

ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

AMVAC CHEMICAL)
CORPORATION,)
)
Plaintiff,)
)
v.)
)
ACETO AGRICULTURAL)
CHEMICALS CORPORATION,)
and JOHN DOES 1 through 10,)
)
Defendants.)
_____)

CASE NO. _____
1:08-CV-1617

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff AMVAC Chemical Corporation ("AMVAC") files its complaint and jury demand against Aceto Agricultural Chemicals Corporation ("Aceto") and John Does 1 through 10 who are Aceto's customers who have purchased infringing goods from Aceto since August 1, 2007 ("Aceto's Customers") (Aceto and Aceto's Customers are collectively, the "Defendants"). Plaintiff states as follows:

NATURE OF ACTION AND PARTIES

1. This is a complaint for damages and equitable relief arising from Aceto's and Aceto's Customers' intentional and willful acts of patent infringement, trademark infringement, and unfair competition in violation of AMVAC's rights.

2. Plaintiff AMVAC, with its principal place of business located in Newport Beach, California, is a corporation organized and existing pursuant to the laws of the State of California. AMVAC is a wholly owned subsidiary of American Vanguard Corporation.

3. At all times relevant herein, AMVAC was and is engaged in the business of obtaining the supply of, manufacturing, marketing, and selling agricultural pesticides, including insecticides.

4. Defendant Aceto, with its principal place of business located in Lake Success, New York, is a corporation organized under and existing pursuant to the laws of the State of New York. Aceto is a wholly owned subsidiary of Aceto Corporation.

5. At all times relevant herein, Aceto was and is engaged in the business of obtaining the supply of, manufacturing, marketing, and selling agricultural pesticides, including insecticides, to customers located in the United States, including in the State of Georgia, and in this judicial district.

6. The identities of John Does 1 through 10, Aceto's Customers who have purchased infringing product from Aceto since August 1, 2007, are unknown at this time, but upon information and belief, Aceto's Customers are ten or fewer

large pesticide distributors who have or intend to resell infringing product to farm supply stores and other retail outlets.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338, the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*

8. This Court has personal jurisdiction over Aceto because Aceto has, either directly or through agents located in this judicial district, engaged in conduct that violates the United States patent laws, the United States and common law trademark laws, and the federal and common law of unfair competition.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400 because Aceto has transacted business and committed acts of patent infringement and trademark infringement in this judicial district.

10. Upon information and belief, the Court has personal jurisdiction over John Does 1 through 10 and venue is proper as John Does 1 through 10 have, either directly or through agents located in this judicial district, engaged in conduct that violates the United States patent laws and the United States trademark laws, and have transacted business in this judicial district.

UNDERLYING FACTS

A. AMVAC's Patent.

11. On June 17, 1997 the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,638,988 ("the '988 patent") entitled "Particulate Dispensing System" and named Kerry D. Rogers, Warren L. Hammerbeck, Joanne M. Hoyt, and Richard A. Beardmore as inventors. A true and correct copy of the '988 patent is attached as Exhibit A.

12. The inventors assigned the '988 patent to Loveland Products, Inc. ("Loveland") at or before the patent application date. Loveland assigned the '988 patent to Loveland's sister corporation, Platte Chemical Company ("Platte"), on December 12, 1997 and Platte in turn assigned the '988 patent back to Loveland on February 16, 2007. Both Loveland and Platte are subsidiaries of UAP.

13. On February 16, 2007, Loveland assigned the '988 patent to AMVAC. A true and correct copy of the Patent Assignment to AMVAC is attached as Exhibit B.

14. The '988 patent has been commercialized as a distribution system for certain pesticides, including an insecticide called phorate, and pesticides sold in the distribution system described in the '988 patent have been marketed as the EZ LOAD SYSTEM.

B. AMVAC's Trademark.

15. On September 11, 2001, the United States Patent and Trademark Office granted Platte Registration Number 2,487,092 for the mark EZ LOAD SYSTEM ("the EZ LOAD SYSTEM Mark") in connection with Platte's marketing of the pesticides being distributed in the system described in the '988 patent. The EZ LOAD SYSTEM Mark is incontestable. A true and correct copy of this trademark registration is attached as Exhibit C.

16. With a first commercial use in 1998, the owner and/or licensees of the EZ LOAD SYSTEM Mark have continuously used the distinctive trademark in interstate commerce to identify pesticides distributed using the system described in the '988 patent.

17. On February 21, 2005, Platte assigned its interest in the EZ LOAD SYSTEM Mark to Loveland.

18. On February 16, 2007, Loveland assigned its interest in the EZ LOAD SYSTEM Mark to AMVAC along with the transfer of the '988 patent. A true and correct copy of the Trademark Assignment to AMVAC is attached as Exhibit D.

C. Prior Dispute Between AMVAC and Aceto Regarding the '988 Patent

19. On May 30, 2007, Aceto brought an antitrust lawsuit against AMVAC in this Court, Case No. 1:07-CV-1236-CC, related to '988 patent. Specifically, Aceto alleged monopolization and related offenses, by AMVAC, of the wholesale market for the insecticide phorate, which can be distributed in the system described in the '988 patent and can be marketed with the EZ LOAD SYSTEM Mark.

20. Along with its antitrust lawsuit, Aceto filed a Motion for Preliminary Injunction on May 30, 2007, which sought to enjoin AMVAC from bringing a patent infringement lawsuit asserting the '988 patent against Aceto or Aceto's Customers.

21. Aceto claimed that it was entitled to the requested preliminary injunction before August 1, 2007, the day that Aceto's license to the '988 patent from its previous owner, Platte, expired. Specifically, Aceto argued in its Memorandum of Law in Support of its Motion for Preliminary Injunction that on "August 1st [2007] or shortly thereafter, unless the Court grants the emergency relief requested . . . Aceto will likely be eliminated from competition"

22. Aceto admitted that it needed a license to the '988 patent to continue selling phorate in the patented EZ LOAD SYSTEM after August 1, 2007.

23. After 7 hearing days during the summer and fall of 2007 on Aceto's Motion, on December 17, 2007, the Court denied Aceto's Motion for Preliminary Injunction because Aceto could not demonstrate a reasonable likelihood of success on the merits of its antitrust claims.

24. On January 15, 2008, Aceto filed its Notice of Appeal of the December 17, 2007 Order and that appeal is currently pending before the Eleventh Circuit Court of Appeals.

D. Aceto's Infringement and Sales to Customers After August 1, 2007

25. In late December 2007, after the Court denied Aceto's Motion for Preliminary Injunction, Aceto contacted AMVAC regarding negotiating a license from AMVAC to Aceto of the '988 patent.

26. Upon information and belief, at the same time Aceto requested negotiation of a license to the '988 patent, Aceto, without notice to AMVAC, informed its customers that it desired to continue selling them phorate in the EZ LOAD SYSTEM as claimed in the '988 patent and that Aceto would indemnify the customers from intellectual property suits.

27. Aceto made the above-described offer of indemnification to at least one of its customers via letter dated January 10, 2008.

28. Aceto has also completed sales of phorate in the system described and claimed in the '988 patent since August 1, 2007 when its license to the '988 patent from Platte expired. Upon information and belief, during February and March 2008, Aceto sold hundreds of thousands of pounds of phorate in the system described in the '988 patent.

29. Aceto's post-August 1, 2007 phorate sales infringe upon the '988 patent and are marketed illegally using the EZ LOAD SYSTEM Mark.

COUNT 1
Infringement of the '988 Patent

30. AMVAC realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 29 of its complaint as if set forth fully herein.

31. On information and belief, Aceto and Aceto's Customers are infringing, contributing to the infringement, or inducing the infringement of the '988 Patent, either literally or under the doctrine of equivalents, by making, selling, or offering for sale in this District and elsewhere in the United States products or processes that embody each element of at least one claim of the '988 patent.

32. AMVAC has been damaged by Aceto's and Aceto's Customers' past and continued infringement of the '988 patent in an amount to be determined at trial.

33. AMVAC has been and continues to be irreparably injured by Defendants' past and continuing infringement of the '988 Patent, and Defendants' infringing activities will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

34. On information and belief, and as demonstrated by the prior disputes between AMVAC and Aceto, Aceto's infringement has been and continues to be deliberate, willful, intentional, and with knowledge of the existence of the '988 patent. Accordingly, AMVAC is entitled to recover enhanced damages pursuant to 35 U.S.C. § 284 as well as its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

COUNT 2

Federal Trademark and Service Mark Infringement

35. AMVAC realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 34 of its complaint as if set forth fully herein.

36. AMVAC owns the incontestable federal trademark registration for the EZ LOAD SYSTEM Mark, which serves to identify to the public certain goods and services that are offered exclusively by AMVAC, and the goods and services offered in connection with those marks are regarded by the public as being offered

by, sponsored by, approved by, authorized by, associated with, or affiliated with AMVAC.

37. Upon information and belief, Aceto and Aceto's Customers have intentionally used the EZ LOAD SYSTEM Mark, without authorization or consent, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods and services, knowing that they have used the EZ LOAD SYSTEM Mark in a manner that is likely to cause confusion, mistake, or deception as to the true source or sponsorship of those goods and services.

38. Aceto's and Aceto's Customers' use of AMVAC's EZ LOAD SYSTEM Mark is likely to confuse or deceive the public into believing that Aceto's product originates from AMVAC, or that Aceto's product is associated or affiliated with, or sponsored or endorsed by, or licensed by, AMVAC.

39. Aceto's and Aceto's Customers' conduct has enabled them to earn profits to which they are not in law, equity or good conscience entitled, and has unjustly enriched Aceto's and Aceto's Customers, all to Aceto's and Aceto's Customers' profit and AMVAC's damage and detriment.

40. Aceto's and Aceto's Customers' conduct constitutes intentional trademark and service mark infringement in violation of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

41. As a direct and proximate result of Aceto's and Aceto's Customers' conduct in violation of 15 U.S.C. § 1125(a), AMVAC has suffered actual and irreparable injury for which no adequate remedy exists at law.

COUNT 3

Common Law Trademark and Service Mark Infringement

42. AMVAC realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 41 of its complaint as if set forth fully herein.

43. AMVAC, by virtue of its (and the mark's prior owners') adoption and use in interstate commerce of the EZ LOAD SYSTEM Mark in this judicial district and elsewhere, has acquired, established, and owns common law trademark and service mark rights in the EZ LOAD SYSTEM Mark, which serves to identify to the public certain goods and services that are offered by AMVAC alone, and the goods and services offered in connection with those marks are regarded by the public as being offered by, sponsored by, approved by, authorized by, associated with, or affiliated with AMVAC.

44. Upon information and belief, Aceto and Aceto's Customers have intentionally used and are intentionally using the EZ LOAD SYSTEM Mark, without authorization or consent, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods and services, knowing that they have

used the EZ LOAD SYSTEM Mark in a manner that is likely to cause confusion, mistake, or deception as to the true source or sponsorship of those goods and services.

45. Aceto's and Aceto's Customers' past and continued use of AMVAC's EZ LOAD SYSTEM Mark is likely to confuse or deceive the public into believing that Aceto's product originates from AMVAC, or that Aceto's product is associated or affiliated with, or sponsored or endorsed by, or licensed by, AMVAC.

46. Aceto's and Aceto's Customers' conduct has enabled them to earn profits to which they are not in law, equity or good conscience entitled, and has unjustly enriched Aceto's and Aceto's Customers, all to Aceto's and Aceto's Customers' profit and AMVAC's damage and detriment.

47. Aceto's and Aceto's Customers' conduct constitutes intentional trademark and service mark infringement in violation of the common law of the state of Georgia.

48. As a direct and proximate result of Aceto's and Aceto's Customers' trademark and service mark infringement, AMVAC has suffered actual and irreparable injury for which no adequate remedy exists at law.

COUNT 4

Federal Unfair Competition

49. AMVAC realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 48 of its complaint as if set forth fully herein.

50. Upon information and belief, Aceto and Aceto's Customers have intentionally used the EZ LOAD SYSTEM Mark, without authorization, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods and services, in a manner that is likely to cause confusion, mistake, or deception as to the true source or sponsorship of Aceto's and Aceto's Customers' goods and services. This is despite the fact that any license Aceto had to use the EZ LOAD SYSTEM Mark expired on August 1, 2007.

51. Upon information and belief, Aceto and Aceto's Customers have used the Infringed EZ LOAD SYSTEM Mark in commercial advertising and promotion, in a manner that misrepresents the nature, characteristics, and qualities of Aceto's and Aceto's Customers' goods, services, and commercial activities.

52. Aceto's and Aceto's Customers' conduct has enabled them to earn profits to which they are not in law, equity or good conscience entitled, and has unjustly enriched Aceto and Aceto's Customers, all to Aceto's and Aceto's Customers' profit and to AMVAC's damage and detriment.

53. Aceto's and Aceto's Customers' conduct constitutes unfair competition in violation of the Federal Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A) and (B).

54. As a direct and proximate result of Aceto's and Aceto's Customers' unfair competition, AMVAC has suffered actual and irreparable injury for which no adequate remedy exists at law.

COUNT 5

Common Law Unfair Competition

55. AMVAC realleges and incorporates by reference the allegations set forth in ¶¶ 1 to 54 of its complaint as if set forth fully herein.

56. AMVAC, by virtue of its (and the mark's prior owners') prior adoption and use in interstate commerce of the EZ LOAD SYSTEM Mark in this judicial district and elsewhere, has acquired, established, and owns common law trademark and service mark rights in the EZ LOAD SYSTEM Mark, which serves to identify to the public certain goods and services that are offered by AMVAC alone, and the goods and services offered in connection with those marks are regarded by the public as being offered by, sponsored by, approved by, authorized by, associated with, or affiliated with AMVAC.

57. Upon information and belief, Aceto and Aceto's Customers have intentionally used and are intentionally using the EZ LOAD SYSTEM Mark, without authorization or consent, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods and services, knowing that they have used the EZ LOAD SYSTEM Mark in a manner that is likely to cause confusion, mistake, or deception as to the true source or sponsorship of those goods and services. This is despite the fact that any license Aceto had to use the EZ LOAD SYSTEM Mark expired on August 1, 2007.

58. Aceto's and Aceto's Customers' past and continued use of AMVAC's EZ LOAD SYSTEM Mark is likely to confuse or deceive the public into believing that Aceto's product originates from AMVAC, or that Aceto's product is associated or affiliated with, or sponsored or endorsed by, or licensed by, AMVAC.

59. Aceto's and Aceto's Customers' conduct has enabled them to earn profits to which they are not in law, equity or good conscience entitled, and has unjustly enriched Aceto's and Aceto's Customers, all to Aceto's and Aceto's Customers' profit and AMVAC's damage and detriment.

60. Aceto's and Aceto's Customers' conduct constitutes unfair competition under the common law of the State of Georgia.

61. As a direct and proximate result of Aceto's and Aceto's Customers' trademark and service mark infringement, AMVAC has suffered actual and irreparable injury for which no adequate remedy exists at law.

PRAYER FOR RELIEF

WHEREFORE, AMVAC respectfully requests that this Court:

(a) Rule that Aceto is judicially estopped from challenging the validity or infringement of the '988 patent.

(b) Declare that Aceto and Aceto's Customers have directly or indirectly infringed the '988 patent and that the infringement has been willful.

(c) Preliminarily and permanently enjoin Aceto, and all those in active concert or participation with it, including Aceto's Customers, from directly or indirectly infringing the '988 patent, pursuant to 35 U.S.C. § 283.

(d) Award AMVAC damages in an amount to be proved at trial because of the injuries suffered by AMVAC by reason of Aceto's and Aceto's Customers' infringement of the '988 patent.

(e) Increase the damages sustained by AMVAC up to three times the amount of its actual damages, as authorized by 35 U.S.C. § 284.

(f) Award AMVAC's its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

(g) Award AMVAC prejudgment interest and costs pursuant to 35 U.S.C. § 284.

(h) Enter judgment that the EZ LOAD SYSTEM Mark is a valid and enforceable trademark and service mark and that Aceto and Aceto's Customers, as a result of their unauthorized copying and use of the mark, have:

- a. infringed AMVAC's rights in the EZ LOAD SYSTEM Mark in violation of the Federal Lanham Act, 15 U.S.C. § 1125(a), and the common law of the state of Georgia; and
- b. engaged in unfair competition with AMVAC in violation of the Federal Lanham Act, 15 U.S.C. § 1125(a)(1)(A) and the common law of the state of Georgia.

(i) Preliminarily and permanently enjoin Aceto, and all those in active concert or participation with it, including Aceto's Customers, from using, in any form or fashion, AMVAC's trademarks, or any confusingly similar variation thereof.

(j) Award AMVAC the damages it has suffered and the profits Aceto and Aceto's Customers have earned by reason of Aceto's and Aceto's Customers' violations of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a),

with such amounts to be increased and trebled as provided by law, together with prejudgment interest accrued thereon.

(k) Award AMVAC recovery of its attorneys' fees and other expenses of litigation pursuant to 15 U.S.C. § 1117(a).

(l) Preliminarily and permanently enjoin Aceto, and all those in active concert or participation with it, including Aceto's Customers, from otherwise competing unfairly with AMVAC.

(m) Award AMVAC the damages it has suffered and the profits Aceto and Aceto's Customers have earned by reason of Aceto's acts of unfair competition, with prejudgment interest accrued thereon.

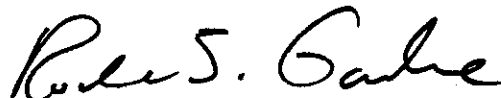
(n) Order Aceto and Aceto's Customers to pay AMVAC punitive damages in light of the willful and intentional nature of Aceto's and Aceto's Customers' acts of unfair competition.

(o) Award AMVAC such other and further relief as this Court deems proper.

JURY TRIAL DEMAND

AMVAC requests a trial by jury on all issues properly triable to a jury raised in its complaint.

Respectfully submitted this 1st day of May, 2008.



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