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6
 7 **UNITED STATES DISTRICT COURT**
 8 **IN AND FOR THE DISTRICT OF ARIZONA**

9
 10 SOILWORKS, LLC, an Arizona
 corporation,

11 **Plaintiff,**

12 v.

13 MIDWEST INDUSTRIAL SUPPLY, INC.,
 14 an Ohio corporation authorized to do
 business in Arizona,

15 **Defendant.**

NO.:

**COMPLAINT FOR DAMAGES AND
 EQUITABLE RELIEF AND DEMAND
 FOR JURY TRIAL**

16
 17 Plaintiff, Soilworks, LLC (“Soilworks”), brings this action against Defendant,
 18 Midwest Industrial Supply, Inc. (“Midwest”), and alleges as follows:

19 **JURISDICTION AND VENUE**

20 1. This is a Complaint for an injunction, damages and other appropriate relief to
 21 stop Midwest from misrepresenting material facts concerning Soilworks and its products and
 22 Midwest and its products. In this action, Soilworks asserts violations of the Lanham Act,
 23 15 U.S.C. § 1041 *et. seq.*, of the Arizona Deceptive Trade Practices Act, and of Arizona
 24 common law. In addition, Soilworks seeks declaratory relief under 28 U.S.C. §§ 2201 and
 25 1338 with regard to U.S. Patent No. 7,081,270 which Midwest purports to own.

26 2. This Court has subject matter over Soilworks’ claims pursuant to 15 U.S.C.
 27 § 1121 and 28 U.S.C. §§ 1331, 1338 and supplemental jurisdiction under 28 U.S.C. § 1367.
 28

1 and injure Soilworks' reputation by, among other things, representing that Soilworks'
2 products infringe Midwest's alleged patent rights.

3 9. Midwest has disseminated information and documentation to Soilworks'
4 distributors, customers and end users which is inaccurate, misleading and which is causing
5 irreparable harm and damage to Soilworks, Soilworks' reputation and the reputation of
6 Soilworks' products.

7 10. Midwest's conduct is intended to cause mistake, deception and consumer
8 confusion and was done by Midwest with the intention of damaging Soilworks and the
9 reputation Soilworks has earned in the industry. The conduct of Midwest wrongfully diverts
10 the potential market and customer loyalty to which Soilworks is entitled.

11 11. Defendant has engaged in the foregoing wrongful conduct intentionally and in
12 order to profit from such conduct. Midwest's conduct is causing, and will continue to cause,
13 irreparable harm to Soilworks and to tarnish and diminish the substantial goodwill Soilworks
14 has cultivated with respect to its company, products and the proprietary rights associated
15 therewith.

16 12. Midwest has allegedly obtained a United States Patent with respect to a method
17 of chemical soil stabilization and dust control, U.S. Patent No. 7,081,270. Midwest
18 intentionally has misrepresented the scope of said patent rights and has misrepresented to
19 Soilworks' distributors, customers and end users that Soilworks' products fall within the
20 scope of said patent rights, which is false. Midwest has also represented to Soilworks'
21 distributors, customers and end users that Midwest owns a proprietary position with regard to
22 Midwest's products and services which is false and/or misleading.

23 13. Midwest has disseminated marketing communications with regard to U.S.
24 Patent No. 7,081,270 that are false, misleading and intended to tarnish and diminish the
25 substantial goodwill Soilworks has cultivated with respect to its company, products and
26 Soilworks' proprietary rights associated therewith.

1 14. Midwest has disseminated marketing communications with regard to U.S.
2 Patent No. 7,081,270 that are false, misleading and intended to misrepresent characteristics
3 of Midwest's products and its proprietary position with regard to those products.

4 **COUNT I**

5 **FALSE REPRESENTATION UNDER LANHAM ACT, § 43(A)**

6 15. Soilworks incorporates by reference paragraphs 1 through 14 above.

7 16. Midwest is disseminating information and documentary materials in a manner
8 that is likely to cause confusion, mistake and deception among consumers of Soilworks'
9 products regarding Soilworks' conduct and products. Such activities will mislead and divert
10 customers of Soilworks and damage and tarnish the excellent reputation Soilworks has
11 established in the marketplace.

12 17. Midwest has used, and continues to use, false and misleading statements and
13 representations of fact in commercial advertising and promotion, thereby misrepresenting the
14 nature, characteristics and qualities of their products, services and commercial activities of
15 those of competitors.

16 18. Midwest's conduct constitutes false designation of origin and association in
17 violation of the Lanham Act, 15 U.S.C. § 1125(a).

18 19. Midwest's unlawful conduct is causing Soilworks severe and irreparable harm
19 that cannot be adequately remedied solely by monetary damages. Unless restrained and
20 enjoined by this Court, Midwest's unlawful actions are likely to continue, to Soilworks'
21 harm and detriment.

22 **COUNT II**

23 **DECLARATORY JUDGMENT UNDER 28 U.S.C. § 2201**

24 20. Soilworks incorporates by reference paragraphs 1 through 19 above.

25 21. Midwest has averred that the U.S. Patent No. 7,081,270 was duly and legally
26 issued, that Midwest is the lawful owner, including the right to sue and to recover for any
27 and all infringement of U.S. Patent No. 7,081,270 and that Soilworks infringes said patent.
28

1 (d) Using and misusing any and all alleged patent rights under U.S. Patent
2 No. 7,081,270 in competition with Soilworks; and

3 (e) Disseminating marketing communications which are in any respect
4 false, misleading and are intended to tarnish and diminish the substantial goodwill
5 Soilworks has cultivated with respect to its company, products and Soilworks'
6 proprietary rights associated therewith.

7 3. That the Court declare that Soilworks has not and does not infringe any valid
8 and/or enforceable claim of U.S. Patent No. 7,081,270, directly or indirectly, literally or by
9 equivalence.

10 4. That the Court declare that each claim of U.S. Patent No. 7,081,270 is invalid.

11 5. That the Court enjoin Midwest, its officers, agents, representatives,
12 distributors, employees, affiliates, parent and subsidiary corporations, attorneys and other
13 persons in active concert or participation with them from charging infringement or instituting
14 any action for infringement of U.S. Patent No. 7,081,270 against Soilworks or anyone in
15 privity with Soilworks, including its successors, assigns, agents, suppliers, distributors,
16 customers, licensees and sublicensees.

17 6. That the Court award Soilworks actual damages, in an amount to be proven at
18 trial.

19 7. That the Court award Soilworks treble damages, in an amount to be proven at
20 trial.

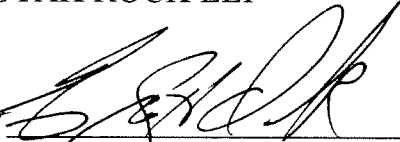
21 8. That the Court award Soilworks punitive damages, in an amount to be proven
22 at trial.

23 9. That the Court award Soilworks its attorneys' fees and costs incurred herein.

24 10. That the Court grant Soilworks all other relief to which it is entitled and such
25 other or additional relief as is just and proper.

1 Dated this 7th day of September, 2006.

2 KUTAK ROCK LLP

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4 By 

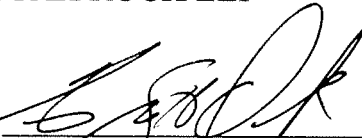
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10 *Attorneys for Plaintiff*

11 **DEMAND FOR JURY**

12 Soilworks hereby demands a trial by jury of all issues triable of right by a jury.

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14 KUTAK ROCK LLP

15
16 By 

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