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7 **UNITED STATES DISTRICT COURT**

8 **IN AND FOR THE DISTRICT OF ARIZONA**

9  
 10  
 11 SOILWORKS, LLC, an Arizona  
 corporation,  
 12 Plaintiff / Counterdefendant /  
 13 Counterclaimant,  
 14 v.  
 15 MIDWEST INDUSTRIAL SUPPLY, INC.,  
 an Ohio corporation authorized to do  
 16 business in Arizona,  
 17 Defendant / Counterclaimant /  
 Counterdefendant.

NO.: 2:06-CV-2141-DGC

**PLAINTIFF'S RESPONSE AND  
 OBJECTIONS TO MIDWEST'S  
 STATEMENT OF FACTS IN  
 SUPPORT OF ITS MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

18  
 19 Plaintiff Soilworks hereby submits its responses and objections to Midwest's  
 20 Statement of Facts in Support of its Motion for Partial Summary Judgment pursuant to  
 21 United States District Court Local Rule 56.1 as follows:

- 22
- 23 1. Undisputed.
- 24 2. Undisputed.
- 25 3. Disputed as not supported by any admissible evidence in this record.
- 26 4. Undisputed.
- 27 5. Undisputed.
- 28

1           6.     Undisputed except as to reference to Synthetic Organic Dust Control, which is  
2 not at issue in this case.

3           7.     Undisputed.

4           8.     Undisputed.

5           9.     Disputed as not supported by any admissible evidence in this record.

6           10.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
7 issue in this case.

8           11.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
9 issue in this case.

10          12.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
11 issue in this case.

12          13.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
13 issue in this case.

14          14.    Disputed as not supported by any admissible evidence. Furthermore, it is  
15 irrelevant because the trademark of Synthetic Organic Dust Control is not at issue in this case.

16          15.    Undisputed.

17          16.    Undisputed.

18          17.    Undisputed.

19          18.    Undisputed.

20          19.    Undisputed.

21          20.    Undisputed.

22          21.    Undisputed.

23          22.    Undisputed.

24          23.    Undisputed.

25          24.    Undisputed.

26          25.    Disputed in all respects.

27          26.    Disputed as not supported by any admissible evidence in this record.

28          27.    Undisputed.

          28.    Undisputed.

- 1           29.    Undisputed.
- 2           30.    Undisputed.
- 3           31.    Undisputed.
- 4           32.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
5 issue in this case.
- 6           33.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
7 issue in this case.
- 8           34.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
9 issue in this case.
- 10          35.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
11 issue in this case.
- 12          36.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
13 issue in this case.
- 14          37.    Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at  
15 issue in this case.
- 16          38.    Undisputed. Soilworks use of keywords is in accord with applicable law and  
17 mirrors the conduct of Midwest.
- 18          39.    Undisputed.
- 19          40.    Undisputed.
- 20          41.    Undisputed.
- 21          42.    Undisputed.
- 22          43.    Undisputed.
- 23          44.    Undisputed.
- 24          45.    Disputed as not supported by any admissible evidence in this record.
- 25          46.    Undisputed.
- 26          47.    Undisputed.
- 27          48.    Undisputed.
- 28          49.    Undisputed.
50.    Disputed as not supported by any admissible evidence in this record.

- 1           51.    Disputed as not supported by any admissible evidence in this record.
- 2           52.    Disputed. *See Ex. 5* attached to Soilworks' Response to Motion for Summary  
3 Judgment filed contemporaneously herewith.
- 4           53.    Undisputed.
- 5           54.    Disputed as not supported by any admissible evidence in this record.
- 6           55.    Disputed as not supported by any admissible evidence in this record.
- 7           56.    Disputed as not supported by any admissible evidence in this record.
- 8           57.    Undisputed.
- 9           58.    Undisputed.
- 10          59.    Undisputed.
- 11          60.    Undisputed.
- 12          61.    Disputed. Irrelevant.
- 13          62.    Undisputed.
- 14          63.    Undisputed.
- 15          64.    Disputed as not supported by any admissible evidence in this record.
- 16          65.    Undisputed.
- 17          66.    Undisputed.
- 18          67.    Disputed as not supported by any admissible evidence in this record.
- 19          68.    Undisputed.
- 20          69.    Undisputed as to the existence and sending of the letter by Mr. Passarelli.  
21 Midwest's mischaracterization of that letter is disputed.
- 22          70.    Undisputed.
- 23          71.    Soilworks does not dispute the sending of letters by Midwest. Soilworks  
24 disputes the contents of those letters.
- 25          72.    Disputed as identifying incomplete evidentiary sources of claim.
- 26          73.    Undisputed.
- 27          74.    Undisputed.
- 28          75.    Disputed as identifying incomplete evidentiary sources of claim.



