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

JAMES N. HATTEN, Clerk  
By: *B. Hatten* Deputy Clerk

PEACH STATE LABS, INC., )

Plaintiff, )

v. )

ENVIRONMENTAL )  
MANUFACTURING SOLUTIONS, )  
LLC )

Defendant. )

CIVIL ACTION FILE

**4:08-CV-190-HLM**

(Jury Trial Demanded)

**COMPLAINT**

Plaintiff Peach State Labs, Inc. ("Peach State"), upon knowledge with respect to itself, and upon information and belief with respect to all other matters, for its Complaint against Defendant, Environmental Manufacturing Solutions, LLC ("EMS"), hereby avers as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is an action for patent infringement. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338(a).
2. Plaintiff Peach State is a Georgia corporation with its principal place of business at 180 Burlington Drive, Rome, Georgia 30161.
3. Defendant EMS is a Florida corporation with offices at 7705 Progress Circle, Melbourne, FL 32904-1657. Defendant EMS is subject to personal

jurisdiction in this Court and venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **BACKGROUND**

4. Since its founding in 1987, Peach State has developed and marketed chemical products that use a variety of technologies including stain resistance, polymer surfactants, acid replacement and polymers for extrusion additives. As a result of its investments in research and development, Peach State has been awarded twenty United States patents for its inventions.

5. Peach State owns U.S. Patent No. 5,672,279 to Sargent, et al. (“279 Patent”) for a “method for using urea hydrochloride.” A true and correct copy of the 279 Patent is attached as Exhibit 1. The abstract of the 279 Patent explains that the “method ... remove[s] the build-up of water-insoluble metal salts on surfaces, and [includes] a method to lower the solids content of industrial liquids that contain water-insoluble metal salts using urea hydrochloride or its equivalent. Also disclosed is a method to use urea hydrochloride or an equivalent strong acid/weak base salt as acid replacements for a variety of purposes.” Exhibit 1, Abstract.

6. Peach State makes and sells a product called Novoc ACL, which contains Peach State’s proprietary urea hydrochloride. Novoc ACL is used to practice the method claimed in the 279 patent. A true and correct copy of Peach

State marketing literature describing its unique, patented Novoc product is attached as Exhibit 2. As stated in Exhibit 2, Novoc ACL is used “to adjust pH for any type of aqueous processing of textiles or for Pool and Spa water treatment” and is used to “quickly dissolves calcium and magnesium salts without the disadvantages of hydrochloric acid.”

7. In approximately 2005, EMS began purchasing Novoc ACL, rebranded under the name Syntec, from Peach State. EMS diluted, repackaged and/or sold Novoc ACL for various applications including removing concrete from trucks and other surfaces, descaling water recirculation systems in ships, and combating scale buildup in water systems.

8. EMS currently makes, sells and actively promotes the use of EMS Ready-Mix Truck Wash and Wax (“EMS Ready-Mix”). EMS Ready-Mix is a truck wash that removes concrete from ready-mix trucks. To remove concrete from a truck, the truck is thoroughly rinsed and EMS Ready-Mix is applied to the truck. The truck may be brushed and in some cases may sit overnight before it is rinsed with water to remove the concrete and EMS Ready-Mix. A true and correct copy of EMS’s product literature for the EMS Ready-Mix is attached as Exhibit 3.

9. EMS Ready-Mix is “powered by SynTech<sup>®</sup>,” which is described as a synthetic acid. Exhibit 3. According to EMS’s website, it also sells and promotes the use of the SynTech<sup>®</sup> product in its “Blow Out” product line. A true and correct

copy of EMS's brochure for its Blow Out product line is attached as Exhibit 4.

EMS promotes Blow Out as an "aggressive line cleaner and descaler" that "breaks down calcium, lime, scale, milk stone, beer stone and other deposits...." *Id.*

10. EMS also offers a SynTech pH product, as reflected in Exhibit 5, which is a true and correct copy of EMS's brochure for SynTech pH. EMS promotes its Syntech pH product for use in lowering water pH and represents that "SynTech formulations have proven to be 15% faster dissolving calcium carbonate" than other products. *Id.*

11. Within the past 15 months, EMS had purchased from Peach State the following amounts of Novoc, in tanker loads (45,000 lbs): September 2007, 2 loads; October 2007, 2 loads; November 2007, 3 loads; December 2007, 1 load; January 2008, 1 load; February 2008, 2 loads; March 2008, 2 loads; April 2008, 2 loads; May 2008, 3 loads; June 2008, 1 load.

12. EMS was aware of Peach State's patent rights by virtue of its relationship with Peach State and from communications between EMS and Peach State. For example, after EMS became aware of the 279 patent it requested Peach State to determine if various other companies were in violation of the 279 patent. Peach State followed up on EMS's inquiries to ensure that end-users were purchasing authorized Peach State products, from EMS or other authorized distributors, for use under the 279 Patent.

13. In addition, EMS's product label for its Ready Mix product identifies the product as containing a "proprietary patented blend." A true and correct copy of EMS's product label is attached as Exhibit 6. EMS's product literature attached as Exhibit 4 also describes its Blow Out product as including "patented Syntec" material.

14. Upon information and belief, EMS itself owns no patents that are applicable to Syntec and the reference in EMS's product literature to the patented formulation of Syntec is a reference to Peach State's patent rights, including Peach State's 279 Patent.

15. EMS has not purchased Novoc ACL from Peach State since June 2008. Despite EMS's cessation of purchases from Peach State of its Novoc ACL product, Peach State learned that EMS was continuing to sell and promote the use of urea HCl-based products for, among other things, removing concrete from trucks, line cleaning and descaling, dissolving calcium carbonate, and other uses that infringe upon Peach State's 279 Patent.

16. When EMS abruptly stopped purchasing Novoc ACL from Peach State while continuing to make, sell and promote products used for concrete removal, line cleaning and descaling and dissolving calcium carbonates, Peach State obtained a retail sample of EMS Ready-Mix. Peach State compared the retail sample with a sample of EMS's concrete removal product produced while EMS

was purchasing Novoc ACL from Peach State. Peach State analyzed the samples for the presence of a chemical “tag” that Peach State includes in its proprietary urea HCl compound to identify that compound as manufactured by Peach State. Virtually the only difference in the two EMS compositions is that the older sample contains the Peach State “tag,” and the EMS Ready-Mix does not.

17. Peach State approached EMS regarding Peach State’s belief that EMS was infringing the 279 patent. EMS has denied promoting its products in ways that infringe the 279 Patent, despite the current promotional materials contained on EMS’s website.

**COUNT I: WILLFUL INFRINGEMENT OF THE 279 PATENT**

18. Peach State incorporates and repeats the averments set forth in the foregoing paragraphs as if fully set forth herein.

19. EMS’s actions in making, using, selling, offering for sale and/or promoting and actively marketing products containing urea hydrochloride have infringed the 279 Patent. Upon information and belief, use of EMS’s Ready Mix, Blow Out and Syntec pH products in accordance with the instructions and applications identified in EMS’s product literature infringe the 279 Patent.

20. Through its actions in promoting, offering for sale and selling infringing products, EMS has contributed to and/or induced infringement of the 279 Patent by others.

21. EMS's infringement is and has been knowing, deliberate and willful. EMS has specifically encouraged infringement of the 279 Patent in order to promote sales of EMS's Syntec product.

22. EMS's infringing actions have injured and continue to injure Peach State and its business of making, offering for sale, or selling products containing urea chloride that, when used, practice the methods of the 279 Patent.

**REQUESTED RELIEF**

WHEREFORE, Plaintiff Peach State prays for relief as follows:

- (a) A permanent injunction preventing Defendant EMS from importing, manufacturing, selling, offering for sale and/or using infringing products;
- (b) A permanent injunction preventing Defendant EMS from contributing to or inducing infringement of others through manufacture, sale or promotion of products whose use infringes the 279 Patent;
- (c) An award of compensatory and exemplary damages compensating Plaintiff Peach State as permitted by law for Defendant EMS's illegal conduct;
- (d) Enhanced damages resulting from the knowing, deliberate and willful nature of Defendant EMS's illegal conduct as provided in 35 U.S.C. § 284;

(e) An award of reasonable attorneys' fees incurred by Plaintiff Peach State, as provided in 35 U.S.C. § 285; and

(f) Such other and further relief as may be permitted by law.

**DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues triable of right by a jury.

Respectfully submitted,

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