

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:12-cv-20231-JAL

ECOSMART US, LLC,

Plaintiff,

v.

AMERICAN HEAT MANUFACTURER LLC,
AMERICAN HEAT DISTRIBUTOR, INC., and
AMERICAN HEAT INDUSTRIES, INC.,

Defendants,

AMENDED COMPLAINT

Plaintiff Ecosmart US LLC (“Ecosmart”) sues Defendants American Heat Manufacturer LLC (“American Heat Manufacturer”), American Heat Distributor, Inc., (“American Heat Distributor”) and American Heat Industries, Inc. a/k/a American Heat Industries LLC and/or d/b/a American Heat (“American Heat Industries”) (collectively “Defendants”) as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. This action is within the jurisdiction limits of the Circuit Court for the 11th Judicial Circuit, in and for Miami-Dade County, Florida, under §§ 26.012(2)(a) and (c) and 34.01(1)(c) Fla. Stat. because the controversy, exclusive of costs and reasonable attorney’s fees, is greater than \$15,000.00.

2. Plaintiff Ecosmart is a Florida limited liability corporation with its principal place of business in Miami-Dade County, Florida.

3. Defendant American Heat Manufacturer is a Florida limited liability corporation with its principal place of business in Miami-Dade County, Florida.

4. This Court has personal jurisdiction over American Heat Manufacturer via §§

48.193(1)(a), (1)(b), (1)(g), and (2) Fla. Stat. American Heat Manufacturer operates, conducts, engages in, or carries on a business or business venture in this state and having an office or agency in this state, committing a tortious act within this state, breached a contract in this state by failing to perform acts required by the contract to be performed in this state, and is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

5. American Heat Manufacturer has the requisite minimum contacts with the State of Florida and jurisdiction over American Heat Manufacturer in this district does not offend fair play or substantial justice.

6. Defendant American Heat Distributor is an inactive Florida corporation that, prior to its administrative dissolution in 2011, had its principal place of business in Miami-Dade County, Florida.

7. This Court has personal jurisdiction over American Heat Distributor via §§ 48.193(1)(a), (1)(b), (1)(g), and (2) Fla. Stat. American Heat Distributor operated, conducted, engaged in, or carried on a business or business venture in this state and had an office or agency in this state, committed a tortious act within this state, breached a contract in this state by failing to perform acts required by the contract to be performed in this state, and was engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

8. American Heat Distributor has the requisite minimum contacts with the State of Florida and jurisdiction over American Heat Distributor in this district does not offend fair play

or substantial justice.

9. Defendant American Heat Industries was Florida corporation that, prior to its voluntary dissolution in 2010, had its principal place of business in Miami-Dade County, Florida.

10. American Heat Industries has also operated as or held itself out to be American Heat Industries LLC.

11. American Heat Industries registered the fictitious name “American Heat” in September 21, 2007 with the State of Florida.

12. This Court has personal jurisdiction over American Heat Industries via §§ 48.193(1)(a), (1)(b), (1)(g), and (2) Fla. Stat. American Heat Industries operated, conducted, engaged in, or carried on a business or business venture in this state and had an office or agency in this state, committed a tortious act within this state, breached a contract in this state by failing to perform acts required by the contract to be performed in this state, and was engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

13. American Heat Industries has the requisite minimum contacts with the State of Florida and jurisdiction over American Heat Industries in this district does not offend fair play or substantial justice.

14. Venue is proper pursuant to § 47.051 Fla. Stat. because Defendants had or usually kept an office for transaction of customary business in Miami-Dade County and because Ecosmart’s causes of action accrued in Miami-Dade County.

FACTS

I. CREATION OF THE PROPRIETARY AND CONFIDENTIAL SOURCE CODE

15. Ecosmart sells and distributes tankless water heaters for homes or other buildings.

16. Carlos Cabrera, on his own and without any additional assistance, created certain proprietary and confidential computer source code that translates look-up tables into computer-readable source code. The proprietary and confidential source code refers to the translated C code of look-up tables that is uploaded into and recognized by the integrated chip within the electronic board of the tankless water heater, used to operate and modulate the power consumption.

17. Look-up tables refer to customized tabulations of data developed by Carlos Cabrera between 2005 and 2007 using the PSOC Designer program made by Cypress MicroSystems, used to operate and modulate the power consumption of electric tankless water heaters. The look-up tables consist of formulas, processes and compilations of information derived from tedious component testing and experience that are organized into fields and tables within the aforementioned PSOC program, which are not generally known or reasonably ascertainable as they involve the physics of heating water and the use of wave forms to trigger triacs to provide specific percentages of power outputs in response to numerous inputs and calculations. The looks up tables are then translated by the C Compiler within the PSOC program into a computing language (C Code) or source code.

18. At the time of this creation and development, Carlos Cabrera was the only person or entity that had or could validly claim any proprietary rights to this source code.

19. Carlos Cabrera subsequently transferred all rights to this proprietary and confidential source code to Ecosmart, including the right to sue for enforcement. Accordingly,

Carlos Cabrera and Ecosmart are the only persons or entities that have or could ever have had any proprietary rights to this source code.

II. THE SOURCE CODE IS NOT DESCRIBED OR CLAIMED BY THE ‘146 PATENT

20. Carlos Cabrera applied for a U.S. patent on June 9, 2008 for a tankless hot water heater with power modulation.

21. On May 17, 2011, the U.S. Patent & Trademark Office issued U.S. patent no. 7,945,146 (“the ‘146 patent”) to Carlos Cabrera for a tankless hot water heater with power modulation. Look-up tables are within the claims of the ‘146 patent and sufficiently explained to enable one skilled in the art, however, the content of source code created by Carlos Cabrera is not disclosed. Carlos Cabrera later assigned the ‘146 patent to Ecosmart, including the right to sue for enforcement.

22. The proprietary and confidential source code that is the subject matter of this case is not described or claimed by the ‘146 patent. Carlos Cabrera did not seek patent protection for this proprietary and confidential source code when he applied for the ‘146 patent, nor did Carlos Cabrera disclose proprietary and confidential source code to the USPTO when he applied for the ‘146 patent as the look up tables are sufficiently explained to enable the patent.

III. REASONABLE EFFORTS TO MAINTAIN SECRECY

23. Ecosmart and Carlos Cabrera have never provided this proprietary and confidential source code to the Defendants, to any current or former employee or agent of the Defendants, to any predecessor of the Defendants, or to any current or former employee of any employee or agent of any predecessor to the Defendants.

24. Ecosmart and Carlos Cabrera have not provided this proprietary and confidential source code to any other person or entity who was not under an express or implied duty of

confidentiality.

25. This proprietary and confidential source code is not readily ascertainable from an Ecosmart tankless water heater. That is, a person seeking to learn this proprietary and confidential source code cannot obtain or utilize the proprietary and confidential source code from an Ecosmart tankless water heater alone.

26. Instead, to be able to obtain or utilize the proprietary and confidential source code, a person must have actual access to the source code.

27. The Defendants did not independently create or develop the proprietary and confidential source code.

IV. AINI MANUFACTURES TANKLESS WATER HEATERS FOR ECOSMART

28. In December 2008, Ecosmart began discussions with Foshan Shunde Aini Electrical Manufacturing Co. Ltd. (“Aini”) for the manufacture of tankless water heaters to be imported into the U.S. and then sold to consumers by Ecosmart.

29. Aini is a manufacturer of electrical devices and equipment located in Foshan City, China.

30. These tankless water heaters to be manufactured by Aini for Ecosmart included the proprietary and confidential source code developed by Carlos Cabrera.

31. Carlos Cabrera visited the Aini factory in China in December 2008 to finalize manufacturing procedures for producing Ecosmart tankless water heaters. During this visit, he loaded the proprietary and confidential source code onto Aini’s server after reaching a verbal agreement with Aini that the proprietary and confidential source code was to be kept confidential and used only for Ecosmart’s products.

32. Ecosmart and Carlos Cabrera have not disclosed the proprietary and confidential

source code to anyone outside of Ecosmart except Aini.

33. The agreements with Aini for the confidentiality of the proprietary and confidential source code have remained in place ever since.

V. USE OF IMPROPER MEANS TO ACQUIRE THE SOURCE CODE FROM AINI

34. American Heat Industries and American Heat Distributor were related entities that sought to establish themselves as competitors to Ecosmart in the tankless water heater industry through improper and unlawful means.

35. Prior to their dissolutions, American Heat Industries and American Heat Distributor operated through a common core of persons, namely Julio Morejon Sr., Julio Morejon, Jr., Aida Morejon, Richard Oliva, Raul Serafin, Rolando Garcia, Marta Martinez, and others. These persons were not all necessarily formal officers of both entities but held positions of authority.

36. Between December 2008 and April 2009, American Heat Industries and/or American Heat Distributor, by and through Rolando Garcia, Richard Oliva, and Raul Serafin, attempted to purchase from Aini the same tankless water heaters, which included the separate proprietary and confidential source code, that Aini was manufacturing for Ecosmart. Initially, Aini would not agree to do so.

37. In response, American Heat Industries and/or American Heat Distributor, by and through Rolando Garcia, Richard Oliva, and Raul Serafin, falsely represented to Aini that it owned all rights to the particular tankless water heater, including the proprietary and confidential source code, and threatened legal action if Aini did not manufacture for American Heat Industries and/or American Heat Distributor the same tankless water heaters that it was manufacturing for Ecosmart.

38. These representations from American Heat Industries and/or American Heat Distributor to Aini were false and misleading. However, at the time, Aini was under the information and belief that these representations were true and wished to avoid a legal dispute.

39. Accordingly, Aini began manufacturing tankless water heaters for American Heat Industries and/or American Heat Distributor on or about May 2009. American Heat Industries and/or American Heat Distributor then imported these tankless water heaters from Aini into the United States and distributed, offered for sale, and sold these tankless water heaters to the public as the AH series.

40. American Heat Manufacturer was created in December 2009 by Raul Serafin and Empire Holdings Corporation, an entity that was administratively dissolved in 2007. Empire Holdings Corporation was created by Aida Morejon, who is the wife to Julio Morejon Sr. and mother to Julio Morejon, Jr., who both have been active participants in American Heat Industries and/or American Heat Distributor with authority to bind those entities. Presently, the listed officers of American Heat Manufacturer are Aida Morejon and Julio Morejon, Jr.

41. American Heat Manufacturer is a successor entity to American Heat Industries and/or American Heat Distributor. That is, American Heat Manufacturer express or implied assumed obligations of the American Heat Industries and/or American Heat Distributor, the transaction that created American Heat Manufacturer was a de facto merger with American Heat Industries and/or American Heat Distributor, American Heat Manufacturer is a mere continuation of American Heat Industries and/or American Heat Distributor, and/or the transaction that created American Heat Manufacturer was a fraudulent effort to avoid the liabilities of American Heat Industries and/or American Heat Distributor.

42. American Heat Manufacturer is the alter ego of American Heat Industries and/or

American Heat Distributor. There is more than sufficient common control, ownership, and domination by Julio Morejon Sr., Julio Morejon, Jr., Aida Morejon, Richard Oliva, Raul Serafin, Rolando Garcia, Marta Martinez such that American Heat Manufacturer is the mere instrumentality of the American Heat Industries and/or American Heat Distributor. American Heat Industries and/or American Heat Distributor engaged in improper conduct in the formation or use of American Heat Manufacturer, namely, as set forth throughout this Amended Complaint, the false statements to Aini, misappropriation of Ecosmart's proprietary and confidential source code and dishonest and unscrupulous business practices.

43. In December 2010, Carlos Cabrera and Silvio Cardoso visited Aini and discovered Aini was still manufacturing heaters for American Heat with Ecosmart source code technology based on misrepresentations made by American Heat regarding ownership rights of the technology. During this visit, Carlos and Silvio explained and demonstrated ownership of the technology and Aini agreed to cease using Ecosmart technology for American Heat products and granted exclusive distributorship within North, Central and South America to Ecosmart.

44. In January 2011, Silvio Cardoso contacted Julio Morejon to begin discussions with American Heat Manufacturer to continue to produce their ADK series tankless water heaters, with the existing flow switch technology already being produced by Aini electrical.

45. On January 11, 2011, Julio Morejon, Jr. and Richard Oliva, acting on behalf of American Heat Manufacturer, visited Aini in China and demanded Aini begin manufacturing tankless water heaters, which included Ecosmart's proprietary and confidential source code, for use, import, distribution, sale, and/or offers for sale in the United States. They were advised by Aini that all negotiations and sales were to be conducted through Ecosmart as the "partners" of

Aini.

46. Without Ecosmart's knowledge or consent, Aini once again continued to manufacture tankless water heaters which included Ecosmart's proprietary and confidential source code – under the AH and ADK series names – for the Defendants until August 31, 2011. It is Ecosmart's understanding and belief that the last order was for 234 AH series tankless water heaters under PO #AH35.

47. The AH and ADK series tankless water heaters contained Ecosmart's proprietary and confidential source code without authorization or consent from Ecosmart.

48. Ultimately, American Heat Manufacturer imported and sold 2,514 ADK series tankless water heaters with Ecosmart's technology into the United States from Aini and then offered to sell and sold those ADK series units in the United States.

49. After learning that it was misled by the Defendants false representations, Aini stopped manufacturing tankless water heaters for American Heat Manufacturer.

50. Aini continues to manufacture tankless water heaters for Ecosmart.

VI. FALSE PROMISES TO CEASE USE OF THE SOURCE CODE AND SELL-OFF ALL AH SERIES TANKLESS WATER HEATERS

51. On or about June and July 2011, Ecosmart and American Heat Manufacturer entered into an agreement in which American Heat Manufacturer agreement to immediately stop making, using, importing, distributing, selling, and/or offering for sale any tankless water heaters that contain the confidential and proprietary source code. Ex. 1. Pursuant to this agreement, American Heat Manufacturer was required to sell all existing AH series tankless water heaters no later than November 17, 2011. Ex. 1.

52. Rather than abiding by this agreement, American Heat Manufacturer continued to sell tankless water heaters which utilize or contain the confidential and proprietary source code

and failed to sell existing AH series tankless water heaters by November 17, 2011.

53. All conditions precedent to the filing of this action have occurred or have been waived.

COUNT I – MISAPPROPRIATION OF TRADE SECRETS

(against American Heat Industries)

54. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

55. The proprietary and confidential source code developed by Carlos Cabrera and assigned to Ecosmart is a trade secret within the meaning of § 688.002(4) Fla. Stat.

56. Ecosmart's proprietary and confidential source code is not described or claimed by the '146 patent.

57. Ecosmart's proprietary and confidential source code is formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

58. Ecosmart has, at all times, used reasonable efforts to maintain the secrecy of the proprietary and confidential source code.

59. American Heat Industries used improper means within the definition of § 688.002(1) Fla. Stat. to acquire Ecosmart's proprietary and confidential source code.

60. Specifically, American Heat Industries falsely represented to Aini that it had proprietary rights to Ecosmart's proprietary and confidential source code, which led Aini to manufacture AH series tankless water heaters for American Heat Industries and/or American Heat Distributor.

61. American Heat Industries' acquisition, use, and/or disclosure of the proprietary and confidential source code constitutes misappropriation of Ecosmart's trade secrets within the meaning of § 688.002(2) Fla. Stat.

62. Ecosmart has been damaged as a direct and proximate result of American Heat Industries' conduct. Pursuant to § 688.004(1) Fla. Stat., Ecosmart is entitled to damages to compensate for its actual losses, to recover any unjust enrichment from American Heat Industries, and/or a reasonable royalty.

63. American Heat Industries has willfully misappropriated Ecosmart's trade secrets, thereby entitling Ecosmart to exemplary damages up to and including two times the sum awarded pursuant to § 688.004(2) Fla. Stat. and attorney's fees pursuant to § 688.005 Fla. Stat. Ecosmart is further entitled to costs and interest.

64. Ecosmart is also entitled to temporary and/or permanent injunctive relief for American Heat Industries' threatened and/or actual misappropriation of Ecosmart's trade secrets pursuant to § 688.003 Fla. Stat. Said injunctive relief includes enjoining American Heat Industries and its officers, directors, employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents, related entities, attorneys, and all those in active concert with American Heat Industries and/or all those representing or purporting to act on behalf of American Heat Industries, in whole or in part, from any further misappropriation, disclosure, and/or use of Ecosmart's confidential and proprietary source code.

COUNT II – MISAPPROPRIATION OF TRADE SECRETS
(against American Heat Distributor)

65. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

66. The proprietary and confidential source code developed by Carlos Cabrera and

assigned to Ecosmart is a trade secret within the meaning of § 688.002(4) Fla. Stat.

67. Ecosmart's proprietary and confidential source code is not described or claimed by the '146 patent.

68. Ecosmart's proprietary and confidential source code is formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

69. Ecosmart has, at all times, used reasonable efforts to maintain the secrecy of the proprietary and confidential source code.

70. American Heat Distributor used improper means within the definition of § 688.002(1) Fla. Stat. to acquire Ecosmart's proprietary and confidential source code.

71. Specifically, American Heat Distributor falsely represented to Aini that it had proprietary rights to Ecosmart's proprietary and confidential source code, which led Aini to manufacture AH series tankless water heaters for American Heat Industries and/or American Heat Distributor.

72. American Heat Distributor's acquisition, use, and/or disclosure of the proprietary and confidential source code constitutes misappropriation of Ecosmart's trade secrets within the meaning of § 688.002(2) Fla. Stat.

73. Ecosmart has been damaged as a direct and proximate result of American Heat Distributor's conduct. Pursuant to § 688.004(1) Fla. Stat., Ecosmart is entitled to damages to compensate for its actual losses, to recover any unjust enrichment from American Heat Distributor, and/or a reasonable royalty.

74. American Heat Distributor has willfully misappropriated Ecosmart's trade secrets, thereby entitling Ecosmart to exemplary damages up to and including two times the sum awarded pursuant to § 688.004(2) Fla. Stat. and attorney's fees pursuant to § 688.005 Fla. Stat. Ecosmart is further entitled to costs and interest.

75. Ecosmart is also entitled to temporary and/or permanent injunctive relief for American Heat Distributor's threatened and/or actual misappropriation of Ecosmart's trade secrets pursuant to § 688.003 Fla. Stat. Said injunctive relief includes enjoining American Heat Distributor and its officers, directors, employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents, related entities, attorneys, and all those in active concert with American Heat Distributor and/or all those representing or purporting to act on behalf of American Heat Distributor, in whole or in part, from any further misappropriation, disclosure, and/or use of Ecosmart's confidential and proprietary source code.

COUNT III – MISAPPROPRIATION OF TRADE SECRETS
(against American Heat Manufacturer)

76. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

77. The proprietary and confidential source code developed by Carlos Cabrera and assigned to Ecosmart is a trade secret within the meaning of § 688.002(4) Fla. Stat.

78. Ecosmart's proprietary and confidential source code is not described or claimed by the '146 patent.

79. Ecosmart's proprietary and confidential source code is formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its

disclosure or use.

80. Ecosmart has, at all times, used reasonable efforts to maintain the secrecy of the proprietary and confidential source code.

81. American Heat Manufacturer used improper means within the definition of § 688.002(1) Fla. Stat. to acquire Ecosmart's proprietary and confidential source code.

82. American Heat Manufacturer is liable as the successor and/or alter ego for the acts of American Heat Industries and/or American Heat Distributor.

83. American Heat Industries and/or American Heat Distributor falsely represented to Aini that it had proprietary rights to Ecosmart's proprietary and confidential source code, which led Aini to manufacture AH series tankless water heaters for American Heat Industries and/or American Heat Distributor.

84. After reaching an agreement with Ecosmart to cease making, using, importing, distributing, selling, and/or offer for sale the AH series, American Heat Manufacturer violated the agreement by switching the name from the AH series to the ADK series. American Heat Manufacturer and continues to sell, make, use, import, distribute, sell, and/or offer for sale the ADK series, which contains Ecosmart's proprietary and confidential source code.

85. American Heat Manufacturer's acquisition, use, and/or disclosure of the proprietary and confidential source code constitutes misappropriation of Ecosmart's trade secrets within the meaning of § 688.002(2) Fla. Stat.

86. Ecosmart has been damaged as a direct and proximate result of American Heat Manufacturer's conduct. Pursuant to § 688.004(1) Fla. Stat., Ecosmart is entitled to damages to compensate for its actual losses, to recover any unjust enrichment from American Heat Manufacturer, and/or a reasonable royalty.

87. American Heat Manufacturer has willfully misappropriated Ecosmart's trade secrets, thereby entitling Ecosmart to exemplary damages up to and including two times the sum awarded pursuant to § 688.004(2) Fla. Stat. and attorney's fees pursuant to § 688.005 Fla. Stat. Ecosmart is further entitled to costs and interest.

88. Ecosmart is also entitled to temporary and/or permanent injunctive relief for American Heat Manufacturer's threatened and/or actual misappropriation of Ecosmart's trade secrets pursuant to § 688.003 Fla. Stat. Said injunctive relief includes enjoining American Heat Manufacturer and its officers, directors, employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents, related entities, attorneys, and all those in active concert with American Heat Manufacturer and/or all those representing or purporting to act on behalf of American Heat Manufacturer, in whole or in part, from any further misappropriation, disclosure, and/or use of Ecosmart's confidential and proprietary source code.

COUNT IV – UNFAIR COMPETITION
(against American Heat Industries)

89. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

90. American Heat Industries' conduct constitutes business conduct which is contrary to honest practice in industrial or commercial matters.

91. Specifically, American Heat Industries has sold, offered for sale, and distributed tankless water heaters to the consuming public in a manner that falsely suggests it developed those tankless water heaters.

92. As a direct and proximate result, Ecosmart has been damaged.

93. Ecosmart has been irreparably harmed by American Heat Industries' acts of unfair competition and damages cannot fully and adequately provide a remedy.

Accordingly, Ecosmart is also entitled to temporary and/or permanent injunctive relief. Said injunctive relief includes enjoining American Heat Industries and its officers, directors, employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents, related entities, attorneys, and all those in active concert with American Heat Industries and/or all those representing or purporting to act on behalf of American Heat Industries, in whole or in part, from any further unfair competition.

94. American Heat Industries acted with intentional misconduct and/or gross negligence so as to be liable for punitive damages under § 768.72 Fla. Stat.

95. Ecosmart is also entitled to costs and interest.

COUNT V – UNFAIR COMPETITION
(against American Heat Distributor)

96. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

97. American Heat Distributor's conduct constitutes business conduct which is contrary to honest practice in industrial or commercial matters.

98. Specifically, American Heat Distributor has sold, offered for sale, and distributed tankless water heaters to the consuming public in a manner that falsely suggests it developed those tankless water heaters.

99. As a direct and proximate result, Ecosmart has been damaged.

100. Ecosmart has been irreparably harmed by American Heat Distributor's acts of unfair competition and damages cannot fully and adequately provide a remedy. Accordingly, Ecosmart is also entitled to temporary and/or permanent injunctive relief. Said injunctive relief includes enjoining American Heat Distributor and its officers, directors, employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents,

related entities, attorneys, and all those in active concert with American Heat Distributor and/or all those representing or purporting to act on behalf of American Heat Distributor, in whole or in part, from any further unfair competition.

101. American Heat Distributor acted with intentional misconduct and/or gross negligence so as to be liable for punitive damages under § 768.72 Fla. Stat.

102. Ecosmart is also entitled to costs and interest.

COUNT VI – UNFAIR COMPETITION
(against American Heat Manufacturer)

103. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

104. American Heat Manufacturer's conduct constitutes business conduct which is contrary to honest practice in industrial or commercial matters.

105. Specifically, American Heat Manufacturer has sold, offered for sale, and distributed tankless water heaters to the consuming public in a manner that falsely suggests it developed those tankless water heaters.

106. As a direct and proximate result, Ecosmart has been damaged.

107. In addition to its own acts of unfair competition, American Heat Manufacturer is liable for unfair competition committed by American Heat Industries and/or American Heat Distributor as the successor in interest and/or as the alter ego.

108. Ecosmart has been irreparably harmed by American Heat Manufacturer's acts of unfair competition and damages cannot fully and adequately provide a remedy. Accordingly, Ecosmart is also entitled to temporary and/or permanent injunctive relief. Said injunctive relief includes enjoining American Heat Manufacturer and its officers, directors, employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents,

related entities, attorneys, and all those in active concert with American Heat Manufacturer and/or all those representing or purporting to act on behalf of American Heat Manufacturer, in whole or in part, from any further unfair competition.

109. American Heat Manufacturer acted with intentional misconduct and/or gross negligence so as to be liable for punitive damages under § 768.72 Fla. Stat.

110. Ecosmart is also entitled to costs and interest.

COUNT VII - BREACH OF CONTRACT
(against American Heat Manufacturer)

111. Ecosmart re-alleges and incorporates paragraphs 1 through 53 as if fully set forth herein.

112. American Heat Manufacturer agreed to cease making, using, importing, distributing, selling, and/or offering for sale any products that utilize or contain the confidential and proprietary source code. Ex. 1.

113. Pursuant to this agreement, American Heat Manufacturer was required to sell all existing AH series tankless water heaters no later than November 17, 2011. Ex. 1.

114. American Heat Manufacturer breached this agreement by continuing to sell tankless water heaters infringe that utilize or contain the confidential and proprietary source code and by failing to sell all existing AH series tankless water heaters no later than November 17, 2011.

115. As a direct and proximate result, Ecosmart has been damaged.

116. Ecosmart has been irreparably harmed by American Heat Manufacturer's breach of contract and damages cannot fully and adequately provide a remedy. Accordingly, Ecosmart is also entitled to temporary and/or permanent injunctive relief. Said injunctive relief includes enjoining American Heat Manufacturer and its officers, directors,

employees, agents, representatives, predecessors, successors, affiliates, subsidiaries, parents, related entities, attorneys, and all those in active concert with American Heat Manufacturer and/or all those representing or purporting to act on behalf of American Heat Manufacturer, in whole or in part, from any further breach of contract.

117. Ecosmart is also entitled to costs and interest.

Respectfully submitted,

s/ James A. Stepan
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CERTIFICATE OF SERVICE
OF ELECTRONIC FILING GENERATED BY CM/ECF

I HEREBY CERTIFY that on this 10th day of August 2012, we electronically filed the foregoing document with the Clerk of the Court using its CM/ECF System. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the following Service List in the manner specified either via transmission of Notice of Electronic Filing generated by this Court's CM/ECF System or in some other authorized manner for those counsel or parties who are not authorized to electronically receive notice of electronic filing.

/s/ James A. Stepan

SERVICE LIST

Ecosmart US, LLC v. American Heat Manufacturer, LLC, et al.
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U.S. District Court, Southern District of Florida

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