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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192209
Party	Defendant EnviroGLAS, LLC
Correspondence Address	Steve H. Clemons Leggett & Clemons, PLLC 2745 North Dallas Parkway Suite 310 PLANO, TX 75093-8729 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	James C. Mosser
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Date	11/13/2009
Attachments	Plaintiffs Amended Complaint.pdf (75 pages)(2092662 bytes) Motion to Suspend- Enviropoxy.pdf (5 pages)(137478 bytes)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ENVIROGLAS PRODUCTS, INC.;
AMERICAN TERRAZZO COMPANY, LTD.;
DARIN FLABIANO; BRANDON FLABIANO;
BRENTON FLABIANO; WILTON
FLABIANO,

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Civil Action No. 3:09-cv-00265-G

Plaintiffs,

v.

Jury Trial Demanded

ENVIROGLAS, LLC; TIMOTHY WHALEY,

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT
FOR MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF
(Jury Trial Demanded)

Plaintiffs EnviroGLAS Products, Inc. (“EnviroGLAS”), Darin Flabiano, Brandon Flabiano, Brenton Flabiano, Wilton Flabiano, and American Terrazzo Company, Ltd. (“ATC”), by and through their attorneys, and for their complaint against Defendants EnviroGLAS, LLC (“EGL”) and Timothy Whaley, allege as follows:

I.
INTRODUCTION

1. This case centers on the reprehensible conduct of EnviroGLAS’s former president, Defendant Timothy Whaley. Whaley stole virtually all of EnviroGLAS’s assets and converted them for the use of his newly-created competing venture, Defendant EGL, that he started *while he was still an officer, director, and 50% shareholder of EnviroGLAS*. Defendant Whaley egregiously breached his fiduciary duties in unlawfully appropriating EnviroGLAS’s assets and, after he resigned, he stole EnviroGLAS’s money *directly from its bank accounts*. He

also continued to contact EnviroGLAS's customers and vendors after he resigned, and led them to believe that they were still dealing with EnviroGLAS. Plaintiffs are entitled to recover both actual and exemplary damages as a result of Whaley's flagrant misconduct.

II. THE PARTIES

2. Plaintiff EnviroGLAS is a Texas corporation with its principal office at 309 Gold Street, Garland, Texas 75042. EnviroGLAS is a closely-held corporation within the meaning of the Texas Business Corporation Act article 5.14(L).

3. ATC is a Texas Limited Partnership with its principal office at 309 Gold Street, Garland, Texas 75042.

4. Plaintiffs Darin Flabiano, Brandon Flabiano, Brenton Flabiano, and Wilton Flabiano (collectively, the "Flabianos") are Texas residents and collectively represent all of the shareholders in Plaintiff EnviroGLAS with the exception of Defendant Whaley.

5. Defendant EnviroGLAS, LLC is a Texas member-managed limited liability company with a principal office at 7704 San Jacinto Place, #200, Plano, Texas 75024. EGL may be served by serving its sole member and registered agent, Timothy Whaley, at 7704 San Jacinto Place, #200, Plano, Texas 75024.

6. Defendant Timothy Whaley is an individual residing in the State of Texas. Mr. Whaley may be served with process at 7704 San Jacinto Place, #200, Plano, Texas 75024 or at such other place within the State of Texas as he may be found.

III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States. In addition, this Court has subject matter jurisdiction

the product, and allowed the ATC name and brand to become associated with the product. In addition, ATC used its resources and know-how to manufacture the product.

12. In 2003, the Flabianos and Whaley consummated their partnership by forming EnviroGLAS. EnviroGLAS's purpose would be to create and market the new surface.

13. EnviroGLAS was registered with the Texas Secretary of State on July 9, 2003.

14. The majority of the discussions regarding the formation of EnviroGLAS occurred at American Terrazzo's offices in Garland, Texas, or by Whaley's telephone calls with ATC's offices in Garland, Texas. Whaley traveled to ATC's offices on a number of occasions during the parties' negotiations and during their co-ownership of EnviroGLAS. In fact, Whaley's primary office was located in ATC's offices in Garland during his time with EnviroGLAS.

15. The parties agreed that Whaley would serve as the president of EnviroGLAS, and would work for EnviroGLAS full time. The Flabianos vested Whaley with almost total control of EnviroGLAS's day-to-day activities.

16. In reliance on Whaley's representations that he would be dedicated to EnviroGLAS and would work for its benefit, ATC and the Flabianos infused almost \$1 million into the company, purchasing, among other things, domain names for a website (the "EnviroGLAS Domain Names"), telephone numbers, and office equipment, as well as paying salaries and various legal fees.

17. As with most new ventures, EnviroGLAS took some time to catch on. During EnviroGLAS's infancy, ATC continued to infuse cash into the company because it believed in the product, and was convinced that its investment would pay off over the long term.

18. Whaley had other plans, however. Unbeknownst to Plaintiffs, Whaley was, from the very beginning, plotting to wrest the venture away from them and to deprive them of the value of their investments. His plan was to allow ATC and the Flabianos to fund EnviroGLAS

in its fledgling years. During that time, he would become the “face” of the EnviroGLAS business on the commercial side. Then, once the market was developed and the business was capable of supporting itself, Whaley intended to start his own competing business—using the EnviroGLAS name, no less—to which he would take EnviroGLAS’s customers, its inventory, and, incredibly, even its office equipment. To accomplish his purposes, Whaley would engage in self-dealing, diverting corporate assets, and usurping corporate opportunities.

19. As ATC and the Flabianos anticipated, over time EnviroGLAS’s business grew, as consumers began to seek cost-effective, stylish, and environmentally-friendly flooring and countertop alternatives.

20. EnviroGLAS was poised to capitalize on the emerging demand for the EnviroGLAS product when Whaley began to implement his plans to steal the business away.

21. First, he submitted a patent application for the flooring (the “EnviroGLAS Patent”) and trademark application (the “EnviroGLAS Trademark”) in his own name, even though he knew that EnviroGLAS and/or ATC was the true owner of this intellectual property. In fact, he used *EnviroGLAS funds* (by submitting receipts for reimbursement to ATC’s offices) to pay legal fees related to these applications, and used EnviroGLAS’s funds to hire a “trademark protection agency” to prevent infringement. Whaley, of course, hid the fact that he was hoarding EnviroGLAS’s intellectual property by placing them in his name. A true and correct copy of the EnviroGLAS Patent (U.S. Patent Number 6,770,328) is attached at **Exhibit A**, and true and correct copies of the EnviroGLAS Trademark are attached as **Exhibit B**.

22. In furtherance of Whaley’s nefarious plan, he created Defendant “EnviroGLAS, LLC”—a limited liability company trading on the EnviroGLAS name. On January 10, 2007—while he was still an officer and director of EnviroGLAS—Whaley filed a certificate of formation for “EnviroGLAS, LLC.”

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