

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No:

CONTROLTEC, LLC and ENERGEX ENTERPRISES, INC.,

Plaintiffs,

v.

ANTHONY DOORS, INC. d/b/a ANTHONY INTERNATIONAL, ANTHONY DOORS,
ANTHONY, INC. a/k/a ANTHONY MANUFACTURING CO., INC.

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW, Plaintiffs, CONTROLTEC, LLC and ENERGEX ENTERPRISES, INC. (collectively hereinafter referred to as "ControlTec"), by and through their attorney, JAMES K. KREUTZ & ASSOCIATES, P.C., JAMES K. KREUTZ and submit this Complaint for Injunctive Relief by stating as follows:

VENUE AND JURISDICTION

1. Plaintiff, Controltec, LLC, is the assignee of all the rights and interest of Energex Enterprises, Inc. and is a manufacturer, developer and marketer of certain refrigeration door anti-sweat devices, with principal offices located in Severance, Colorado 80546. Plaintiffs are Colorado corporations and doing business with their principal place of business in the State of Colorado.

2. Defendant is a California corporation, the manufacturer of refrigeration doors and other similar equipment with principal offices located in 12391 Montero Street, Sylmar, California 91342, and doing business in the state of Colorado.

3. The parties entered into a Co-Development Agreement within the State of Colorado, as a result of a prior legal action being Case No. 02-K-0397, such Agreement

was part and parcel to the settlement agreement entitled Co-Development Agreement, copy attached hereto and made a part hereof as Exhibit A.

4. That the matter is filed pursuant to 28 U.S.C. § 1332, therefore, based upon the foregoing and diversity, venue and jurisdiction are proper.

FACTS

5. That on or about March 17, 2004, the aforementioned parties entered into an agreement, the purpose of which was to facilitate a settlement agreement and dismissal of pending action in the United States District Court for the District of Colorado, being Case No. 02-K-0397 (Ex. A attached hereto).

6. Pursuant to said Agreement, the Plaintiffs, by and through their president and manager, Brad Geuke, developed a "co-developed product" as contemplated under the Agreement (Ex. A). For a period of approximately eighteen (18) months, Plaintiffs devoted full-time to the development of such product, being an anti-sweat control device for refrigeration doors. Plaintiffs spent hundreds of thousands of dollars in the development of such anti-sweat device as contemplated under the Agreement (Ex. A), and Defendants performed under such Agreement by making payments thereunder and by making available their expertise and testing laboratories to facilitate the development of such anti-sweat device.

7. On or before June 15, 2005, being the "Deadline Date" under the Agreement (Ex. A), such product was available for manufacturing and marketing, such product being a refrigeration door anti-sweat device (hereinafter referred to as the "Controltec AS-20"), a patent-pending and trademark product.

8. Plaintiffs have been marketing the Controltec AS-20 across the nation and Mexico, and Plaintiffs and Defendant have sold and purchased the Controltec AS-20, the Defendant purchased the first hundred (100) on or about June, 2005, copy of such Purchase Order attached hereto and made a part hereof as Exhibit B.

9. That on or about January 26, 2006, Thursday, Plaintiffs received a written notice of "cancellation" of the Co-Development Agreement (Ex. A), referencing Sections 7.1 and 7.2 of the Co-Development Agreement (Ex. A), copy of such letter attached hereto and

made a part hereof as Exhibit C.

10. Section 7.1 of the Co-Development Agreement (Ex. A) sets forth as follows:

"Termination for Cause. Anthony or Energex may suspend performance and/or terminate this Agreement immediately upon written notice at any time if the other party (or Geuke, with respect to Anthony's right of termination hereunder) is in material breach of any representation, warranty, term, condition or covenant of this Agreement, and fails to cure that breach within thirty (30) days after written notice thereof." (Emphasis added)

Section 7.2 of such Co-Development Agreement (Ex. A) sets forth as follows:

"Termination by Anthony. Anthony may suspend performance and/or terminate this Agreement immediately upon written notice to Energex at any time in the event the Co-Developed Product is not read to be manufactured, marketed, sold and delivered to end-users, or is not reasonably competitive as to price or quality with other Anti-Sweat Controllers then being marketed and sold by Anthony or third parties, in any such case on or prior to the Deadline Date, as determined by Anthony and Energex in good faith." (Emphasis added)

11. While Section 7.1 of the Co-Development Agreement (Ex. A) sets forth that Plaintiffs or Defendant may "suspend performance and/or terminate this Agreement", such letter calls for "cancellation" which if synonymous with termination, such notice fails to provide any fact, which if true, would constitute a "...material breach..." for which the Plaintiffs would be entitled to cure as provided for under Section 7.1 within thirty (30) days after written notice thereof. That is to say that the letter of January 26, 2006 of Defendant fails to set forth any basis for such "cancellation" in which the Plaintiffs would have a "right to cure" as provided for under Section 7.1.

12. Plaintiffs further submit that such notice pursuant to Section 7.2 refers to "suspension... performance and/or terminate this Agreement" (Ex. A) in the event the Co-Developed product is not ready to be manufactured, marketed, sold and delivered "... prior to the Deadline Date..." (The "Deadline Date" being June 15, 2005). Clearly, such product was available on or before June 15, 2005, to be manufactured, marketed, sold and

delivered. Such notice, dated January 26, 2006, is some seven (7) months past the "Deadline Date", therefore rendering such notice defective.

CLAIM FOR RELIEF

13. Such notice of January 26, 2006 (Ex. C), fails to provide any facts which, if true, would give Anthony a basis for suspension or termination, it is virtually impossible for Plaintiffs to cure such alleged breach as provided for under the Agreement (Ex. A), therefore, such notice of "cancellation" or otherwise suspension or termination as alluded by the Defendant should be deemed defective and should be held for naught pending proper notification as provided for under the Agreement (Ex. A).

14. The Agreement (Ex. A) provides that the Defendant may not purchase any other anti-sweat device from any other manufacturer and shall not either directly or indirectly, manufacture anti-sweat control device or purchase anti-sweat controllers. See Section 4.1 of the Agreement (Ex. A).

15. The Defendant's president, Mr. Jeffrey Clark, and its National Sales Director, Steve Foege, had informed Brad Geuke, President and Manager of Plaintiffs on January 24, 2006, that they intended to purchase the CPC "anti-sweat device", CPC being a division of Emerson Company. Plaintiffs have been marketing their anti-sweat device, the Controltec AS-20, pursuant to the Agreement (Ex. A), through Anthony, and pursuant to said Agreement (Ex. A) with Anthony (copies of certain advertising material attached hereto as Exhibits D, E, F and G).

16. Should Defendants purchase anti-sweat devices from CPC or any other manufacturer or distributor of anti-sweat controls, prior to the cure period or prior to appropriate notice as provided for under the Agreement (Ex. A), immediate and irreparable injury will occur in Plaintiffs loss of reputation, goodwill, marketing potential and ability to meet its contractual obligations, for which there is no adequate remedy at law, as confirmed in the Affidavit of Brad Geuke, attached hereto and made a part hereof as Exhibit H.

17. Based thereon, it is requested that the Court enter an Temporary Restraining Order and Preliminary and Permanent Injunction enjoining Defendant from violating the Co-Development Agreement (Ex. A), by failing to give appropriate notice of suspension or

termination, failing to give a basis for such "cancellation" for which Plaintiffs have a right to cure, and enjoin Defendant from acquiring, purchasing, negotiating, or in any way terminating the rights of the Plaintiffs as the exclusive supplier of anti-sweat control devices pending further Order of the Court. Specifically, from acquiring, negotiating or purchasing any other anti-sweat device, in particular, the anti-sweat device of CPC.

WHEREFORE, Plaintiffs pray for judgment in favor of Plaintiffs and against Defendant for injunctive relief, for attorney's fees, court costs, and such other and further relief as the Court may deem just and proper.

Dated this _____ day of _____ February _____, 2006.

Respectfully submitted,

JAMES K. KREUTZ & ASSOCIATES, P.C.
*[This document was filed via e-file system. The
originally signed copy is on file at the offices of
James K. Kreutz & Associates, P.C.]*

By /s

James K. Kreutz, #4752
5445 DTC Parkway, Suite 1036
Greenwood Village, CO 80111
Telephone: (303) 779-8224
Attorney for Plaintiffs
ControlTec, LLC and
Energex Enterprises, Inc.