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JAMES N. HATTEN, Clerk
By: *J. White* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ECOSMART TECHNOLOGIES, INC.,)

Plaintiff,)

v.)

GREEN LIGHT COMPANY, and)
SOUTHWEST CONTRACT)

PACKAGING, INC.,)

Defendants.)

1 08 - CV - 2898
CIVIL ACTION NO. **ODE**

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT

Plaintiff, EcoSMART Technologies, Inc. ("EcoSMART"), by and through
its undersigned attorneys, alleges as follows:

THE PARTIES

1. EcoSMART is a corporation duly organized and existing under the
laws of the State of Delaware, with its principal place of business at 3600 Mansell
Road, Suite 150, Alpharetta, Georgia 30022.

2. Upon information and belief, Defendant Green Light Company
("Green Light") is a corporation organized and existing under the laws of the State
of Texas, with its principal place of business at 10511 Wetmore Rd., San Antonio,
TX 78216.

3. Upon information and belief, Defendant Southwest Contract Packaging, Inc. ("Southwest"), a wholly owned subsidiary of Green Light, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business at 10511 Wetmore Rd., San Antonio, TX 78216 (Green Light and Southwest are collectively referred to herein as "Defendants").

OVERVIEW AND NATURE OF THE ACTION

4. EcoSMART is a pesticide company engaged in the discovery, development, and commercialization of non-toxic, environmentally safe pesticides. Over the years, EcoSMART has applied modern research and development techniques to essential oils derived from plants in order to create effective pesticide products with an unprecedented margin of safety to people, pets, and the environment. The EcoSMART formulas for residential, commercial and agricultural pest control include FDA approved food grade ingredients that block an insect's neuroreceptors, resulting in metabolic frenzy and ultimately death of the insects.

5. Since its founding in 1992, EcoSMART has emerged as a world leader in organic and pesticides and biopesticides, and its formulation technology has resulted in significant innovative advances in the pesticide field over the past decade. As a viable alternative to conventional pesticides, EcoSMART's products

are among the most successful pesticides in the natural/organic product markets. EcoSMART's field-proven technology provides natural organic pest control solutions to the agricultural, commercial and retail markets. Its technologies and products are also covered by patents granted by the United States Patent and Trademark Office. Defendants have chosen to disregard EcoSMART's patented technology and now market products and systems that infringe one or more claims of the patent-in-suit without a license from EcoSMART.

6. To identify its innovative, non-toxic, and environmentally safe pesticides, EcoSMART created, used and federally registered the trademark BIOGANIC, which Defendants are using in connection with its products without permission from EcoSMART.

7. Accordingly, this action seeks injunctive and monetary relief for Defendants' infringing acts.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq*, and the trademark laws of the United States, including 15 U.S.C. § 1121. This Court also has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a)(1) since the matter in

controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

9. This Court has personal jurisdiction over Defendants because they continually and systematically solicit and transact business in this state and judicial district by, among other things, offering to sell, selling and distributing insecticide products to purchasers, third-party distributors and/or end users of such products who also reside and/or conduct business in this state and district, in violation of EcoSMART's patent and trademark rights, as described herein. By their conduct, Defendants also have committed tortious acts in this state and judicial district, and have committed a tortious injury in this state caused by acts or omissions outside this state.

10. EcoSMART also conducts business in this judicial district by virtue of its distribution and sale of a wide variety of highly successful insecticide, herbicide and/or fungicide products for use in the agricultural industry including, but not limited to, products covered by the patent and trademark rights as described herein. This state therefore has a strong interest in protecting EcoSmart's patent and trademark rights against Defendants' misconduct as described herein.

VENUE

11. The Defendants reside and conduct business in this district, including distributing and/or selling pesticidal products and providing technical assistance, instructions and other information regarding the use of such products in violation of EcoSMART's patent and trademark rights as described herein. Venue is proper in this judicial district under 28 U.S.C. § 1391 and 1400.

**FIRST CLAIM FOR RELIEF
(INFRINGEMENT OF U.S. PATENT NO. 6,004,569)**

12. On December 21, 1999, United States Patent No. 6,004,569 ("the '569 patent"), entitled "Non-Hazardous Pest Control," was duly and legally issued by the United States Patent and Trademark Office. The entire right, title and interest in the '569 patent has been assigned by the inventors to EcoSMART, including the right to recover for past damages for any infringement of the patent. A true and correct copy of the '569 patent is attached hereto as Exhibit A.

13. For many years, and prior to the acts complained of herein, EcoSMART has been a global leader in the development and distribution of pesticide products derived from natural plant oils. By virtue of its extensive research and development efforts over the past decade, EcoSMART has developed a new line of revolutionary combinations of efficacious insecticidal plant oils that provide an environmentally safe alternative to the use of conventional pesticides.

The pesticidally active ingredients in the products developed by EcoSMART including, but not limited to, the products covered by the '569 patent, comprise ingredients that are chosen because they are highly effective in controlling deleterious insect populations that otherwise cause significant damage to agricultural crops.

14. Upon information and belief, Defendants Green Light and Southwest have infringed and continue to infringe the '569 patent. Defendants' infringing acts include the manufacture, use, sale and/or offer for sale of insecticide products used in accordance with the methods described and claimed in the '569 patent, as well as acts inducing and contributing to the use of such products in an infringing manner in this judicial district. Upon information and belief, the products currently being manufactured, distributed, sold and offered for sale by Defendants for use in an infringing manner in this district include at least the products set forth below:

<u>Product Name</u>	<u>UPC Code</u>
Bioganic Home & Garden Spray RTU	0 49424 80232 6
Bioganic Home & Garden Spray RTU	0 49424 80224 1
Bioganic Lawn & Garden RTS	0 49424 80132 9
Bioganic Organic Insect Control Concentrate	0 49424 80016 2
Bioganic Organic Insect Control Concentrate	0 49424 80032 2

15. Material Safety Data Sheets for the above-identified products, which were obtained from Green Light's website, are attached hereto as Exhibit B.

16. Defendants are jointly and severally liable for infringement of the '569 patent under 35 U.S.C. § 271.

17. Defendants' acts of infringement have caused significant damage to plaintiff. EcoSMART is entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount subject to proof at trial.

18. Defendants' infringement of EcoSMART's patent rights under the '569 patent will continue to damage EcoSMART's business and will cause irreparable harm, for which there is no adequate remedy at law, unless Defendants are enjoined by this Court.

SECOND CLAIM FOR RELIEF
(INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARKS)

19. For purposes of this Claim for Relief, EcoSMART incorporates by reference all previous paragraphs of this Complaint, as if fully set forth herein.

20. This is an action for trademark infringement arising under the trademark laws of the United States, Title 15 of the United States Code and, more particularly, 15 U.S.C. § 1114, and §§ 1116-18, inclusive.

21. On June 28, 1999, June 30, 2000, and August 29, 2000, EcoSMART filed applications to register its BIOGANIC trademark in the United States Patent and Trademark Office ("PTO"). On March 12, 2002, June 11, 2002, and August 5, 2003, the PTO granted the applications and issued Certificates of Registration

under U.S. Registration Nos. 2,545,701, 2,577,444, and 2,747,713, respectively.

Copies of the registration certificates are attached as collective Exhibit C.

22. The Certificates of Registration provided as Exhibit C are valid and subsisting and *prima facie* evidence of the validity of the registrations, EcoSMART's ownership, and its exclusive right to use, or to license others to use, the BIOGANIC mark in commerce in connection with the goods and/or services specified in the certificates of registration under the provisions of 15 U.S.C. § 1057(b). The registrations also provide constructive notice of EcoSMART's claim of ownership under 15 U.S.C. § 1072.

23. EcoSMART has created substantial goodwill in the BIOGANIC mark, including in the State of Georgia and this judicial district. As a result, the general public has long recognized that the BIOGANIC mark, as used on or in connection with insecticidal products, indicates origin with, sponsorship by or other connection solely with EcoSMART.

24. Without EcoSMART's authorization or consent, Defendants have been selling and/or offering to sell products within the State of Georgia, including this judicial district, and throughout the United States, under the BIOGANIC trademark. EcoSMART has objected to Defendants' use of the BIOGANIC trademark in connection with its products, including any use of BIOGANIC in

Defendants' website, sales presentations or in any advertising or promotional materials. To date, Defendant has refused to remove references to BIOGANIC on its web site or to discontinue using that name and mark to identify or otherwise promote its products.

25. Defendants' products offered under the mark BIOGANIC include, *inter alia*, at least the products set forth in Exhibit B.

26. Upon information and belief, Defendants' products are marketed to the same general class of potential end customers in the same general channels of trade as EcoSMART's pesticidal products covered by its federal registrations. Defendants are thus using the BIOGANIC mark to identify products in general competition with EcoSMART products.

27. Defendants commenced its use of the BIOGANIC trademark long after EcoSMART's first use in commerce and interstate commerce of its BIOGANIC trademark. Upon information and belief, Defendants are using the mark BIOGANIC on the internet and in its sales and marketing materials for its products.

28. The use by Defendants of the BIOGANIC mark to identify its products is likely to cause confusion or mistake or deception of purchasers as to

the source of origin of EcoSMART's goods and/or services under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d)(2).

29. Potential purchasers of pesticide products are also likely to purchase Defendants' products under the BIOGANIC mark believing they are associated or affiliated in some manner with EcoSMART, thereby resulting in a loss of sales, goodwill and revenue to EcoSMART.

30. The continued use by Defendants of BIOGANIC will also result in the dilution of the exclusive rights which EcoSMART enjoys in connection with its federally registered mark, all to EcoSMART's detriment.

31. EcoSMART has no control over the nature or quality of the goods and/or services being provided by Defendants under the BIOGANIC mark. Because of the confusion as to the source engendered by Defendants' activities, EcoSMART's valuable good will in its BIOGANIC mark is also at the mercy of Defendant. Such established goodwill in the BIOGANIC mark has significant value and EcoSMART will suffer irreparable harm if the infringement is allowed to continue.

32. Upon information and belief, the infringement by Defendant has been willful and deliberate and designed specifically to trade upon the goodwill associated with the BIOGANIC mark.

33. Defendants' infringement will continue unless enjoined by this Court.

PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, EcoSMART prays for judgment and seeks relief against each of the Defendants as follows:

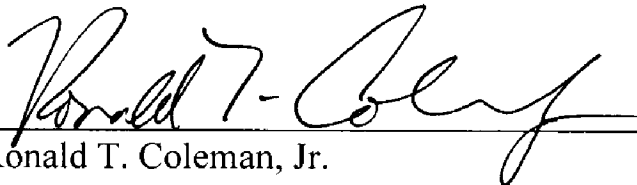
- A. Preliminary and permanent injunctions against each of the Defendants, enjoining them from any continued acts of patent and trademark infringement, including their officers, agents, employees, subsidiaries, related individuals and entities, customers, representatives, dealers and distributors, and persons acting in concert therewith;
- B. An award of actual damages sustained by EcoSMART as a result of Defendants' patent and trademark infringement;
- C. That each Defendant be compelled to account to EcoSMART for any and all profits derived by it from its illegal acts complained of herein;
- D. That each Defendant be ordered to deliver up for destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising, promotional material or the like in possession, custody or under the control of Defendants bearing a trademark found to infringe

EcoSMART's BIOGANIC trademark rights, as well as all plates, matrices, computer programs and other means of making the same;

- E. An award of attorneys' fees incurred by EcoSMART under applicable federal law, as well as all costs of suit; and
- F. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 16th day of September, 2008

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