

AcryliCon Accuses Silikal Of Trademark Infringement and Misappropriation of Trade Secrets

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On April 10, 2014, **AcryliCon USA, LLC**, (“AcryliCon” or “Plaintiff”) filed a complaint against **Silikal GmbH & Co. and Silikal Industries GmbH**, (“Silikal”), Hubert Weimann, and Harold Schmidt (collectively, “Defendants”) alleging misappropriation of trade secrets, trademark infringement in violation of the Lanham Act, federal unfair competition, trademark infringement and unfair competition under Georgia law, violation of the Georgia Unfair and Deceptive Trade Practices Act, violation of the Georgia Trade Secrets Act, and violations of Georgia common law.

AcryliCon is a limited liability company formed under Delaware law, with its principal place of business in Alpharetta, Georgia. Both Silikal GmbH & Co. and Silikal Industries GmbH are corporations organized and existing under the laws of Germany with principal places of business in Mainhausen, Germany. Hubert Weimann is managing director of Silikal, also residing in Mainhausen, Germany, and Harold Schmidt is an owner and managing director of Silikal, also residing in Mainhausen, Germany.

According to the complaint, AcryliCon markets and installs an industrial flooring system which has been sold throughout the world for more than 30 years. The system is marketed under the trademarked “AcryliCon®” name and referred to generally as the “AcryliCon System.” Variations of the name are also used, such as the “AcryliCon Décor [or Dekor] System,” the “AcryliCon Flake System,” the “AcryliCon Granite System,” the “AcryliCon Lacquer System,” the “AcryliCon Variant System,” and the “AcryliCon Microban System.” The term “SW” is also used to describe the system.

Still according to the complaint, AcryliCon has filed trademark applications with the United States Patent and Trademark Office for the word mark “AcryliCon” and for the stylized word mark “AC AcryliCon” in both black-and-white and in color – for use regarding the goods and services of “commercial and industrial flooring, namely, floors formed from acrylic resin,” and for the “installation, maintenance and repair of floor and wall coverings.” These three marks were registered in the United States Patent and Trademark Office under registration numbers 2,666,813, 2,669,542, and 3,564,938. The complaint alleges that these marks are suggestive and accordingly inherently distinctive, have acquired secondary meaning and public association, and are incontestable pursuant to 15 U.S.C. § 1115.

In addition to allegations of trademark infringement, AcryliCon also alleges misappropriation of trade secrets regarding a product known as “1061 SW,” a modified methacrylate (or “MMA”) resin. The resin is applied and then covered with a sealer to comprise an AcryliCon System floor. According to the complaint, the 1061 SW resin is one of the most important parts of the AcryliCon System, and the unique, confidential and exclusive nature of the 1061 SW formula is critical to the success of the AcryliCon System. The complaint further alleges that until recently, the AcryliCon resin had been manufactured by Silikal, but, as a result of business disputes and quality control issues, AcryliCon was forced to locate an alternative source for the manufacture of this proprietary resin.

The Plaintiff and Defendants have a prior history of litigation, including two previous lawsuits, (Case No. 1:08-cv-00119-CC (N.D. Ga.) and Case No. 09-cv-23451 (S.D. Fla.)). In the first, plaintiffs alleged that the defendants were misappropriating the AcryliCon Companies’ trademarks and other proprietary, confidential, and trade secret information in connection with their marketing of Silikal products. The second lawsuit was allegedly filed to protect trade secrets related to the 1061 SW formula and resulted in a Stipulated dismissal including a agreement to the exclusive jurisdiction of the Northern District of Georgia for future disputes.

The complaint alleges, among other things, that the defendants are “(a) making statements and representations, directly and indirectly, regarding 1061 SW Resin, the AcryliCon Systems and its components; (b) making statements, representations and claims, directly and indirectly, that Silikal Products and AcryliCon Systems are the same; (c) improperly comparing Silikal Products to AcryliCon Systems; and (d) using, directly and indirectly, references of floors installed by AcryliCon.” Further, the defendants have allegedly threatened to misappropriate the formula for 1061 SW.

AcryliCon seeks a preliminary and permanent injunction, an award of damages, including exemplary damages for alleged willful and malicious misconduct, as well as attorneys' fees and costs.

The case is *AcryliCon USA, LLC v. Silikal GmbH & Co. et al.*, Case no. 1:14-cv-01072-WSD , filed April 10, 2014 in United States District Court for the Northern District of Georgia, Atlanta Division, and is assigned to Judge William S. Duffey, Jr.

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