

MAR - 3 2009

James N. Hatten, Clerk
By: *[Signature]*
Deputy Clerk

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

ORIGINAL

OSMOSE, INC.,)
)
Plaintiff,)

Civil Action No.

v.

3 09 - CV - 23

JTC

VIANCE, LLC.,)
ROCKWOOD HOLDINGS, INC.,)
STEPHEN B. AINSCOUGH, a/k/a)
STEVE AINSCOUGH,)
SEIFOLLAH E. GHASEMI, a/k/a)
SEIFI GHASEMI, and)
CHRISTOPHER R. SHADDAY,)
a/k/a CHRIS SHADDAY,)

JURY TRIAL DEMANDED

Defendants.)
)
)

COMPLAINT

COMES NOW OSMOSE, INC., Plaintiff hereinabove ("Osmose" or "Plaintiff"), and files this Complaint against Defendants VIANCE, LLC, ROCKWOOD HOLDINGS, INC., STEPHEN B. AINSCOUGH, a/k/a STEVE AINSCOUGH, SEIFOLLAH E. GHASEMI, a/k/a SEIFI GHASEMI, and CHRISTOPHER R. SHADDAY, a/k/a CHRIS SHADDAY (individually, "Viance," "Rockwood," "Ainscough," or "Ghasemi," or "Shadday," or

collectively, “Defendants”), and shows the Court as follows:

1.

Osmose is a worldwide leader in the development, manufacture and sale of wood preservative chemical formulations that protect wood against rot, decay, and insect attack.

2.

Osmose developed an advanced, new patent-pending micronized wood preservative system, which it markets under its MicroPro® trademark (“MicroPro”).

3.

Micronized Copper Quaternary wood preservative (“MCQ”) is one of Osmose’s products that incorporates the MicroPro technology.

4.

Osmose’s competitor, Viance, has engaged in a pattern of activity since the spring of 2008 to discredit MCQ specifically, and micronized wood preservative treating systems generally, in a false and malicious media campaign in violation of the Trademark Act of 1946, known for its principal proponent as the Lanham Act, is U.S.C. § 1051 *et. seq.* (“Lanham Act”) and state law.

5.

It appears Viance is attempting to disrupt and confuse the marketplace in an effort to slow or stop the success of micronized copper wood preservative products until Viance can develop a viable replacement for its older wood preservative system, Alkaline Copper Quaternary (“ACQ”).

6.

Viance is confusing and misleading the market, retailers, and consumers, through a false advertising campaign. The Court must intervene and put a stop to Defendants’ actions immediately.

THE PARTIES AND RELATED ENTITIES

7.

Osrose is a New York corporation with its registered address at 980 Ellicott Street, Buffalo, New York 14209-2323.

8.

Osrose is a New York corporation registered to do business in Georgia with its principal place of business at 1016 Everee Inn Road, Griffin, Spalding County, Georgia 30224.

9.

Viance is a Delaware limited liability company with its registered address at

The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

10.

Viance is a Delaware limited liability company with its principal place of business at 200 East Woodlawn Road, Suite 350, Charlotte, North Carolina 28217.

11.

Chemical Specialties, Inc. (“CSI”) and Rohm and Haas Company (“R&H”), are the members of Viance.

12.

Ainscough is president and chief executive officer of Viance.

13.

Upon information and belief, Ainscough is a citizen and resident of the State of North Carolina.

14.

Shadday is commercial vice president of Viance.

15.

Upon information and belief, Shadday is a citizen and resident of the State of North Carolina.

16.

Rockwood is a Delaware corporation with its registered address at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

17.

Rockwood is a Delaware corporation with its principal place of business at 100 Overlook Center, Princeton, NJ, 08540. Rockwood is the parent of CSI.

18.

Ghasemi is president and chief executive officer of Rockwood.

19.

Upon information and belief, Ghasemi is a citizen and resident of the State of New Jersey.

20.

In the event that Ainscough does not waive service of summons or acknowledge service, he may be served with process at his home address of 5941 Masters Court, Charlotte, Mecklenburg County, North Carolina 28226 or Viance's principal place of business.

21.

In the event that Shadday does not waive service of summons or

acknowledge service, he may be served with process at his home address of 10228 Chilvary Drive, Charlotte, Mecklenburg County, North Carolina 28277 or Viance's principal place of business.

22.

In the event that Ghasemi does not waive service of summons or acknowledge service, he may be served with process at his home address of 10 Pheasant Run, Gladstone, Somerset County, New Jersey 07934 or Rockwood's principal place of business.

JURISDICTIONAL ALLEGATIONS

23.

This Court has subject matter jurisdiction over the claims asserted herein below based on a federal question under 15 U.S.C. § 1121(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a), since it arises under the Lanham Act.

24.

Specifically, 15 U.S.C. § 1121(a) provides that "the district and territorial courts of the united States shall have original jurisdiction . . . of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties."

25.

The Court has supplemental jurisdiction over all remaining claims pursuant to 28 U.S.C. § 1367(a).

26.

This Court has personal jurisdiction over Defendants inasmuch as each of the Defendants have, either in person or through their agents, in connection with the factual allegations of this lawsuit, (1) transacted business in this judicial district, (2) committed a tortious act or omission in this state or committed a tortious injury in this state caused by an act or omission outside this state, and/or (3) engaged in a persistent course of conduct and has derived revenues from goods used or consumed or services rendered in Georgia.

ALLEGATIONS REGARDING VENUE

27.

Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c).

28.

Venue is proper before this Court, as the actions, omissions, and events giving rise to Plaintiffs' claims occurred within or were directed to this District.

29.

As discussed below, Defendants directed their conduct and communications

toward Georgia with the intent and purpose of harming Osmose:

- (1) Viance released its false, misleading, and malicious media campaign to retailers of Osmose's micronized copper treated wood, Osmose wood treating customers, and the consuming public including contractors here in the Northern District of Georgia and nationwide;
- (2) Ainscough and Shadday participated in the propagation of false and malicious claims in Georgia and nationwide;
- (3) Rockwood has posted the false and malicious claims on its website accessible here in Georgia; and
- (4) Ghasemi, on behalf of Viance and Rockwood (the "Corporate Defendants"), called on at least one principal retailer of Osmose's micronized copper treated wood in Atlanta, Georgia and asserted the false, misleading, and malicious claims.

30.

On information and belief, at all times pertinent hereto, Defendants knew Osmose conducted a significant portion of its wood preservative business in Spalding County, Georgia.

FACTUAL BACKGROUND

31.

Osmose developed an advanced, patent pending, micronized wood treatment technology (patent pending), which Osmose licenses to third party wood treaters under the registered name MicroPro. Osmose sells micronized wood treatment products incorporating the MicroPro technology to its wood treater customers. One such product is MCQ.

32.

Osmose spent a number of years developing its MicroPro technology and products. The development process included substantial laboratory testing and field testing at Osmose's own test facilities, qualified independent university test facilities, and other third-party test facilities using American Wood Protection Association ("AWPA"), American Society for Testing and Materials ("ASTM"), and other industry testing standards. The International Code Council-Evaluation Services, Inc. ("ICC-ES") approved MCQ. The Scientific Certification Systems ("SCS") certified the MicroPro process as an Environmentally Preferable Product under its Environmentally Preferable Product ("EPP") program based on Life-Cycle Assessment.

33.

In 2006, Osmose brought its MCQ product to market by selling MCQ to wood treaters who manufacture and sell treated wood to distributors, builders, and retailers. Retailers such as The Home Depot then sell the treated wood to contractors and/or the general public for end uses such as fences, decks and other outdoor structures.

34.

Osmose spent significant money and resources in developing, testing, and promoting its MicroPro micronized wood treatment technology and its MCQ product.

35.

Since 2006, MCQ treated wood has become one of the best selling treated wood product in the United States.

36.

The treated wood market in the United States constitutes approximately a \$2.5 billion industry.

37.

Osmose and Viance are competitors in the business of manufacturing and selling wood preservative treatment products.

38.

Viance manufactures a wood treating preservative chemical formulation called “ACQ” that competes directly with Osmose’s MCQ and other micronized copper wood preservative products.

39.

Upon information and belief, ACQ is a registered trademark of Domtar, Inc., and licensed to Defendant, Viance.

OSMOSE’S MICROPRO TECHNOLOGY

40.

Osmose’s new MicroPro copper technology consists of solid “micronized” particles of copper suspended in a liquid carrier – water. Those solid particles of copper are processed so they are in the micron/sub-micron size range. The tiny size of the particles allows for proven penetration of and distribution throughout the wood in accordance with industry standards.

41.

Wood treated with MicroPro micronized copper technology has several advantages over the prior generation copper-based treated wood products such as ACQ. For example, it is less corrosive, more easily paintable, does not need chemicals to dissolve the copper, is less likely to “leach” or migrate out of the

wood, is clean in appearance, and has been certified as environmentally preferable.

42.

As a result of Viance's inability to successfully develop and commercialize an effective alternative to compete with micronized copper systems including MicroPro, Defendants have embarked on a campaign of publicly disseminating unsupported false and misleading statements to disparage the efficacy and performance of micronized copper wood preservative systems, in general, and Osmose's MicroPro technology and its MCQ product, in particular.

**DEFENDANTS' UNSUPPORTED, FALSE,
MISLEADING AND DISPARAGING STATEMENTS**

43.

Beginning in April 2008, Defendants undertook a calculated campaign of false advertising and unfair competition, and have done so using numerous different trade channels including, but not limited to, print ads, press releases, trade meetings, seminars, e-mails, and the internet ("Campaign").

44.

This Campaign has been both intentional and pervasive.

45.

Initially, the Campaign was targeted into the distribution channels of the wood preservative industry but most recently Viance has targeted the end-use

consumer by falsely claiming that there are supposed safety issues related to wood treated with micronized copper treatment systems.

46.

As corporate officers and key employees, Defendants, Ainscough, Shadday, and Ghasemi have spearheaded the Defendants' negative public relations Campaign.

47.

Defendants retained a public relations agency to support this negative Campaign by releasing press releases, videos, and e-mails publishing and distributing false advertising to the public.

48.

Beginning in the spring of 2008, Defendants attacked Osrose's MicroPro technology and its MCQ product with false allegations. Defendants claimed poor performance and the possibility of premature decay failure based on questionable and unreplicable field stake tests in Japan and Hawaii. Due to the non-standardized, unrecognized, and unreliable test methods and conflicting "results," the test results that Defendants promoted failed to gain acceptance in the wood treating industry and reputable scientists in the field criticized them as being flawed.

49.

Next, in the Fall of 2008, upon information and belief, Viance began to scour the United States hunting for a post showing some sort of early decay among the millions of MCQ treated posts in service.

50.

Viance alleges they found some early decay in a few MCQ-treated non-structural fence posts in Baton Rouge, Louisiana.

51.

Viance hired Timber Products Inspections, Inc. (“Timber Products”), to perform an evaluation of certain of these posts hand-selected by Viance.

52.

Timber Products issued a report on November 14, 2008 (“Timber Products’ Report”), in which it qualified its findings as follows: “This inspection report should not be considered as acceptance or rejection for the grade, treatment, or physical quality of the above-referenced material.”

53.

Timber Products’ limitation undermined Viance’s strategy of using Timber Products’ Report as a basis for a national indictment of micronized copper treated wood.

54.

Simultaneous with the release of initial November, 2008 Timber Products' Report, respected industry consultants Mike H. Freeman ("Freeman") and Craig R. McIntyre, Ph.D. ("McIntyre"), published a comprehensive study entitled "A Comprehensive Review of Copper-Based Wood Preservatives: with a focus on new micronized or dispersed copper systems" in the November 2008 edition of Forest Products Journal (the "Study"). (See Exhibit "A").

55.

The Study was peer-reviewed and published in this highly respected journal in the industry.

56.

The Study reviewed test data for various types of copper-based wood preservatives.

57.

The Study concluded that micronized copper wood treatment systems were as effective as (and in some qualities more effective than) solubilized copper wood treatments like Viance's ACQ.

58.

Nevertheless, in February, 2009, Defendants, ignoring all of the above information and data, renewed their campaign of false and disparaging attacks.

59.

On February 9, 2009, Defendants released two almost identical press releases: one targeting the industry (see Exhibit “B” (“Industry Press Release”)) and the other entitled “Hidden Danger in Your Backyard” targeting consumers. (See Exhibit “C” (“Consumer Press Release”))¹.

60.

Defendants designed both press releases to frighten and mislead Osrose’s customers, retailers, and the consuming public by falsely claiming that the use of micronized copper treated wood, and MCQ treated wood, in particular, poses a structural safety hazard and is potentially dangerous.

61.

A third release aimed at heightening anxiety and fears, sent by e-mail blast on February 9, 2009 entitled “Is There a Lawsuit in Your Future?” targeted wood treaters and retailers of micronized copper treated wood, including MCQ. (See Exhibit “D” (“E-mail Release” or “E-mail Blast Release”)).

62.

Upon information and belief, prior to the above press release, Viance again

¹ Viance’s press releases contain virtually identical language. As such, this complaint focuses on the Industry Press Release. See Exhibit B. The claims as to the Industry Press Release apply to the Consumer Press Release and the E-mail Release too.

scoured the United States to find micronized copper treated wood in service and claimed it found some temporary non-structural MCQ treated posts showing premature decay in Alpharetta, Georgia.

63.

Again, it hired Timber Products to “inspect” its findings.

64.

Timber Products issued a second report, dated January 21, 2009. (See Exhibit “E,” (the “TP Report”)).

65.

An analysis of Viance’s Industry Press Release (Exhibit “B,”) demonstrates that Viance has once again falsely attacked Osrose’s MCQ product and micronized copper wood preservative systems generally by misusing the TP Report concerning a few micronized copper preservative treated non-structural posts as a basis for a national safety alarm to consumers.

66.

The crux of the Industry Press Release can be found in the first paragraph: “[T]reated 4x4 wood posts commonly are used to support all types of wood and composite lumber decks as well as fencing and the severity of the decay on these micronized copper treated posts raises alarming consumer safety concerns about

structures built using micronized copper-treated wood.” (See Exhibit “B”).

67.

Timber Products has repudiated this general indictment of micronized copper wood treating systems, including Osmose’s MCQ product, cited above in Viance’s Industry Press Release.

68.

Defendants published the Industry Press Release on February 9, 2009.

69.

On February 12, 2009, Timber Products released a statement repudiating Viance’s use of the TP Report to support Viance’s false generalization about consumer safety concerns in relation to structures built using micronized copper treated wood (the “Timber Products Repudiation”). (See Exhibit “F”).

70.

The Timber Products Repudiation pointed out that Viance selected the posts in Georgia that Timber Products “inspected.”

71.

The Timber Products Repudiation further pointed out that it did not identify a random sample of posts treated with MCQ for testing stating: **“thus the posts described in the report should not necessarily be viewed as a representative**

sample of MCQ posts in use at this time in the United States.” (See Exhibit “F”).

72.

Timber Products’ Repudiation states that there is no comparable study of wood treated with other preservatives: **“No Comparable Study for Other Preservatives. TP [Timber Products] has been asked whether a study exists that examines the effectiveness of preservatives other than MCQ after a period of time in the field. TP is aware of no such study.”** (See Exhibit “F”).

73.

Finally, Timber Products’ Repudiation noted: **“However, TP’s objective in releasing this memorandum is to provide clarifying and limiting information regarding the Report in hopes that such information will preclude interested parties from using the Report to make generalizations that may not be supported by the Report.”** (See Exhibit “F”).

74.

Thus, Timber Products has repudiated the association of its name and its work for Viance with Viance’s attack about **“alarming consumer safety concerns about structures built using micronized copper treated wood.”**

75.

The Industry Press Release contains other false and misleading representations.

76.

For example, the TP Report states on the first page “end tags from multiple facilities found on some posts listed the treatment as MCQ 0.40.”

77.

The end tag attached to a piece of treated wood identifies the treater and the product.

78.

Thus, the TP Report implies that there are a number of posts (and it does not tell how many) that were not over treated with MCQ or any other micronized copper preservatives.

79.

However, the Industry Press Release, in the very first paragraph, reports that the posts were MCQ treated.

80.

Viance’s implication that all posts in the TP Report were MCQ treated is false and misleading.

81.

Viance's implication in the second paragraph of the Industry Press Release that all of the posts referenced in the TP Report had decay is also false and misleading.

82.

The TP Report reveals that most of the posts did not have decay.

83.

In fact, the TP Report does not specify whether any of the posts on which Timber Products allegedly found decay were MCQ treated or even treated with any micronized copper wood preservative.

84.

In their comprehensive peer-reviewed article in Forest Products Journal in November, 2008, Freeman and McIntyre reviewed and compared test data for the major copper-based wood treating systems including micronized copper products such as MCQ and other micronized copper systems and Viance's dissolved copper product (ACQ). (See Exhibit A).

85.

Freeman and McIntyre concluded in their article that MCQ, in particular, and micronized copper wood treatment preservative systems, in general, were as

effective as (and in some qualities more effective than) solubilized copper wood treating systems like ACQ.

86.

Viance relied on its own self-selected posts and its limited and misleading “sampling” and “testing” to deliberately enhance the false and misleading statements in its Industry Press Release, its Consumer Press Release, and its E-mail Blast Release.

87.

Viance did so, in part, by omitting the known reliable scientific data that repudiates any basis for Viance’s generalization that wood treated with micronized copper systems (and more particularly Osmose’s MCQ product) is somehow unsafe.

88.

On Page 3 of the Industry Press Release, Viance claims: “The decay present in micronized copper treated wood within such short periods of time has been much more aggressive and rapid than wood preservatives previously brought to market for residential use.” (See Exhibit “B”).

89.

This general statement about micronized copper wood preservatives is not

only unsupported by accepted industry science and testing, but also is unsupported by any of the “sampling and testing” that Viance cites in the Industry Press Release.

90.

The statement is therefore false, misleading, and disparaging.

91.

There are other false and misleading representations in the Industry Press Release intended to mislead and frighten the general public about the safety of micronized copper treated wood. These include:

- (1) First, none of the posts that Viance selected for testing was used in a structural capacity as implied in the Press Release. Rather, TP Report refers to realty sign posts cut and altered in an undeveloped residential subdivision in Alpharetta, Georgia, that had temporarily been placed in the ground to indicate the number of the vacant residential lot.
- (2) Second, the statement embedded on Page 2 of the Industry Press Release that “Osrose, Arch Wood Protection and Phibrowood [two other micronized wood preservative manufacturers] have not submitted any of the micronized copper system products to the AWWPA for review or standardization,” falsely implies that these companies has been somehow

careless or acted as outliers in bringing these products to market. However, the Press Release fails to state that ICC-ES (which is an independent evaluation agency located in the United States), has thoroughly reviewed and approved these micronized copper systems. ICC-ES is a building material acceptance certification for purposes of product use under the model building codes in place in the United States.

- (3) Third, the first paragraph of the Industry Press Release states: “[t]he decay, verified by Timber Products Inspection (TP) is considered unacceptable for providing long term structural integrity for residential and commercial uses.” This is a false statement. Not only does it not identify who considers the decay unacceptable, but without analysis of the posts, analysis of any decay, and analysis of the posts used in combination with other structural methods and posts, there is no basis to conclude that the alleged decay found is “considered unacceptable for providing long term structural integrity.”
- (4) Indeed, the rating systems that Timber Products used to rate the in-service posts are intended for evaluation of experimental field stake tests, not for in-service posts.

92.

On February 12, 2009, the issuance of the Industry Press Release, Viance submitted a video interview for television release in Charlotte, NC for distribution by News 14 Carolina to the public (“Video Release”).

93.

On the same evening of its Video Release on the internet, Timber Products published its repudiation. (Exhibit “F”).

94.

By the following morning, News 14 Carolina had pulled the Video Release from its website.

95.

A summary of the Video Release from the broadcasting television station states that Viance claims “that their research shows a new, cheaper chemical used to preserve wood may actually cause it to decay faster than normal.” (See Exhibit “G”).

96.

This claim is false, misleading and disparaging.

97.

Viance’s conduct has outraged the wood treating industry and has caused many of its members to publicly speak out against Viance’s conduct. (See Exhibit

“H”).

98.

Viance has clearly focused its attack on Osmose, Osmose’s MCQ product and Osmose’s MicroPro technology in an attempt to destroy their marketability by disseminating false and misleading statements based on faulty “inspections” and “reports.”

99.

Upon information and belief, Viance is once again scouring the countryside trying to identify MCQ treated posts for a new round of unfounded accusations.

COUNT ONE

**Unfair Competition, False Advertising and Product Disparagement
Under The Lanham Act**

100.

Osmose incorporates and realleges, as though fully set forth herein, paragraphs 1 through 99 above.

101.

Viance is a commercial competitor of Osmose. Rockwood has a financial interest in Viance and has posted the false information on its website.

102.

As described in detail above, Defendants have promulgated and then

published false and materially misleading descriptions of fact and false claims of product superiority and product inferiority in commercial advertising and in promotional materials distributed in interstate commerce.

103.

The Defendants have promulgated and published false and materially misleading descriptions of fact and false claims of product superiority and inferiority misrepresent the nature, characteristics, and qualities of Osmose's MCQ, its MicroPro micronized wood treating technology, and other micronized copper wood treating systems used in the industry.

104.

Defendants Ainscough, Shadday, and Ghasemi have spearheaded, participated in and/or contributed knowingly and deliberately with Viance and Rockwood to disseminate the false, misleading and disparaging advertising.

105.

Defendants have, both directly and indirectly, represented that Osmose's MCQ product and MicroPro micronized copper systems are unsafe, unreliable, and subject to premature decay.

106.

Such representations about safety, reliability, and premature decay are false,

misleading and disparaging.

107.

Defendants have, directly and indirectly, represented that the safety of possibly millions of consumers whose decks or other structures were built with micronized-copper-treated wood are at risk. Such a representation about safety is false, misleading, and disparaging.

108.

Defendants' representations about the inferior quality of Osmose's MCQ product and the alleged superiority of Viance's ACQ products are based on "inspections" that are wholly unreliable and invalid.

109.

They do not provide any basis for Defendants' false and misleading claims and generalizations about quality.

110.

Defendants' representation that the "independent" organization Timber Products has verified their claims based on their "inspections" is false, misleading, and untrue.

111.

Defendants have intentionally propagated, published, and widely distributed

such falsehoods through various outlets including press releases, written advertisements, trade publications, e-mails, the internet, seminars, face-to-face meetings with industry members, and through third parties, whom Defendants knowingly published and provided the false information.

112.

Defendants know and have known that their representations and materials were used in interstate commerce and contained these false, misleading, and disparaging statements about Osmose's MCQ product, the MicroPro technology and micronized copper treatment systems in general.

113.

By making and encouraging others to make such false, misleading, and disparaging representations, Defendants intended to mislead the consuming public about the quality and performance of Osmose's MCQ product and the performance of the MicroPro micronized system in comparison to Viance's own ACQ product, and to denigrate and disparage the quality and safety of Osmose's MCQ product and MicroPro micronized treating system.

114.

These false, misleading, and disparaging representations were and are intended to harm Osmose's interests by seeking to persuade, if not outright

frighten, end-use customers and retailers to not purchase or use wood treated with Osmose's MCQ product, MicroPro technology, or any other micronized copper treatment system.

115.

Defendants' false and materially misleading descriptions of fact and false claims are targeted and intended to deceive the consuming public including treaters, retailers, and end-use consumers.

116.

Defendants' false and materially misleading descriptions of fact and false claims of product inferiority in commercial advertising and promotion violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

117.

Osmose is entitled to have Viance temporarily, preliminarily and permanently enjoined from continuing to publish these false, malicious and misleading statements aimed at bringing into question the quality, safety, and reliability of Osmose's MCQ product, MicroPro technology, and micronized copper treated wood products in general.

118.

If Defendants are not enjoined, Viance will continue its baseless media

attack in an effort to deceive woods-treaters and retailer and end use consumers of MCQ treated wood and MicroPro technology.

119.

Osmose will suffer immediate, continuing, and irreparable harm by the disparagement of its safe and proven process and product.

120.

Osmose is without an adequate remedy at law to prevent Defendants' acts and the likely harm that Osmose may suffer, if Defendants' acts are not enjoined.

121.

This court should temporarily, preliminarily, and permanently enjoin Defendants false, misleading, and disparaging advertising, under Section 34 of the Lanham Act, 15 U.S.C. § 1116.

122.

In addition, Osmose is entitled to disgorgement of Defendants' profits, and its actual damages, trebled in accordance with the Lanham Act.

COUNT TWO

Common Law Unfair Competition.

123.

Osmose incorporates and realleges, as though fully set forth herein,

paragraphs 1 through 122 above.

124.

Defendants' conduct constitutes a violation of the common law of unfair competition.

125.

Osmose has sustained, and will sustain damages including irreparable harm to its MCQ product and its MicroPro micronized technology, and to the goodwill of its products, as a result of Defendants' intentional, willful, and unlawful conduct.

COUNT THREE

Violation of the Georgia Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq.

126.

Osmose incorporates and realleges, as though fully set forth herein, paragraphs 1 through 125 above.

127.

Defendants have engaged in deceptive trade practices in violation of O.C.G.A. § 10-1-370 *et. seq.*, by disparaging the goods, services, or business of Osmose by false and misleading representations of fact.

128.

Osmose has sustained, and will sustain damages including irreparable harm to the reputation and goodwill of its products, as a result of Defendants' intentional, willful, and unlawful conduct.

129.

As a result of Defendants' ongoing deceptive trade practices, Osmose is entitled to temporary, interlocutory, and permanent injunctive relief to remedy those violations.

130.

Osmose is also entitled to recover its attorneys' fees and costs incurred in connection with this action.

COUNT FOUR

Defamation

131.

Osmose incorporates and realleges, as though fully set forth herein, paragraphs 1 through 130 above.

132.

In connection with their competition against Osmose and in furtherance of Viance's business, Defendants have intentionally published to third parties

false statements concerning Osmose's MCQ product and MicroPro micronized technology.

133.

Specifically, without limitation, Defendants issued the Industry Press Release, the Consumer Press Release, and the E-mail Release on February 9, 2009, to the industry, to the consumer, the treaters and retailers.

134.

Subsequently, Defendants displayed these press releases on their websites and disparaged Osmose MCQ product, MicroPro micronized technology, and micronized copper treating systems by doing so.

135.

Upon information and belief, Defendants expressly authorized and directed the publication of the false statements in the press releases, provided quotations for the press releases, and disseminated the press releases themselves and through third-parties.

136.

Upon information and belief, Defendants have made other false statements about Osmose's products and processes on other occasions.

137.

The false statements concerning Osmose's MCQ product and MicroPro micronized technology that Defendants published and, upon information and belief, others, were all made with malice and without privilege.

138.

As a direct and proximate result of Defendants' false statements, Osmose has suffered substantial damages in an amount to be determined by a jury at trial.

139.

Defendants acted with a specific intent to cause harm to Osmose by making allegations regarding its trade – to wit, its MCQ product and its MicroPro micronized technology.

140.

The conduct of each of the Defendants was willful, wanton, malicious, and in reckless disregard of Osmose's rights, as well as in reckless disregard of the harm each Defendant was causing and was foreseeably likely and intended to cause Osmose, so that punitive damages should be imposed on Defendants.

141.

Defendants are not entitled to any revenues that they have realized stemming from the defamatory statements that Defendants published.

142.

Defendants must disgorge and return to Osmose all such payments.

143.

Osmose is likewise entitled to all other damages available by law, as well as all available equitable and injunctive relief.

COUNT FIVE

Tortious Interference With Contract and Business Relations

144.

Osmose incorporates and realleges, as though fully set forth herein, paragraphs 1 through 143 above.

145.

Osmose maintains contracts and advantageous business relations with its direct wood treater customers, and through those customers, the retailers and end users.

146.

Defendants have tortiously interfered with those contracts and/or

business relationships by disseminating false or misleading statements about Osmose's MCQ product and MicroPro micronized technology.

147.

Defendants' dissemination of false and misleading statements about Osmose's MCQ product and MicroPro micronized technology was improper.

148.

Defendants' dissemination of false and misleading statements about Osmose's MCQ product and MicroPro micronized technology was without privilege.

149.

Defendants' dissemination of false and misleading statements about Osmose's MCQ product and MicroPro micronized technology was purposeful.

150.

Defendants' dissemination of false and misleading statements about Osmose's MCQ product and MicroPro micronized technology was with malice and with the intent to injure Osmose.

151.

Through their wrongful acts of interference, Defendants have

proximately caused substantial injury and financial harm to Osmose.

152.

Since Defendants are not entitled to any revenues that they have realized from customers coming from the unlawful interference that Defendants have committed, Defendants must account for, disgorge and return to Osmose all such payments.

153.

Osmose is likewise entitled to all other damages available by law as well as to all equitable relief including injunctive relief.

154.

Each Defendant's interference with Osmose's contracts and business relationships was willful, wanton, malicious and in reckless disregard of Osmose's rights, as well as in disregard of the harm that each Defendant was causing and was foreseeably likely and intended to cause Osmose, so that punitive damages should be imposed on Defendants.

COUNT SIX

Attorney's Fees and Expenses of Litigation **Under O.C.G.A. § 13-6-11**

155.

Osmose incorporates and realleges, as though fully set forth herein,

paragraphs 1 through 154 above.

156.

Defendants have acted in bad faith, and have caused Osmose unnecessary trouble and expense.

157.

Osmose is entitled to an award of attorney's fees and costs incurred in prosecuting this action pursuant to O.C.G.A. § 13-6-11.

COUNT SEVEN

Punitive Damages
Under O.C.G.A. § 51-12-5.1

158.

Osmose incorporates and realleges, as though fully set forth herein, paragraphs 1 through 157 above.

159.

Defendants have acted willfully, wantonly, maliciously, with an entire want of care, and with the specific intent to injure Osmose.

160.

Defendants' actions in deliberately committing those torts set forth herein upon Plaintiff authorize the imposition of punitive damages, pursuant to the provisions of O.C.G.A. § 51-12-5.1, in that they show willful

misconduct, malice, fraud, wantonness, oppression, or that entire want of care, which would raise the presumption of a conscious indifference to consequences.

161.

Defendants' conduct with regard to Plaintiff's rights warrants an award of punitive damages in an amount to be determined by the enlightened conscience of the jury at trial.

WHEREFORE, Osmose demands a trial by jury on all issues triable and requests that judgment be entered:

A. Granting Osmose a Temporary Restraining Order, Interlocutory and Permanent Injunction, enjoining Defendants from:

- (1) Making any false, misleading or disparaging representations about the nature, characteristics or qualities of Osmose's MicroPro micronized technology or its MCQ product or other micronized copper wood treating systems in use;
- (2) Making any false, misleading or disparaging representations claiming superiority of Viance's products over Osmose's MCQ products or MicroPro technology;
- (3) Specifically, from making any representations:

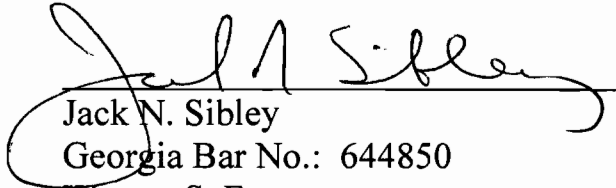
- (a) That micronized copper wood preservatives, including Osmose's MicroPro technology and MCQ product, are "unproven;"
- (b) That micronized copper wood preservatives, including Osmose's MicroPro technology and MCQ product, are "potentially dangerous;"
- (c) That micronized copper wood preservatives, including Osmose's MicroPro technology and MCQ product, do "not provide adequate protection against premature decay and failure;"
- (d) That micronized copper wood treatment products, including Osmose's MicroPro technology and MCQ product, do not properly penetrate, and thus protect, wood;
- (e) That structures built with micronized copper treated wood, including those treated with Osmose's MicroPro technology and MCQ product, are unsafe, or raise alarming consumer safety concerns or pose a safety hazard to consumers;
- (f) That micronized copper treated wood, including wood treated with Osmose's MicroPro technology and MCQ product, is subject to accelerated decay and failure or more rapid or more aggressive decay and other treated wood products; and

(g) That micronized copper products, including Osmose's MicroPro technology and MCQ product, were introduced with little to no published field data to support [their] performance.

- B. Granting judgment in favor of Osmose and against each and every Defendant on each and every count of the Complaint, and awarding the amount of actual, consequential and/or compensatory damages proved by Osmose, including treble damages under 15 U.S.C. § 1117(a);
- C. Awarding Osmose punitive damages against each and every Defendant for their intentional acts described herein to the extent allowed by law;
- D. Ordering an accounting from Defendants of all revenues received from operation of their business and disgorgement of all profits from their wrongful activity;
- E. Awarding to Osmose the costs, expenses and disbursements of this action, including reasonable attorneys' fees, accountants' fees and expert fees, as well as costs and expenses of this action;
- F. Awarding pre- and post- judgment interest at the legal rate; and
- G. For such other and further relief as this court deems appropriate, just and equitable.

Respectfully submitted, this 3rd day of March, 2009.

HAWKINS & PARNELL, LLP



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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

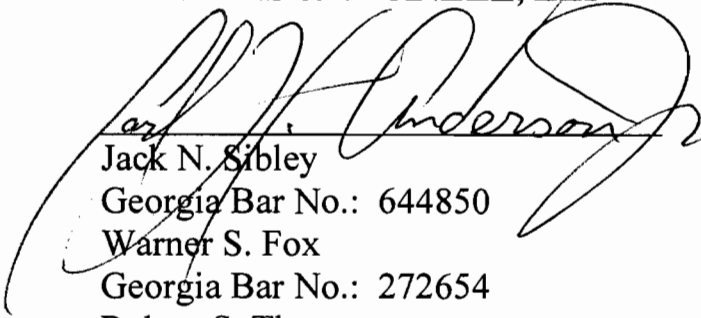
OSMOSE, INC.,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
VIANCE, LLC.,)	
ROCKWOOD HOLDINGS, INC.,)	
STEPHEN B. AINSCOUGH, a/k/a)	
STEVE AINSCOUGH,)	
SEIFOLLAH E. GHASEMI, a/k/a)	
SEIFI GHASEMI, and)	
CHRISTOPHER R. SHADDAY,)	
a/k/a CHRIS SHADDAY)	
)	
Defendants.)	
)	

CERTIFICATE OF COMPLIANCE

COMES NOW Plaintiff Osmose, Inc.'s, Inc. by and through its attorneys and certify that this Pleading meets the United States District Court for the Northern District of Georgia, Atlanta Division's Local Rule 5.1 regarding font size and margins. The font is Times New Roman 14 points; margins are 1.5 inches at the top and 1 inch on all other sides.

Respectfully submitted, this 3rd day of March, 2009.

HAWKINS & PARNELL, LLP



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make this Verification on behalf of Plaintiff **OSMOSE, INC.**, and, having relied on the assistance of others in preparing this **COMPLAINT**, hereby does verify on behalf of the corporate entity that the within and foregoing **COMPLAINT** is true and correct to the best of his personal knowledge, information, and belief.

This 2nd day of March, 2009.

OSMOSE, INC.

By: Stephen C Reeder
Name: Stephen C Reeder
Title: Senior Vice President

Sworn to and subscribed
before me this 2nd day
of March, 2009

Carl H. Anderson, Jr.
Notary Public

My Commission expires:

Notary Public, Fulton County, Georgia
My Commission Expires January 5, 2010

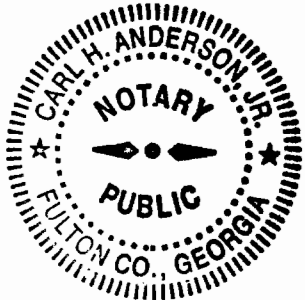


EXHIBIT LIST

- Exhibit A - Forest Products Journal study
- Exhibit B - Industry Press Release
- Exhibit C - Consumer Press Release
- Exhibit D - E-mail Release or E-mail Blast Release
- Exhibit E - the TP Report
- Exhibit F - the Timber Products Repudiation
- Exhibit G - A summary of the Video Release
- Exhibit H - Industry Reaction