

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ACRYLICON USA, LLC,)	
a Delaware limited liability)	
company,)	
 Plaintiff,)	
)	CIVIL ACTION
)	FILE NO. 1:14-CV-01072-WSD
v.)	
)	
SILIKAL GMBH, a foreign)	<u>JURY TRIAL DEMANDED</u>
company,)	
)	
Defendant.)	

**SECOND AMENDED COMPLAINT FOR MISAPPROPRIATION
OF TRADE SECRETS, TRADEMARK INFRINGEMENT,
BREACH OF CONTRACT AND RELATED CLAIMS**

COMES NOW, Plaintiff ACRYLICON USA, LLC. (“AcryliCon”), by its undersigned attorneys, as and for its Complaint hereby sues Defendant SILIKAL GMBH, and alleges, upon knowledge as to itself and its own actions, and upon information and belief as to all other matters, as follows:

SUMMARY OF ACTION

1. From its headquarters in Alpharetta, Georgia, Plaintiff markets and sells an industrial flooring system. The system uses a proprietary and trade secret resin that, until recently, was manufactured by Defendant exclusively for AcryliCon. According to the former production and purchasing manager in

Defendant's German factory, however, Silikal has been selling AcryliCon's proprietary, exclusive and trade-secret flooring resin to others for years, without AcryliCon's knowledge or permission.

2. To stop this misconduct, which Silikal has misrepresented and concealed, and address the damage it has caused to AcryliCon's business, headquartered in Alpharetta, Georgia, AcryliCon brings this action. Plaintiff asserts claims for breach of contract, 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.

PARTIES AND JURISDICTION

3. Plaintiff AcryliCon is a limited liability company formed under Delaware law, with its principal place of business in Alpharetta, Georgia. AcryliCon's members are individuals, who reside in and are citizens of Georgia.

4. Defendant Silikal GmbH ("Silikal") is a corporation organized and existing under the laws of Germany, and having its principal place of business in Mainhausen, Germany.

5. While, on information and belief, the company's name has changed at certain times, Silikal has been owned and controlled by the same principal, Mr.

Harald Schmidt, since 1999. Silikal holds itself out to the world as having manufactured “Industrial Flooring” products “since 1951.”

6. This is a civil action for trademark infringement and unfair competition arising under the Lanham Act, as amended, 15 U.S.C. §§ 1051 et. seq., and for claims under the laws and common law of the State of Georgia.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1121, 1331, 1332, 1338, and the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. Sections 1391(b)(2) & (3), where a substantial part of the events or omissions giving rise the claim occurred, where the Defendant is subject to personal jurisdiction, and pursuant to the agreement of the parties.

9. As detailed below, Defendant has consented to venue and jurisdiction in this District in a written agreement and a stipulation filed of record in a prior Federal Court action.

10. This Court also has personal jurisdiction over Defendant, since it transacts business within this state, and/or has an office or agency in this state; has committed tortious acts or omissions within this state; has committed tortious injury in this state caused by an act or omission outside this state and regularly

does or solicits business, or engages in other persistent courses of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state; or owns, uses, or possesses real property situated within this state. The activities of Defendant within the state are substantial and not isolated. In addition, this action arises out of transactions and operations connected with and incidental to Defendant's business within the state.

11. Among other things, Silikal has made continuous and ongoing sales and shipments of flooring resins and other products into the State of Georgia. Silikal asserts an ownership interest in those products, even after they arrive and are warehoused in Georgia. Silikal also provides warranties for the products. In connection with that business, representatives of Silikal have regularly travelled to the United States, including Georgia. Silikal also has applied for and obtained a registered trademark in the United States, representing under oath to the United States Patent and Trademark Office that the mark has been continuously used in commerce in the United States. In fact, Silikal has appointed agents in the United States – both in connection with its prior disputes with AcryliCon and trademark matters – for service of process. Silikal, moreover, has previously admitted that it is subject to this Court's jurisdiction in the prior lawsuit.

**THE PROPRIETARY, TRADE SECRET AND
TRADEMARK PROTECTED “ACRYLICON” FLOORING SYSTEM**

The AcryliCon System

12. Plaintiff markets and installs an industrial flooring system (“System”), which has been sold throughout the world for more than 30 years.

13. The System is marketed under the trademarked “AcryliCon®” name and referred to generally as the “AcryliCon System.”

14. Certain variations of the name are 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 terms “SW” or “M SW” are also used to describe the System. (The term “AcryliCon” will refer collectively to Plaintiff, the trademarked “AcryliCon System,” and its trade secret components marketed and sold in the US by Plaintiff.)

AcryliCon’s Trademarks

15. These “AcryliCon” names and their variations are all protected by federal trademark registrations, as well as common law trademarks.

16. Trademark applications were filed 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 protection of its trademark for 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 (“Federal Trademarks”) were registered in the United States Patent and Trademark Office under registration numbers 2,666,813, 2,669,542, and 3,564,938, and are outstanding and valid. (True and correct copies of the registrations are attached hereto as Exhibit “A.”) AcryliCon, as a licensee, may use and enforce the Federal Trademarks, the common law trademarks, and the trade secret “AcryliCon” resins and products, and their formulas.

17. Pursuant to 15 U.S.C. § 1115, the Federal Trademarks are incontestable. In any event, the Federal Trademarks “AcryliCon” and “AC AcryliCon” – as well as the common law AcryliCon trademarks – are suggestive marks, and as such are inherently distinctive. (The Federal Trademarks and common law trademarks are referred to herein, collectively, as “Trademarks”). Alternatively, the AcryliCon Trademarks have acquired a secondary meaning from the continuous use of the trademarks in interstate commerce, and the public’s association of AcryliCon’s name with its business.

18. The AcryliCon Trademarks have obtained their common law trademark protection by virtue of their first and continuous use in commerce throughout the United States for many years.

19. All of the AcryliCon Trademarks have accrued substantial goodwill over the years of their use.

The Trade Secret

20. The product on which the AcryliCon System is based is called “1061 SW” (sometimes also referred to as 1061 MSW).

21. The formula for the 1061 SW resin (hereafter, “Formula”) is a trade secret of AcryliCon.

22. In technical terms, 1061 SW is a modified methacrylate (or “MMA”) resin. The resin is applied and then covered with a sealer to comprise an AcryliCon System floor. The 1061 SW resin is one of the most important parts of the AcryliCon System.

23. The unique feature of the 1061 SW resin is its hardness, or “compressive strength.” Measured in Newtons per millimeter (“N/mm”), 1061 SW has a compressive strength ranging into the high 80’s. That is significantly higher than the compressive strength of the standard resins, which range from 20-40 N/mm.

24. This feature, in combination with AcryliCon’s other proprietary and trade secret information products, results in an industrial flooring system that is highly durable. Indeed, installations of AcryliCon flooring systems in facilities around the world remain in as-new condition after more than 30 years.

25. Substantial economic value is derived from the Formula by virtue of its unique, confidential and exclusive nature, and customers pay a premium for the AcryliCon system for these reasons. The unique, confidential and exclusive nature of the Formula is critical to the success of the AcryliCon System.

26. The Formula and specifications for the 1061 SW resin are highly confidential. It is not readily ascertainable by AcryliCon's competitors, and extensive efforts have been undertaken to ensure that the Formula remains secret. Among other measures the AcryliCon Companies have taken to ensure this secrecy, the Formula is locked securely in a safe to which access is strictly limited.

27. Until recently, the AcryliCon resin had been manufactured by Silikal, but, as a result of business disputes and quality control issues, an alternative source for the manufacture of this proprietary resin was found.

28. Other than AcryliCon, only Silikal, the manufacturer, had information regarding the Formula. Silikal's use was limited, solely for the purpose of fulfilling its role as manufacturer of the 1061 SW resin.

29. The Formula had been entrusted to Silikal for this limited purpose; Silikal knowingly accepted that trust; and is obligated to preserve the Formula in confidence as an AcryliCon trade secret.

Silikal Acknowledges AcryliCon's Rights

30. Silikal has repeatedly confirmed, orally and in writing, that the Formula is exclusively AcryliCon's and is AcryliCon's proprietary trade secret.

31. Silikal has a duty, including as a fiduciary, to preserve and maintain the secrecy of the Formula and to use it exclusively as authorized by AcryliCon.

32. Silikal has repeatedly acknowledged and re-confirmed these obligations, even though Silikal also manufactures and sells a separate line of flooring products that it markets under the Silikal brand name, including the Trademark it has obtained in the United States, under Registration Number 2,912,064 ("Silikal Trademark").

33. The Silikal products are materially different from the AcryliCon System, and Silikal has repeatedly represented that it never sold or marketed any system using the "1061 SW" resin.

34. For example, Silikal has confirmed in writing that the AcryliCon System is different, and is "worldwide exclusively the affair of AcryliCon and is not comparable to Silikal systems." Silikal further confirmed that it "will not . . . say or even imply that these systems are the same or display the same properties." A true and correct copy of Silikal's letter containing these representations is attached hereto as Exhibit "B".

35. Silikal has also confirmed that, regardless of which of the names AcryliCon has used to market the AcryliCon System, AcryliCon “has the exclusive right for the use and sale of the so-called ‘SW-systems’ . . . which are used and sold by Acrylicon under [the] ‘Acrylicon Systems’ [name]. We are manufacturing these ‘SW’-systems for Acrylicon based on a worldwide exclusivity.” A true and correct copy of this letter is attached hereto as Exhibit “C”.

36. Silikal, moreover, specifically confirmed the exclusivity of 1061 SW and of the Trademarks in connection with the AcryliCon Companies’ development of business in the United States, *see* Exhibit “D” hereto.

37. Silikal and its predecessors made these representations on an ongoing and continuous basis throughout the history of Silikal’s relationship with Acrylicon.

THE PRIOR LITIGATION AND SETTLEMENT AGREEMENTS

38. Unfortunately, Silikal has a history of misconduct toward AcryliCon in the United States, where their actions required the filing of a prior federal lawsuit in this District, styled *ACRYLICON INTERNATIONAL, LTD. v. SILIKAL GMBH & CO., etc. et al.*, CASE NO. 1:08-CV-0119-CC (“Prior Lawsuit”).

39. The Prior Lawsuit 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.

40. Additionally, a second lawsuit (“Trade Secret Lawsuit”) was filed to ensure that the secrecy of 1061 SW and its Formula were preserved. The Trade Secret Lawsuit was filed in the Southern District of Florida, styled ACRYLICON USA, LLC v. SILIKAL GMBH, Case No. 09-23451-CIV-MOORE-SIMONTON.

41. The parties to the Trade Secret Lawsuit subsequently entered into a Stipulation, which was approved by Court Order. A copy is attached hereto as Exhibit “E”.¹

42. The parties then entered into a Global Settlement Agreement dated April 12, 2010 (“Agreement”), which was filed with the Court under seal, and the Prior Lawsuit was dismissed. A true and correct copy of the Agreement is referenced and incorporated as Exhibit “F” hereto, previously filed as D.E. # 16..

The Settlement Agreement

43. AcryliCon believed that the Agreement resolved the disputes. It imposed detailed requirements on Silikal for the marketing of its products, and also re-confirmed, consistent with Silikal’s prior representations, AcryliCon’s exclusive rights to 1061 SW and its Formula, referencing the Stipulation in the Trade Secret Lawsuit.

¹ In the Stipulation, the parties expressly stipulated to the exclusive jurisdiction and venue of the Northern District of Georgia and that Silikal’s counsel would accept service of process.

44. Thus, the Agreement specifically defined “1061 SW” to include “the industrial flooring resin known as ‘1061 SW’ and its Formula.” Agreement at 1.

45. Then, in paragraph 5 of the Agreement, titled “**Confidentiality and Use of 1061 SW**,” Silikal expressly promised as follows (emphasis added):

Silikal represents and warrants that it has not disclosed the formula for 1061 SW resin or **sold or distributed 1061 SW resin, directly or indirectly, to anyone other than AcryliCon during the pendency of the Silikal/AcryliCon relationship.** Silikal hereby covenants and agrees that it will preserve the secrecy of the formula for the 1061 SW resin. Silikal will not disclose or use in any way, directly or indirectly, the 1061 SW resin or the formula for the 1061 SW resin. **Silikal further covenants and agrees NOT to sell or distribute 1061 SW resin to anyone other than AcryliCon, or as expressly permitted in writing by AcryliCon.**

46. These terms were fundamental and highly material to the Agreement. AcryliCon relied – justifiably – on these representations, warranties and promises by Silikal in entering into the Agreement.

47. Indeed, Silikal and its representatives had consistently made the same representations to AcryliCon regarding the exclusivity of 1061 SW to AcryliCon.

48. Just as they did in connection with the Agreement, Defendant’s designated representatives, Harold Schmidt and Hubert Weimann, confirmed the exclusivity of 1061 SW under oath when they testified at deposition in the United States in the Prior Lawsuit. And, they denied that Silikal had ever sold 1061 SW to anyone other than AcryliCon.

49. Silikal also consented in the Agreement to the exclusive personal jurisdiction and venue of this Court as to all disputes regarding activities in the United States, and appointed its US counsel, Lawrence E. Laubscher, Jr., as its agent to accept service of process.

**DEFENDANTS' BREACHES, MISAPPROPRIATIONS
AND INFRINGEMENTS**

50. AcryliCon has learned, however, that Silikal is acting improperly.

51. Silikal is manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, in violation of its duty to maintain its secrecy and limit its use exclusively as an AcryliCon trade secret.

52. Silikal is taking the 1061 SW Resin manufactured for AcryliCon pursuant to AcryliCon's Formula, re-labelling it as a Silikal resin, and selling it in connection with the Silikal Trademark to customers without AcryliCon's consent or knowledge.

53. The sales are believed to be widespread and to have been made throughout the world, including in the United States. The sales and their true extent have been concealed by Silikal, however, and will thus be the subject of discovery in this action.

54. According to Bernd Diel, the former production and purchasing manager who supervised and managed the production process at Silikal's

Mainhausen, Germany headquarters, Silikal has been selling AcryliCon's 1061 SW resin to others for years.

55. Previously, Silikal sold the resin in containers with a Silikal label, but still referred to the resin as "1061 SW" or "1061-M SW." In an apparent effort to conceal these sales, however, Silikal more recently began labeling the resin "R61 H." But, the product is the same 1061 SW resin that is AcryliCon's.

56. According to Mr. Diel, Silikal fills up drums with AcryliCon's 1061 SW resin, and then puts a Silikal label on the drums. Mr. Diel, himself, was specifically instructed to do this by Silikal's most senior management, including Hubert Weimann.

57. Thus, in 2013 alone, Silikal sold shipments of AcryliCon's 1061 SW Resin – improperly re-labelled as a Silikal resin – to various customers including, but not limited to, Floor Labs, Silimor, TPR Systems Ltd., and Dama Ltd.

58. According to documents obtained to date, moreover, this has been a long-standing practice of Silikal, as reflected by an information sheet distributed under the "Silikal GmbH & Co. KG" name for a product labelled "R 61 EH-X-SE," a copy of which is attached as Exhibit "G" hereto. The sheet confirms that this resin – with a compressive strength in excess of 80 N/mm – is in fact AcryliCon's 1061 SW resin.

59. Mr. Diel states, moreover, that Silikal has extensive internal records, including on its computer systems, which document what has occurred. The records show that Silikal has sold 1061 SW to others, and that the product designated and labelled by Silikal as “R61 H” is 1061 SW. The records further show that Silikal used its inventory of 1061 SW to fill orders that were shipped to customers other than AcryliCon. This information includes, but is not limited to, inventory management records, production records, records from a dangerous goods system, and delivery records.

60. Mr. Diel, however, received instructions from Mr. Weimann before the end of 2013 to change some of the information and records, in order to hide the fact that 1061 SW was being used to fill orders for other customers, and was re-labelled as R61 H.

61. Silikal has engaged in other misconduct as well, including but not limited to (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.

62. As detailed above, Silikal's misrepresentations occurred in the United States – including false statements by Silikal's designated representatives, Mr. Schmidt and Mr. Weimann, under oath in proceedings in the Prior Lawsuit in the United States, and in the Agreement and Stipulation – which were negotiated, drafted and executed in the United States, and then filed of record in the US Lawsuits.

63. Silikal's misconduct – including its sales of AcryliCon's 1061 SW resin, wherever those sales occur – significantly impacts AcryliCon in the United States, has had a significant effect on United States Commerce, and has caused damage to AcryliCon in Georgia, where its business is headquartered.

64. As noted above, the exclusivity of 1061 SW is the foundation of AcryliCon's business, its Trademarks, and its competitive advantage in the marketplace.

65. Silikal's misappropriations, infringements, misrepresentations and violations substantially and adversely impact AcryliCon's business in the United States.

66. This harm is severe, irreparable, and threatens and impacts the basic conduct of AcryliCon's business, its marketing, promotion and sale of the AcryliCon System in the United States, and the business it conducts from its headquarters in Georgia.

67. Plaintiff has been forced to retain undersigned counsel to bring this action, and is obligated to pay their reasonable fees.

68. All conditions precedent to the bringing of this action have been satisfied, performed, excused or waived. Among other reasons, the breaches have already occurred and cannot be cured, and it would thus be futile for Plaintiff to demand a cure or resolution, especially given Silikal's fraudulent concealment and misrepresentations. Nevertheless, AcryliCon provided written notice to Silikal, including by letter dated June 18, 2014, and other follow-up communications.

COUNT ONE
(Misappropriation of Trade Secrets)

69. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above.

70. This is a claim for misappropriation of trade secrets in violation of the Georgia Trade Secret Act.

71. The Formula for 1061 SW is a trade secret, which AcryliCon has taken appropriate measures to preserve. AcryliCon derives independent economic value from the exclusivity of 1061 SW and the Formula not being generally known by other persons or companies who can obtain economic value from its disclosure or use.

72. Silikal has had access to the trade secret Formula, solely and exclusively for the purpose of manufacturing the resin on behalf of AcryliCon.

Silikal, under the circumstances, has had, and continues to have, a duty to maintain its secrecy and to limit its exclusive use as an AcryliCon trade secret.

73. Silikal, however, has misappropriated the trade secret by, among other things, manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, improperly using its Silikal Trademark, in violation of Silikal's duty to maintain its secrecy and limit its use exclusively as an AcryliCon trade secret.

74. Silikal's conduct has and will cause AcryliCon injury, including irreparable harm and damage to its goodwill, reputation, and the value of its Trademarks and trade secrets.

75. Silikal's misappropriation is willful, intentional and malicious.

76. Defendant should be enjoined from misappropriating AcryliCon's trade secrets.

77. As a direct and proximate result of Defendant's wrongful conduct, AcryliCon has been damaged in an amount not yet precisely ascertainable, including the loss of sales of its products and damage to its reputation and goodwill. AcryliCon is entitled to recover its "actual loss caused by the misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss" within the meaning of O.C.G.A. § 10-1-763(a). AcryliCon

is entitled to recover exemplary damages from Defendants pursuant to O.C.G.A. § 10-1-763(b) because willful and malicious appropriation has occurred.

78. AcryliCon is also entitled to recover its attorneys' fees and expenses pursuant to O.C.G.A. § 10-1-764.

COUNT TWO
**(Action under Lanham Act, 15 U.S.C. § 1125,
and for Infringement of Common Law Trademark Rights)**

79. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above.

80. This is an action for injunctive and other relief pursuant to 15 U.S.C. § 1125(a) & (b) and applicable common law.

81. The Trademarks are incontestable. The general public also recognizes AcryliCon's Trademarks as being inherently distinctive and identifying AcryliCon's goods or services, including the AcryliCon Systems based on 1061 SW, and distinguishing them from those of others.

82. Moreover, the AcryliCon products have developed throughout their many years in the industry a stellar reputation amongst customers, competitors, and the general public.

83. It is well established and widely known that the source and origin of the AcryliCon System and 1061 SW is solely and exclusively AcryliCon.

84. Silikal's actions in manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, improperly using its Silikal Trademark, violating the Marketing Practices, and representing that Silikal's products are identical to those of AcryliCon, have infringed, and will continue to infringe, AcryliCon's Trademarks, including its Federal Trademarks. Silikal is also improperly using its Silikal Trademark

85. These actions are causing confusion, causing mistake and deceiving as to the affiliation, connection, and association of Silikal with AcryliCon and as to the origin, sponsorship and approval of 1061 SW.

86. Such actions by Silikal, moreover, misrepresent the nature, characteristics, qualities and origin of AcryliCon's proprietary and trade secret 1061 SW resin.

87. Silikal's conduct is willful, intentional and malicious.

88. The threats and conduct have and will cause AcryliCon injury, including irreparable harm and damage to its goodwill, reputation, and the value of its Trademarks.

COUNT THREE
(Action For Federal Unfair Competition)

89. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above.

90. This is an action for unfair competition.

91. Silikal is infringing AcryliCon's Trademarks, improperly using its Silikal Trademark, and unfairly competing by manufacturing, distributing, and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, by violating the Marketing Practices, and by representing that Silikal's products are identical to those of AcryliCon. These actions constitute unfair competition in violations of Section 43 and 44 of the Lanham Act and common law.

92. Silikal's conduct is willful, intentional and malicious.

93. This unfair competition has and will cause AcryliCon injury, including irreparable harm and damage to its goodwill, reputation, and the value of its Trademarks.

COUNT FOUR

(Trademark Infringement and Unfair Competition under Georgia Law)

94. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above, as though fully set forth herein.

95. Defendant's actions, including manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, improperly using its Silikal Trademark, violating the Marketing Practices, and representing that its products are identical to those of AcryliCon, constitute trademark infringement and unfair competition in violation of O.C.G.A. § 23-2-55.

96. Moreover, Defendant acted with the intent to deceive the public.

97. As a direct and proximate result of Defendant's wrongful conduct, AcryliCon has been damaged in an amount to be proven at trial, which includes the loss of sales of its products, its reputation and goodwill. AcryliCon is entitled to recover damages including but not limited to actual damages, Defendant's profits, and the attorneys' fees, costs, and expenses which AcryliCon has incurred in this action.

98. In addition, Defendant's misconduct has been fraudulent, willful, and malicious, such that it raises the presumption of a conscious indifference to the consequences of their actions, thereby entitling AcryliCon to an award of exemplary damages in an amount to be determined by the enlightened conscience of the jury.

COUNT FIVE
**(Trademark Infringement and Unfair Competition under
the Common Law of Georgia)**

99. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above, as though fully set forth herein.

100. Defendant's actions, including manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, improperly using its Silikal Trademark, violating the Marketing Practices, and representing that its products are identical to those of AcryliCon, constitute trademark infringement and unfair competition in violation of the common law of Georgia.

101. Moreover, Defendant acted with the intent to deceive the public.

102. As a direct and proximate result of Defendant's wrongful conduct, AcryliCon has been damaged in an amount not yet precisely ascertainable but including the loss of sales of its products, its reputation and goodwill.

103. In addition, Defendant's infringement and unfair competition were fraudulent, willful, and malicious, such that it raises the presumption of a conscious indifference to the consequences of their actions, thereby entitling AcryliCon to an award of exemplary damages in an amount to be determined by the enlightened conscience of the jury.

COUNT SIX

(Georgia Uniform Deceptive or Unfair Trade Practices Act)

104. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above, as though fully set forth herein.

105. Defendant's actions, including manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, improperly using its Silikal Trademark, violating the Marketing Practices, and representing that its products are identical to those of AcryliCon, constitute deceptive trade practices under §§ 10-1-372(a)(1), (3), (5), (7), and (8) of Georgia's Uniform Deceptive Trade Practices Act.

106. Moreover, Defendant acted with the intent to deceive the public.

107. As a direct and proximate result of Defendant's wrongful conduct, AcryliCon has been damaged in an amount not yet precisely ascertainable but including the loss of sales of its products, its reputation and goodwill.

108. As a result of Defendant's willfully engaging in trade practices knowing them to be deceptive, AcryliCon is entitled to recover its attorneys' fees, as provided for in O.C.G.A. § 10-1-373(b)(2).

COUNT SEVEN
(Breach of Contract)

109. AcryliCon realleges and incorporates by reference the allegations in paragraphs 1-67 above, as though fully set forth herein.

110. This is an action for breach of contract.

111. AcryliCon and Silikal entered into the Agreement and Stipulation.

112. Silikal has breached the terms of the Agreement and the Stipulation, including by manufacturing, distributing and selling AcryliCon's exclusive and proprietary 1061 SW resin to others, improperly using its Silikal Trademark, violating the Marketing Practices, representing that its products are identical to those of AcryliCon, and failing to turn over the required documents and information.

113. As a direct and proximate result, AcryliCon has suffered damages.

114. Defendant has acted in bad faith, has been stubbornly litigious, and has caused AcryliCon such unnecessary trouble and expense so as to authorize the

recovery of AcryliCon's reasonable attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11, as well as under paragraph 16 of the Agreement.

REQUESTED RELIEF

WHEREFORE, AcryliCon prays that it is entitled to:

(a) a preliminary and permanent injunction enjoining Defendant from, among other things, infringing upon AcryliCon's duly licensed trademarks; from misappropriating AcryliCon's trade secrets; from manufacturing, distributing selling or marketing 1061 SW or products with equivalent properties; and from violating the Marketing Practices, including by utilizing AcryliCon's information or references of AcryliCon floors to sell their products;

(b) a judgment awarding AcryliCon damages, including exemplary damages for Defendant's willful and malicious misconduct;

(c) cancellation of Silikal's improperly used Trademark, including pursuant to 15 U.S.C. § 1064(3);

(d) an award of all attorneys' fees, costs and expenses incurred by AcryliCon;

(e) a trial by jury of all issues triable by right of jury; and

(f) a judgment awarding AcryliCon any such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic notice by the CM/ECF system, this _____ day of _____, 2014, on counsel listed on the Service List below.

/s/ Kevin C. Kaplan

Kevin C. Kaplan

SERVICE LIST

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Counsel for Defendants

EXHIBIT

“A”

Int. Cls.: 19 and 37

Prior U.S. Cls.: 1, 12, 33, 50, 100, 103, and 106

Reg. No. 2,666,813

United States Patent and Trademark Office

Registered Dec. 24, 2002

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

ACRYLICON

ACRYLICON NORGE AS (NORWAY CORPORATION)
SCHONNINGSGT.9
0362 OSLO, NORWAY

FOR: COMMERCIAL AND INDUSTRIAL FLOORING, NAMELY, FLOORS FORMED FROM ACRYLIC RESIN, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND 50).

FIRST USE 10-0-1994; IN COMMERCE 4-1-2002.

FOR: INSTALLATION, MAINTENANCE AND REPAIR OF FLOOR AND WALL COVERINGS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 10-0-1994; IN COMMERCE 4-1-2002.

SN 75-772,683, FILED 8-10-1999.

TINA L. SNAPP, EXAMINING ATTORNEY

Int. Cls.: 19 and 37

Prior U.S. Cls.: 1, 12, 33, 50, 100, 103, and 106

Reg. No. 2,669,542

United States Patent and Trademark Office

Registered Dec. 31, 2002

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



ACRYLICON NORGE AS (NORWAY CORPORATION)
SCHONNINGSGT.9
0362 OSLO, NORWAY

FOR: INSTALLATION, MAINTENANCE AND REPAIR OF FLOOR AND WALL COVERINGS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FOR: COMMERCIAL AND INDUSTRIAL FLOORING, NAMELY, FLOORS FORMED FROM ACRYLIC RESIN, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND 50).

FIRST USE 10-0-1994; IN COMMERCE 4-1-2002.

SN 75-772,682, FILED 8-10-1999.

FIRST USE 10-0-1994; IN COMMERCE 4-1-2002.

TINA L. SNAPP, EXAMINING ATTORNEY

Int. Cls.: 1 and 19

Prior U.S. Cls.: 1, 5, 6, 10, 12, 26, 33, 46 and 50

Reg. No. 3,564,938

United States Patent and Trademark Office

Registered Jan. 20, 2009

TRADEMARK
PRINCIPAL REGISTER



ACRYLICON NORGE AS (NORWAY CORPORATION)

SCHEITLICS GATE 14

N-3045 DRAMMEN

NORWAY

FOR: CHEMICALS FOR USE IN INDUSTRY; ACRYLIC RESINS; AND HARDENERS FOR USE IN THE MANUFACTURE OF ADHESIVES, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FOR: NON-METALLIC BUILDING MATERIALS, NAMELY, WOODEN BOARDS, PARTICLE BOARDS, DECKING BOARDS; INDUSTRIAL FLOORING, NAMELY, FLOORS FORMED FROM ACRYLIC RESIN, WOODEN FLOORING, RUBBER FLOORING, AND LAMINATE FLOORING, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND 50).

OWNER OF INTERNATIONAL REGISTRATION 0921754 DATED 10-17-2006, EXPIRES 10-17-2016.

OWNER OF U.S. REG. NOS. 2,666,813 AND 2,669,542.

THE COLOR(S) RED AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE STYLIZED LETTERS "AC" SHOWN IN RED AND THE WORD "ACRYLICON" SHOWN IN BLACK.

SER. NO. 79-053,316, FILED 4-11-2008.

HEATHER BIDDULPH, EXAMINING ATTORNEY

EXHIBIT

“B”



Silikal GmbH & Co. KG • Ostring 23 • D-63533 Mainhausen

AcryliCon International

Units 11 & 12 / Brook Road
Bicton Industrial Park
UK PE 28 OLR Kimbolton Cambs

31.01.06

Dear Mr. Hegstad,

Regarding the MMA products from Silikal and AcryliCon we would like to clarify the following:

1. The industrial flooring systems Silikal, AcryliCon and AcryliCon Microban are definitely different. Only the basic MMA components are produced by Silikal and to be found in all different systems.
2. The formulation of AcryliCon and AcryliCon Microban is worldwide exclusively the affair of AcryliCon and is not comparable to Silikal systems.
3. We will not permit to say or even imply that these systems are the same or display the same properties.

Yours Silikal

Harald Schmidt
- Owner -

ppa. Klaus Hünemann
- Sales Director Export -



EXHIBIT

“C”

FACSIMILE TRANSMISSION

To : ESGEE
Att. : Mr. Gurunath
Phone :
Fax :
Date : 29.04.98

From : B. Krapf
Company: Silikal Karl Ullrich GmbH
Ostring 23, D-63533 Mainhausen
Phone : ..49 6182 92350
Fax : ..49 6182 923540
Ref. : 4/3-kf/ro

Total pages (incl. this one): -2-

Reference: Your Fax of April 25, 1998 - Pepsi Cola

Dear Mr. Gurunath,

let me answer on your fax (including the enclosure) as follows:

- 1) It is a matter of fact and will be strictly noted by us, that you have the exclusive rights for manufacture, sale and use of Silikal Systems in India and Nepal.
- 2) Acrylicon group, on the other hand, esp. in U.K. and Scandinavia, has the exclusive right for the use and sale of the so-called „SW-systems“ (1061- M SW, 1071-M SW a.s.o.) which are used and sold by Acrylicon under „Acrylicon-systems“. We are manufacturing these „SW“-systems for Acrylicon based on a worldwide exclusivity.
- 3) Acrylicon in U.K. has special connections with Pepsi Cola in U.K. and Ireland for different jobs to be done all over the world. One of the reason for this is the very good experiences Pepsi Cola made with these Acrylicon systems in different jobs, e.g. the job at the Pepsi Cola plant at Little Island in Ireland.

This, we suppose, is the main reason Pepsi Cola is intending to use the Acrylicon systems in the Pepsi Cola plants worldwide.

This will be a decision being made only by Pepsi Cola management on which we or Acrylicon (or you in India) will not have influence.

- 4) Having all this in mind (your exclusive rights for Silikal in India on the one side, and the exclusive rights for Acrylicon systems / SW-systems for Acrylicon worldwide on the other hand) we propose that Acrylicon U.K. (Chris Howarth and Björn Hegstad) and your company should communicate to each other and find a solution which fits the interests of all parties, including the special interests of Pepsi Cola as the final customer.

Therefore we will ask Chris Howarth / Björn Hegstad to go in touch with you (by phone or by fax) and exchange the opinions and check the possibilities in this case of Pepsi Cola in India. Any arrangement you may conclude will be supported by us.

- 5) Regarding your question of using our Silikal system No. 4 with fibre glass reinforcement we cannot recommend this or a similar system at all (never described in our literature) and especially not in front of the Pepsi Cola requirements.

Please think about this proposal of which we also fax a copy to Acrylicon U.K. and let us know your opinion.

Acrylicon U.K phone No. (1480) 86 10 34
fax-No (1480) 86 17 03

Best regards

Silikal Karl Ullrich GmbH



Bernd Krapf

cc/ B. Hegstad
C. Howarth

EXHIBIT

“D”

Silikal GmbH & Co. KG

Ostring 23
D-63533 Mainhausen
+49 (0) 61 82 / 92 35 -0 +49 (0) 61 82 / 92 35 -40
www.silikal.de @mail@silikal.de



Silikal GmbH & Co. KG • Ostring 23 • D-63533 Mainhausen

Acrylicon International Ltd

Mr. Chris Howarth

Units 11 and 12 Brook Road, Bicton Ind. Park

GB Kimbolton Cambs PE28 OLR / UK

*Kopie
Original per Part
18.5.04*

AC-International01a.doc / es
11. Dec. 2003

Dear Chris,

The position with North America (USA, Canada and Mexico) is that we at present do not intend to set up agents as we did in the past nor in fact sell Silikal products in these regions.

Therefore if it is AcryliCon's intention to operate in this region you must make your own plans and of course based upon the special exclusive resins which you use in your business and carry the AcryliCon trade mark.

You can of course expect ongoing technical support for those Silikal products which we have made and supplied exclusively to you for many years.

However, you must not sell any Silikal products in the aforementioned regions and at present we do not intend to export them to this regions. Furthermore you are not allowed to use Silikal's name to promote your efforts.

We wish you every success in your plans in this market region.

Best regards from Mainhausen, Germany

Yours Silikal

A handwritten signature in black ink, appearing to read "E. J. J. J." with a stylized flourish.

EXHIBIT

“E”

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

CASE NO. 09-23451-CIV-MOORE-SIMONTON

ACRYLICON USA, LLC,
a Delaware limited liability company,

Plaintiff,

v.

SILIKAL GMBH, a foreign company,

Defendant.

**STIPULATION AND PROPOSED ORDER REGARDING
MAINTENANCE OF CONFIDENTIALITY OF FORMULA
AND DISMISSAL WITHOUT PREJUDICE OF LITIGATION**

Plaintiff ACRYLICON USA, LLC (“AcryliCon”), and Defendant SILIKAL GMBH, by and through undersigned counsel, hereby stipulate to the following interim resolution of certain issues:

1. During a period of 60 days from the date of this Stipulation (hereafter, “Term”), Defendant agrees that it shall preserve the secrecy of the formula for 1061 SW and not disclose it without the written consent of AcryliCon.
2. During the Term, Defendant shall not sell or distribute 1061 SW to anyone other than AcryliCon, or as permitted by AcryliCon.

3. The parties stipulate to the voluntary dismissal of this action pursuant to Rule 41(a)(1)(A)(ii), without prejudice and with each of the parties to bear their own fees or costs.

4. In the event AcryliCon re-files these claims, undersigned counsel for Silikal GmbH agrees to accept service of the Complaint, whether filed in this District or another Court.

5. This stipulation is entered into without waiver or prejudice to the parties' respective claims, defenses, and arguments including regarding jurisdiction, all of which are expressly reserved.

6. The parties stipulate that the Northern District of Georgia shall have exclusive jurisdiction and venue to enforce the terms of this Stipulation.

<p><u>s/ Kevin C. Kaplan</u> Kevin C. Kaplan Florida Bar No. 933848 COFFEY BURLINGTON 2966 South Bayshore Drive Penthouse Miami, Florida 33133 Tel: (305) 858-2900 Fax: (305) 858-5261</p> <p>Attorneys for Plaintiff ACRYLICON USA, LLC</p>	<p><u>s/ Francisco A. Rodriguez</u> Francisco A. Rodriguez Florida Bar No. 0653446 AKERMAN SENTERFITT One Southeast Third Avenue 25th Floor Miami, FL 33131-1714 Telephone: (305) 374-5600 Facsimile: (305) 374-5095</p> <p><u>s/Lawrence E. Laubscher, Jr.</u> LAUBSCHER & LAUBSCHER, P.C. 1160 Spa Road, Suite 2B Annapolis, MD 21403 Telephone: (410) 280-6608 Facsimile: (410) 280-6758</p> <p>Attorneys for Defendant SILIKAL GMBH</p>
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ORDER ADOPTING AND APPROVING STIPULATION

The foregoing stipulation of the parties is adopted and approved as an order of this Court, and this Action is dismissed without prejudice pursuant to the Stipulation.

SO ORDERED, this ____ day of _____, 2010.

JUDGE
UNITED STATES DISTRICT COURT

From: cmecfautosender@flsd.uscourts.gov
To: flsd_cmecf_notice@flsd.uscourts.gov
Subject: Activity in Case 1:09-cv-23451-KMM Acrylicon USA, LLC v. Silikal,GMBH Order Dismissing Case
Date: Thursday, March 18, 2010 9:18:50 AM

This is an automatic e-mail message generated by the CM/ECF system.
Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 3/18/2010 9:17 AM EDT and filed on 3/18/2010

Case Name: Acrylicon USA, LLC v. Silikal,GMBH
Case Number: 1:09-cv-23451-KMM <https://ecf.flsd.uscourts.gov/cgi-bin/DktRpt.pl?347068>

Filer:
WARNING: CASE CLOSED on 03/18/2010

Document Number: 48

(No document attached)

Docket Text:

PAPERLESS ORDER. THIS CAUSE came before the Court upon the Parties' Stipulation and Voluntary Dismissal [47]. UPON CONSIDERATION of the Stipulation and Voluntary Dismissal, the pertinent portions of the record, and being otherwise fully advised on the premises, it is ORDERED AND ADJUDGED that the Stipulation is hereby adopted and approved as an Order of this Court.

It is further ORDERED AND ADJUDGED that the above-styled cause is hereby DISMISSED WITHOUT PREJUDICE pursuant to the Stipulation. The Clerk of the Court is instructed to CLOSE this case. All pending motions are DENIED AS MOOT. Signed by Judge K. Michael Moore on 3/18/2010. (rg1)

1:09-cv-23451-KMM Notice has been electronically mailed to:

Benjamin Henry Brodsky bbrodsky@coffeyburlington.com

Francisco A. Rodriguez francisco.rodriguez@akerman.com,
debra.king@akerman.com

Kevin Crow Kaplan kkaplan@coffeyburlington.com,
drichardson@coffeyburlington.com, service@coffeyburlington.com

Lawrence E. Laubscher, Jr llaubscher@laubscherlaw.com

1:09-cv-23451-KMM Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

EXHIBIT

“F”

**SEPARATELY FILED AS
D.E. # 16**

EXHIBIT

“G”

SILIKAL R 61 EH-X-SE



Boden gut, alles gut!

SILIKAL R 61 EH-X-SE

Reactive Methacrylic Resin for trowel layed concrete screeds with Coloured Quartz (CQ)

Medium viscous – fast curing – UV-weathering resistance – hard – warm climate areas

Description:

SILIKAL R 61 EH-X-SE is a medium viscous Methacrylic resin of very high compressive strength which is suitable for 3 – 4 mm trowel layed screeds preferable for indoor areas on concrete. In connection with decorative coloured quartz fillers smooth or skid resistant surfaces can be achieved.

Properties:

There is no big difference between **SILIKAL R 61** and **SILIKAL R 61 EH-X-SE** regarding their application properties for trowel layed screeds. Just the compressive strength is higher than **SILIKAL R 61** and it should not be used for self levelling formulations or cold climate areas.

Technical Datas of SILIKAL R 61 EH-X-SE resin

Viscosity:	50 – 60 sec / DIN 4 mm 260 – 320 mPas
Spec. Gravity:	0,992 g/cm ³
Flashpoint:	+10°C
Colour:	Transparent
Pot Life:	20-22 minutes
Curing Time:	60 minutes
Packing:	Steel drum 180 kg
Shelf Life:	Minimum 6 months sealed and closed drums below +25°C
Application Temp.:	+5°C to +35°C surface temperature

SILIKAL R 61 EH-X-SE



Boden gut, alles gut!

Application Possibilities

SILIKAL R 61 EH-X-SE is just the binding resin to formulate the screed mortar according to the recommended mixing ratio 1 : 3,5 parts by weight. Some precaution for modified concrete qualities containing emulsion based resins or additives is being recommended since adhesion and curing properties of SILIKAL resin can be influenced. Primer Silikal R 51 or RU 727 must be used (refer to technical informations „Primers“).

Formulation: **SILIKAL R 61 EH-X-SE** 10,000 kg
 Filler CQ 35,000 kg

Hardener according to Table 1

Consumption: appr. 8 kg/m² mixture at 4 mm thickness

Hardener must be dissolved carefully in the pure resin before the Filler CQ is being added. Distribute the mortar equally of 3-4 mm onto the primed floor and smoothen by densifying its surface by an stainless steel trowel within the potlife. Continue always fresh by fresh mixtures to avoid trowel marks or joint connections of each batch.

After hardening a top coat must be applied. We recommend **SILIKAL R 71 re** for best scratch resistance. For good skid resistance use 1 layer, for smooth surface texture use 2 roll-on layers of 300 – 400 g/m² each.

Methacrylic resins like **SILIKAL R 61 EH-X-SE** are thermoplastic polymers which can get deformed when tires slip under full load and tire marks occur. In most cases such tiremarks can partially be cleaned by alcohol containing detergants. Also a carefull drive with forklifts or trucks might improve the problem.

Technical Datas of the 3-4 mm Coating:

Compressive Strength: ca. 88 N/mm²
 Tensile Strength: ca. 32 N/mm²
 Modulus of Elasticity: ca. 2790 N/mm²
 Specific Gravity: 2,0 g/cm³
 Pot Life: 15 minutes at + 20°C
 Curing Time: 1 hour
 Application Temp.: + 5°C to + 35°C depending on amount of hardener