

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HONEYWELL INTERNATIONAL INC. and
HONEYWELL INTELLECTUAL PROPERTIES INC.,

Plaintiffs,

-against-

COOLGAS, INC. a/d/b/a COOLGAS, LTD.,

Defendant.

Civ. Action No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT AND
VIOLATIONS OF THE
LANHAM ACT**

Honeywell International Inc. and Honeywell Intellectual Properties Inc., through their undersigned counsel Buchanan Ingersoll & Rooney PC, by and for their Complaint against Coolgas, Inc. for patent infringement in violation of 35 U.S.C. § 271, for trademark infringement under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and for violations of New York statutory and common law, hereby allege as follows:

THE PARTIES

1. Plaintiff Honeywell International Inc. ("Honeywell International") is a corporation organized under the laws of Delaware with a principal place of business in Morristown, New Jersey. Honeywell International maintains a Specialty Materials Research & Development Facility in Buffalo, New York. The patented invention at issue in this lawsuit was developed at the Buffalo facility.

2. Plaintiff Honeywell Intellectual Properties Inc. ("HIPI") is a corporation organized under the laws of Arizona with its principal place of business in Tempe, Arizona. HIPI is a wholly-owned subsidiary of Honeywell International.

3. Defendant Coolgas, Inc. ("Coolgas") is a Texas corporation with its principal place of business at 30045 FM 2978, Magnolia, Texas 77354.

JURISDICTION AND VENUE

4. This action arises under Titles 35 and 15 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1121(a), 1331 and 1338(a). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and § 1367(a).

5. This Court has personal jurisdiction over Coolgas. According to its website, Coolgas "distributes virgin and reclaimed refrigerants throughout the U.S.," "provides Universally Certified Refrigerant Recovery Technicians to recover refrigerant anywhere in the U.S.," and provides buy back services "all over the U.S." Upon information and belief, Coolgas has and continues to transact business in New York, including without limitation using, selling, offering to sell, shipping, distributing and/or advertising the infringing products.

6. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

PATENT INFRINGEMENT

7. Plaintiffs incorporate by reference the allegations set forth in all preceding and succeeding paragraphs as if set forth in full herein.

8. On December 18, 1990, U.S. Patent No. 4,978,467 titled "Azeotrope-like compositions of pentafluoroethane and difluoromethane" (the "Patent") was duly and legally issued to Ian Shankland and Earl Lund, who were then employed at the Buffalo research facility described above. HIPI currently owns the Patent, which is licensed exclusively to Honeywell International. A true and correct copy of the Patent is attached hereto as Exhibit A.

9. Honeywell International and HIPI are collectively referred to as "Honeywell."

10. The Patent describes and claims, *inter alia*, a novel refrigerant composition known as "R-410A." Honeywell makes and sells R-410A under the trademark AZ-20.

11. Honeywell has placed the required statutory notice on all products sold by it under the Patent.

12. Coolgas has infringed and continues to infringe the Patent by making, using, selling and offering to sell R-410A throughout the United States.

13. Upon information and belief, Coolgas has known about the Patent, and its infringement is willful. This case is an exceptional case that warrants treble damages and attorneys' fees under 35 U.S.C. § 285.

14. Coolgas's infringement has damaged the Plaintiffs.

15. Coolgas will continue to infringe and cause irreparable harm to the Plaintiffs for which there is no adequate remedy at law, unless permanently enjoined.

LANHAM ACT VIOLATIONS

16. Honeywell incorporates by reference the allegations set forth in all preceding and succeeding paragraphs as if set forth in full herein.

17. In 1993, Honeywell began using the trademark, "AZ-20." The AZ-20 trademark was registered in 1998 on the Principal Register of the United States Patent and Trademark Office (the "PTO") for use in connection with refrigerants. A true and correct copy of the AZ-20 registration is attached hereto as Exhibit B.

18. HIPI is the current owner of the AZ-20 trademark, which is licensed exclusively to Honeywell International.

19. Honeywell has continuously used the AZ-20 trademark since 1993.

20. Upon information and belief, Coolgas has had actual knowledge of the trademark.

At the very least, Coolgas has constructive knowledge of the trademark since it is registered on the Principal Register.

21. Despite this knowledge, Coolgas has been marketing R-410A on its website in interstate commerce using the AZ-20 registered mark.

22. Coolgas has never had Honeywell's permission, consent or approval in any form or manner to use the AZ-20 trademark, and all such use by Coolgas has been without Honeywell's consent and with actual knowledge and willful disregard of Honeywell's rights.

23. Coolgas's use of the AZ-20 trademark is likely to cause confusion, to cause mistake, or to deceive.

24. Coolgas's advertisements falsely or misleadingly represent that the Coolgas products are the same as products sold under Honeywell's registered trademark AZ-20.

25. Coolgas's continued use of the AZ-20 trademark and false or misleading representations, despite knowledge that such use constitutes infringement of Honeywell's intellectual property rights, demonstrates that Coolgas intended to pass off its product as AZ-20, or to suggest that Coolgas is associated with Honeywell, when it is not.

26. Coolgas's aforesaid acts and omissions violate Section 32 of the Lanham Act, 15 U.S.C. § 1114.

27. Coolgas's aforesaid acts and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

28. Coolgas is engaged in interstate commerce, and the acts complained of herein have an effect on interstate commerce.

29. Coolgas's infringement and false or misleading representations are a willful attempt to deceive the public, to trade upon the goodwill of Honeywell, and to cause irreparable

harm to Honeywell.

30. The acts of Coolgas constitute a fraud and deceit upon the consuming public in the Unites States.

31. Unless Coolgas is enjoined from using Honeywell's trademark, Honeywell is being and will continue to be irreparably harmed in its business, goodwill and reputation.

32. Honeywell does not have an adequate remedy at law.

**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW
AND UNFAIR COMPETITION**

33. Honeywell incorporates by reference the allegations set forth in all preceding and succeeding paragraphs as if set forth in full herein.

34. Coolgas's aforesaid acts and omissions violate New York General Business Law §§ 349 and 350-a.

35. Coolgas's aforesaid acts and omissions constitute common law unfair competition.

PRAYER FOR RELIEF

Honeywell requests the following relief:

- A. A judgment that Coolgas has infringed the Patent and the AZ-20 trademark;
- B. A judgment that Coolgas's infringement of the patent and the AZ-20 trademark has been willful;
- C. A judgment that this case is exceptional under 35 U.S.C. § 285;
- D. A judgment awarding Honeywell damages sufficient to compensate it for Coolgas's infringement, including treble damages, pre-and post-judgment interest, and all the costs of this action and attorneys' fees;
- E. A judgment that Coolgas, its officers, agents, servants, directors, employees,

subsidiaries, parents, attorneys, and those person acting in active concert, on behalf of, in joint venture, or in participation with Coolgas, are permanently enjoined from further patent and trademark infringement;

F. A judgment that Coolgas be required to take all actions as may be necessary or required to issue a recall to all retailers or other persons or entities to whom Coolgas has given, distributed or sold products using the AZ-20 trademark, to lodge with the Court a copy of each of the recalls issued, to collect all such recalled products, and to represent in writing under oath to Honeywell and the Court that such recall and collection is full and complete;

G. A judgment that Coolgas be required to deliver to Honeywell for destruction all products, labels, signs, advertisements, letterheads, billheads and other printed matter or things of any kind whatsoever in its possession or control bearing the AZ-20 trademark, and to represent in writing under oath to Honeywell and the Court its collection and delivery efforts and that such collection and delivery is full and complete to the best of Coolgas's efforts;

H. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: Buffalo, New York
June 21, 2007

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