotis Betty Tufarillo

BOX TTAB FEE  
Hon. Commissioner for Patents and Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Commissioner:

Fido's Fences, a New York corporation, with a business address at 6278 Northern Blvd., E. Norwich, NY 11732 (hereinafter "Petitioner"), believes that it will continue to be damaged by the registration of the mark shown in the registration identified herein above. Accordingly, Petitioner hereby requests and petitions for cancellation of same, pursuant to 37

Page 1- PETITION FOR CANCELLATION, In re U.S. Registration No. 1,765,230

C.F.R. § 2.11 (a) and 15 U.S.C. § 1064.

The grounds for the present Petition for Cancellation are as follows:

1. On July 11, 2008, Registrant/Respondent Invisible Fence, Inc. (hereinafter "Respondent") and Respondent's Distributor The Canine Fence Company (hereinafter "Respondent's Distributor") filed a Motion for Preliminary Injunction against Petitioner in Fido's Fences v. The Canine Fence Company, Case No. 08-CV-754 in the United States District Court, Eastern District of New York. The basis for such motion is Petitioner's alleged trademark infringement of Respondent's U.S. Trademark Registration No. 1,765,230, the trademark registration referenced herein above and the subject matter of the present petition.
2. Following a September 5, 2008, hearing on said Motion for a Preliminary Injunction before E.D.N.Y. Judge Leonard D. Wexler, the Court granted the Respondent and Respondent's Distributor's Motion for Injunction.
3. Petitioner has been greatly injured by the grant of such Injunction to Respondent and Respondent's Distributor particularly since, upon information and belief, the Mark in U.S. Registration 1,765,230 is generic (15 U.S.C. § 1064 (3)).
4. The use and continued registration of Respondent's Generic Mark has caused and will continue to cause significant damage to Petitioner.
5. A duplicate copy of this Petition is enclosed, together with USPTO Credit Card Payment Form for the required fee of \$300.00 for the cancellation of U.S. Registration No. 1,765,230.

**WHEREFORE**, Petitioner prays that Registration No. 1,765,230 be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully Submitted,  
INTELLECTULAW  
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 12/02/08

By: \_\_\_\_\_

*Panagiot Betty Tufariello*

Panagiot Betty Tufariello

25 Little Harbor Road

Mt. Sinai, New York 11766

Tei.: (631) 476-8734

Fax: (631) 476-8737

Email: [24yellow@optonline.net](mailto:24yellow@optonline.net)

POWER OF ATTORNEY

The Petitioner appoints Intellectulaw, The Law Offices of P.B. Tufariello, P.C. and Panagiota Betty Tufariello, Esq., Registration No. 40,851, as its attorney to prosecute this Petition for Cancellation with full power of substitution and revocation to transact all business in the United States Patent and Trademark Office in connection therewith. Please address all correspondence to:

---

PANAGIOTA BETTY TUFARIELLO, ESQ.  
INTELLECTULAW  
The Law Offices of P.B. Tufariello, P.C.  
25 Little Harbor Road  
Mt Sinai, NY 11766  
631-476-8734 (Tel)  
631-476-8737 (Fax)  
~~24yellow@optonline.net (e-mail)~~  
Info@intellectulaw.com (e-mail)  
Betty@intellectulaw.com (e-mail)

DECLARATION

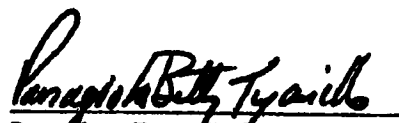
I, PANAGIOTA BETTY TUFARIELLO hereby declare:

that I am the Attorney for the Applicant that I have read and signed the foregoing Petition for Cancellation and know the contents thereof; and that the allegations are true.

I further declare that I am authorized to make this declaration;

that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this Cancellation.

Dated: 12/02/08

  
Panagiota Betty Tufariello  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH404821095US in an envelope addressed to: U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, VA 22313-1451, on Tuesday, December 2, 2008. I also certify that on this date a copy of the foregoing PETITION FOR CANCELLATION dated Tuesday, December 2, 2008, has been forwarded to Respondent and Respondent's counsel via Express Mail at the following addresses:

Invisible Fence, Inc.  
Innotek, Inc.  
1000 Fuller Drive  
Garret, IN 46738

Innotek, Inc.  
One Innoway  
Garrett, IN 46738

Christopher Parent  
Brownstein, Hyatt & Farber, P.C.  
Twenty-Second Floor  
410 Seventeenth Street  
Denver, CO 80202

R. Bradford Brittan  
Pitts and Brittan, P.C.  
1319 Old Weisgarber Road  
Knoxville, TN 37909

on Tuesday, December 2, 2008

  
Panagota Betty Tufariello, Esq.

**EXHIBIT D**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

\_\_\_\_\_ X  
FIDO'S FENCES

Petitioner

v.

INVISIBLE FENCE, INC.

Respondent  
\_\_\_\_\_ X

**PETITION FOR  
CANCELLATION**

In re: U.S. Registration No: 1,600,470  
Date of Registration: June 12, 1990

Trademark: INVISIBLE FENCE

I hereby certify that this correspondence is being deposited with  
the United States Postal Service as Express Mail No.  
EH404821104 US in an envelope addressed to: United States  
Patent and Trademark Office, Trademark Trial and Appeal Board  
on Tuesday, December 2, 2008

DATED: 12/02/08  
Name:

*Patricia Betty Tufarillo*  
Patricia Betty Tufarillo

BOX TTAB FEE  
Hon. Commissioner for Patents and Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Commissioner:

Fido's Fences, a New York corporation, with a business address at 6278 Northern Blvd., E. Norwich, NY 11732 (hereinafter "Petitioner"), believes that it will continue to be damaged by the registration of the mark shown in the registration identified herein above. Accordingly, Petitioner hereby requests and petitions for cancellation of same, pursuant to 37

Page1- PETITION FOR CANCELLATION, In re U.S. Registration No. 1,600,470

C.F.R. § 2.11 (a) and 15 U.S.C. § 1064.

The grounds for the present Petition for Cancellation are as follows:

1. On July 11, 2008, Registrant/Respondent Invisible Fence, Inc. (hereinafter "Respondent") and Respondent's Distributor The Canine Fence Company (hereinafter "Respondent's Distributor") filed a Motion for Preliminary Injunction against Petitioner in Fido's Fences v. The Canine Fence Company, Case No. 08-CV-754 in the United States District Court, Eastern District of New York. The basis for such motion is Petitioner's alleged trademark infringement of Respondent's U.S. Trademark Registration No. 1,600,470, the trademark registration referenced herein above and the subject matter of the present petition.
2. Following a September 5, 2008, hearing on said Motion for a Preliminary Injunction before E.D.N.Y. Judge Leonard D. Wexler, the Court granted the Respondent and Respondent's Distributor's Motion for Injunction.
3. Petitioner has been greatly injured by the grant of such Injunction to Respondent and Respondent's Distributor particularly since, upon information and belief, the Mark in U.S. Registration 1,600,470 is generic (15 U.S.C. § 1064 (3)).
4. The use and continued registration of Respondent's Generic Mark has caused and will continue to cause significant damage to Petitioner.
5. A duplicate copy of this Petition is enclosed, together with USPTO Credit Card Payment Form for the required fee of \$300.00 for the cancellation of U.S. Registration No. 1,600,470.

WHEREFORE, Petitioner prays that Registration No. 1,600,470 be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully Submitted,  
INTELLECTULAW  
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 12/02/08

By: *Panagiotis Betty Tufariello*

Panagiotis Betty Tufariello  
25 Little Harbor Road  
Mt. Sinai, New York 11766  
Tel.: (631) 476-8734  
Fax: (631) 476-8737  
Email: [24yellow@optonline.net](mailto:24yellow@optonline.net)

POWER OF ATTORNEY

The Petitioner appoints Intellectulaw, The Law Offices of P.B. Tufariello, P.C. and Panagiota Betty Tufariello, Esq., Registration No. 40,851, as its attorney to prosecute this Petition for Cancellation with full power of substitution and revocation to transact all business in the United States Patent and Trademark Office in connection therewith. Please address all correspondence to:

PANAGIOTA BETTY TUFARIELLO, ESQ.  
INTELLECTULAW  
The Law Offices of P.B. Tufariello, P.C.  
25 Little Harbor Road  
Mt Sinai, NY 11766  
631-476-8734 (Tel)  
631-476-8737 (Fax)  
[24yellow@optonline.net](mailto:24yellow@optonline.net) (e-mail)  
[Info@intellectulaw.com](mailto:Info@intellectulaw.com) (e-mail)  
[Betty@intellectulaw.com](mailto:Betty@intellectulaw.com) (e-mail)

DECLARATION

I, PANAGIOTA BETTY TUFARIELLO hereby declare:

that I am the Attorney for the Applicant that I have read and signed the foregoing Petition for Cancellation and know the contents thereof; and that the allegations are true.

I further declare that I am authorized to make this declaration;

that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this Cancellation.

Dated:

12/02/08

  
Panagiota Betty Tufariello  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH404821104US in an envelope addressed to: U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, VA 22313-1451, on Tuesday, December 2, 2008. I also certify that on this date a copy of the foregoing PETITION FOR CANCELLATION dated Tuesday, December 2, 2008, has been forwarded to Respondent and Respondent's counsel via Express Mail at the following addresses:

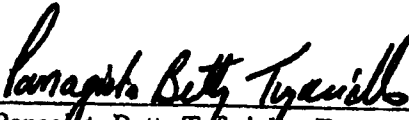
Invisible Fence, Inc.  
Innotek, Inc.  
1000 Fuller Drive  
Garret, IN 46738

Innotek, Inc.  
One Innoway  
Garrett, IN 46738

Christopher Parent  
Brownstein, Hyatt & Farber, P.C.  
Twenty-Second Floor  
410 Seventeenth Street  
Denver, CO 80202

R. Bradford Brittan  
Pitts and Brittan, P.C.  
1319 Old Weisgarber Road  
Knoxville, TN 37909

on Tuesday, December 2, 2008

  
Panagiotis Betty Tufaric, Esq.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

\_\_\_\_\_ X  
FIDO'S FENCES  
:

Petitioner  
:

v.  
:

**PETITION FOR  
CANCELLATION**

In re: U.S. Registration No: 1,371,021  
Date of Registration: November 19, 1985

**Trademark: INVISIBLE FENCING**

INVISIBLE FENCE, INC.  
:

Respondent  
:  
\_\_\_\_\_ X

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH404821118 US in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board on Tuesday, December 2, 2008.

DATED: 12/02/08  
Name:

*Panagiotis Betty Tufariello*  
Panagiotis Betty Tufariello

**BOX TTAB FEE**  
**Hon. Commissioner for Patents and Trademarks**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Dear Commissioner:

**Fido's Fences**, a New York corporation, with a business address at **6278 Northern Blvd., E. Norwich, NY 11732** (hereinafter "Petitioner"), believes that it will continue to be damaged by the registration of the mark shown in the registration identified herein above. Accordingly, Petitioner hereby requests and petitions for cancellation of same, pursuant to 37

Page1- PETITION FOR CANCELLATION, In re U.S. Registration No. 1,371,021



C.F.R. § 2.11 (a) and 15 U.S.C. § 1064.

The grounds for the present Petition for Cancellation are as follows:

1. On July 11, 2008, Registrant/Respondent Invisible Fence, Inc. (hereinafter "Respondent") and Respondent's Distributor The Canine Fence Company (hereinafter "Respondent's Distributor") filed a Motion for Preliminary Injunction against Petitioner in Fido's Fences v. The Canine Fence Company, Case No. 08-CV-754 in the United States District Court, Eastern District of New York. The basis for such motion is Petitioner's alleged trademark infringement of Respondent's U.S. Trademark Registration No. 1,371,021, the trademark registration referenced herein above and the subject matter of the present petition.
2. Following a September 5, 2008, hearing on said Motion for a Preliminary Injunction before E.D.N.Y. Judge Leonard D. Wexler, the Court granted the Respondent and Respondent's Distributor's Motion for Injunction.
3. Petitioner has been greatly injured by the grant of such Injunction to Respondent and Respondent's Distributor particularly since, upon information and belief, the Mark in U.S. Registration 1,371,021 is generic (15 U.S.C. § 1064 (3)).
4. The use and continued registration of Respondent's Generic Mark has caused and will continue to cause significant damage to Petitioner.
5. A duplicate copy of this Petition is enclosed, together with USPTO Credit Card Payment Form for the required fee of \$300.00 for the cancellation of U.S. Registration No. 1,371,021.

WHEREFORE, Petitioner prays that Registration No. 1,371,021 be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully Submitted,  
INTELLECTULAW  
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 12/02/08

By: Panagiotis Betty Tufariello

Panagiotis Betty Tufariello  
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Mt. Sinai, New York 11760  
Tel.: (631) 476-8734  
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POWER OF ATTORNEY

The Petitioner appoints IntellectualLaw, The Law Offices of P.B. Tufariello, P.C. and Panagiota Betty Tufariello, Esq., Registration No. 40,851, as its attorney to prosecute this Petition for Cancellation with full power of substitution and revocation to transact all business in the United States Patent and Trademark Office in connection therewith. Please address all correspondence to:

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PANAGIOTA BETTY TUFARIELLO, ESQ.  
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DECLARATION

I, PANAGIOTA BETTY TUFARIELLO hereby declare:

that I am the Attorney for the Applicant that I have read and signed the foregoing Petition for Cancellation and know the contents thereof; and that the allegations are true.

~~I further declare that I am authorized to make this declaration;~~

that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this Cancellation.

Dated: 12/02/08

  
Panagiota Betty Tufariello  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EH404821118US in an envelope addressed to: U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, VA 22313-1451, on Tuesday, December 2, 2008. I also certify that on this date a copy of the foregoing PETITION FOR CANCELLATION dated Tuesday, December 2, 2008, has been forwarded to Respondent and Respondent's counsel via Express Mail at the following addresses:

Invisible Fence, Inc.  
Innotek, Inc.  
1000 Fuller Drive  
Garret, IN 46738

Innotek, Inc.  
One Innoway  
Garrett, IN 46738

Christopher Parent  
Brownstein, Hyatt & Farber, P.C.  
Twenty-Second Floor  
410 Seventeenth Street  
Denver, CO 80202

R. Bradford Brittan  
Pitts and Brittan, P.C.  
1319 Old Weisgarber Road  
Knoxville, TN 37909

on Tuesday, December 2, 2008

  
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Panagota Betty Tufanello, Esq.