

ESTTA Tracking number: **ESTTA769290**

Filing date: **09/07/2016**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Ansell Limited
Granted to Date of previous extension	09/07/2016
Address	678 Victoria Street Victoria Gardens / Level 3 RICHMOND, VIC, 3121 AUSTRALIA
Attorney information	Charles P. Guarino Moser Taboada 1030 Broad Street - Suite 203 Shrewsbury, NJ 07702 UNITED STATES cguarino@mtiplaw.com, docketing@mtiplaw.com Phone: 732-945-9498

Applicant Information

Application No	86571248	Publication date	05/10/2016
Opposition Filing Date	09/07/2016	Opposition Period Ends	09/07/2016
International Registration No.	NONE	International Registration Date	NONE
Applicant	ATG Ceylon (Pvt) Limited Spur Road 7, Phase 2 IPZ, Katunayake, SRI LANKA		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Safety gloves; industrial safety gloves
--

Grounds for Opposition

The mark is deceptively misdescriptive	Trademark Act Section 2(e)(1)
Deceptiveness	Trademark Act Section 2(a)

Attachments	AD-APT - Notice of Opposition.pdf(20238 bytes) All Exhibits.pdf(3135623 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Charles P. Guarino/
Name	Charles P. Guarino
Date	09/07/2016

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

Serial No.: 86-571248
Mark: AD-APT
Filing Date: March 20, 2015

-----X

ANSELL LIMITED,

Opposer,

Opposition No.: _____

v.

ATG CEYLON (PVT) LIMITED,

Applicant.

-----X

NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C. § 1063

Opposer, Ansell Limited (“Ansell” or “Opposer”), with an address of Victoria Gardens, Level 3, 678 Victoria Street, Richmond, Victoria, 3121, AU, believes it will be damaged by registration of the mark AD-APT as shown in U.S. Trademark Application Serial No. 86/571,248 (“the Opposed Application”) owned by ATG Ceylon (Pvt) Limited (“Applicant”). The Opposed Application published for opposition on May 10, 2016. Ansell, a corporation organized and existing under the laws of Australia, opposes the registration of this mark pursuant to 15 U.S.C. §1063 (Lanham Act § 13).

As grounds of opposition, Opposer alleges that:

1. By way of the Opposed Application, Applicant seeks to register the mark AD-APT (the “Opposed Mark”) for “Safety gloves; industrial safety gloves” in International Class 9 (the “Opposed Goods”).

2. The filing date of the Opposed Application is March 20, 2015.

3. The Opposed Application is based on an intent-to-use the Opposed Mark in the future, not actual past use of the Opposed Mark.

4. Ansell markets and sells safety and protective gloves in U.S. commerce under numerous trademarks, including ALPHATEC, HYFLEX, and ACTIVARMR.

5. Ansell is the owner of multiple U.S. trademark registrations for these trademarks, *inter alia*, covering safety and protective gloves, and all goodwill of the business associated therewith.

6. Upon information and belief, the Applicant has adopted the term “AD-APT” as an acronym for the phrase “All Day Anti-Perspirant Technology.” See Exhibits A through E, attached hereto.

7. Applicant has publicly marketed MaxiFlex Ultimate gloves as bearing its AD-APT All Day Anti-Perspirant Technology. See Exhibits D and E, attached hereto.

8. Upon information and belief, based upon an examination of US-PTO records, the Applicant deliberately withheld the definition of the AD-APT acronym from the US-PTO during the prosecution of the Opposed Application.

9. Upon information and belief, Applicant’s characterization of goods bearing its AD-APT mark as an “all day anti-perspirant” violates U.S. federal drug and medical device regulations

in several respects, resulting in such goods as being misbranded and mislabeled under the Federal Food, Drug, and Cosmetic Act (“FD&C Act”), 21 U.S.C. § 350 *et seq.*

10. Among such requirements, the U.S. Food & Drug Administration (“FDA”) requires that products claiming “all day anti-perspirant” qualities be properly labelled with approved active ingredients, and be capable of demonstrating that those ingredients provide at least a 20% sustained sweat reduction over a 24-hour period. See 21 C.F.R. §§ 350.3, 350.50(b)(3).

11. Additional labeling requirements mandated by the FDA for anti-perspirant products are found in its “*Antiperspirant Drug Products For Over-the-Counter Human Use: Final Monograph.*”

12. A mark is deceptive if it (a) consists of or contains a term that misdescribes the character, quality, function, composition, or use of the goods and/or services; (b) prospective purchasers are likely to believe that the misdescription actually describes the goods and/or services; and (c) the misdescription is likely to affect a significant portion of the relevant consumers’ decision to purchase the goods and/or services.

13. For the above reasons, any use or registration of the Opposed Mark is deceptive in connection with the goods described in the Opposed Application, in violation of Section 2(a) of the Lanham Act [15 U.S.C. § 1052(a)].

14. A mark is deceptively misdescriptive if it describes an ingredient, quality, characteristic, function, or feature of the relevant goods, and the description conveyed by the mark is both false and plausible.

15. For the above reasons, any use or registration of the Opposed Mark is merely descriptive and/or deceptively misdescriptive of the goods described in the Opposed Application, in violation of Section 2(e)(1) of the Lanham Act [15 U.S.C. § 1052(e)(1)].

16. If Applicant is permitted to use or register the Opposed Mark for the Opposed Goods, it would cause damage and injury to Ansell's business reputation and would injure and impair Opposer's rights, because said use or registration is likely to cause confusion or mistake among prospective purchasers, or to deceive prospective purchasers, by creating the erroneous impression that (a) the Applicant's goods possess "all day anti-perspirant" qualities that have been approved by the FDA; and (b) that the Applicant has the sole and exclusive right to denote goods possessing such qualities.

17. If Applicant is granted the registration applied for, it would thereby obtain, at least, the *prima facie* exclusive right to use the Opposed Mark on the Opposed Goods. Such registration would thus be a source of damage and injury to Opposer, and would be inconsistent with Opposer's rights.

WHEREFORE, Opposer prays that this Opposition be sustained, that the Opposed Application be rejected, and that registration of the Opposed Mark be refused and denied in all respects.

Dated: September 7, 2016

Respectfully submitted,

/Charles P. Guarino/
Charles P. Guarino, Esq.
MOSER TABOADA
1030 Broad Street, Suite 203
Shrewsbury, New Jersey 07702
Telephone: 732-945-9498
Email: cguarino@mtiplaw.com
Attorneys for Opposer Ansell Limited

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Applicant this 7th day of September, 2016 by USPS First-Class Mail, postage prepaid, as follows:

Holiday W. Banta
Ice Miller LLP
1 American Square, Suite 2900
Indianapolis, IN 46282

/Charles P. Guarino/
Charles P. Guarino, Esq.
MOSER TABOADA
1030 Broad Street, Suite 203
Shrewsbury, New Jersey 07702
Telephone: 732-945-9498
Email: cguarino@mtiplaw.com
Attorneys for Opposer Ansell Limited

EXHIBIT A



June 14, 2016

VIA FEDERAL EXPRESS & FACSIMILE

ATG Lanka (Pvt.) Limited
Spur Road 7, IPZ Phase 2
11420 Katunayake
Western Province, Sri Lanka
Attention: Mr. John Taylor, *Chairman & CEO*
Facsimile: (94) 11-2253887

Protective Industrial Products Inc.
968 Albany Shaker Road
Latham, New York 12110
Attention: Mr. Joe Milot, *President & CEO*
Facsimile: (866) 304-6607

Re: *False and Deceptive Advertising Regarding AD-APT Technology*

Gentlemen:

As in-house counsel for Ansell Healthcare Products LLC (“Ansell”), I am contacting you regarding the false and deceptive advertising concerning “AD-APT” (an acronym for “All Day Anti- Perspirant Technology”) which has been touted by ATG Lanka (Pvt.) Limited (“ATG”) and its U.S. distributor Protective Industrial Products Inc. (“PIP”) in various advertisements and media to date, including (without limitation) the following: (1) the “Maxi-Flex Ultimate” advertising campaign, published in the May 2016 issue of *Industrial Safety & Hygiene News* and attached hereto as Exhibit A (the “Trade Advertisement”); (2) the video advertisement entitled “ATG® - AD-APT®” and described as “THE WORLD’S FIRST ANTI-PERSPIRANT FOR GLOVES” published on the “*Official Social Media Channel*” YouTube site of ATG® Intelligent Glove Solutions (see <https://www.youtube.com/watch?v=IIOypW4Ephc>) (the “AD-APT Technology Video”) (attached hereto as Exhibit B); (3) social media posts, including the post dated May 30, 2016 on the “*Official Social Media Channel*” Facebook page of ATG – Intelligent Glove Solutions Company, (see <https://www.facebook.com/ATGgloves/>) (the “AD-APT Social Media Posts”) (attached hereto as Exhibit C); and (4) product re-distributor/re-seller websites (see e.g., <http://www.fullsource.com/maxiflex-gloves/pip-42-874/>) (the “Internet Sales Materials”, and together with the Trade Advertisement, the AD-APT Technology Video, and the AD-APT Social Media Posts, collectively referred to herein as the “AD-APT Advertisements”) (attached hereto as Exhibit D). As detailed below, the claims and representations contained in the AD-APT Advertisements are in violation of both applicable law and applicable drug/medical device rules and regulations.

The MaxiFlex® Ultimate™ 42-874 Glove is Misbranded & Adulterated

According to the AD-APT Advertisements, “AD-APT” is an acronym which stands for “All Day Anti Perspirant Technology” (the “AD-APT Technology”), a technology which claims to have been incorporated into the MaxiFlex® Ultimate™ 42-874 glove (the “Glove”) for the purpose of regulating human thermoregulation. The characterization of the AD-APT Technology and Glove as an “antiperspirant” violates drug/medical device regulations in a number of respects, and results in the Glove being misbranded and mislabeled under *The Federal Food, Drug, and Cosmetic Act* (“FDCA”), 21 U. S.

C. §350 *et seq.* First, the AD-APT Technology and Glove do not include any of the exclusive, specified active ingredients approved under U.S. Food & Drug Administration's ("FDA") "*Antiperspirant Drug Products For Over-the-Counter Human Use; Final Monograph*" (the "*Final Monograph*"), as they are advertised to be "*aluminum-free*". Second, the undisclosed active ingredient of the AD-APT Technology and Glove has not been approved by FDA as safe and effective for use as an antiperspirant, much less for the novel purpose of preventing perspiration of the hand. (*See Final Monograph noting that "[t]he agency is not including the claim 'gentle enough for sensitive areas of the body' because the words 'sensitive areas' may imply that the product can be used on other body areas in addition to the underarm.*") Third, even if the AD-APT Technology/Glove qualified as an "antiperspirant" under the Final Monograph (or had otherwise received FDA approval) and was approved for application to the hands, the AD-APT Technology/Glove falsely claims "*all day*" effectiveness. In order to claim "*all day*" reduced sweat production, however, the FDA requires antiperspirant drug products to label the approved active ingredients and to demonstrate that those ingredients provide no less than a twenty percent (20%) *sustained sweat reduction over a prolonged 24-hour period*. (*See 21 C.F.R §§350.3, 350.50(b)(3)*) Lastly, several other labeling requirements which are mandated for antiperspirants under the Final Monograph appear to be missing from the AD-APT Technology/Glove, thereby independently rendering it misbranded and mislabeled. (*See Final Monograph for requirements*)

As a result, the AD-APT Technology and Glove are in violation of FDA regulations and lack the necessary assurances of safety and efficacy, especially for an antiperspirant drug product intended to be used in an unapproved, novel way (on an individual's hands, as opposed to underarms).

The Glove/AD-APT Technology's Claims and Markings Are False or Misleading¹

The AD-APT Advertisements, the Glove's markings and labelling, and the very name of the AD-APT Technology itself are misleading to consumers under Section 43(a) of the *Lanham Act*, as well as other federal regulatory rules and state laws that prohibit unfair competition through deceptive claims in commerce.

First, the claim that the Glove contains "antiperspirant" technology which is "*aluminum-free*" (see *e.g.*, the AD-APT Technology Video) is literally false and is not capable of being true, as FDA guidelines and definitions limit an "antiperspirant" to include only those compounds containing aluminum-based salts. (*See Final Monograph*)

Second, the AD-APT Technology Video makes multiple claims that the AD-APT Technology (whether independently or together with other technologies or features incorporated into the Glove) helps "*keep hands ... sweat-free*." This claim suggests that the antiperspirant eliminates or provides complete protection against perspiration - a message which contradicts the scientific evidence relied upon by FDA in its evaluation and issuance of the Final Monograph notice on antiperspirant drug products. (*See e.g., Final Monograph Notice dated June 9, 2003 at comment 14 ("[t]he agency is not including claims such as 'complete protection' or 'completely guards your family' in the monograph because there is no evidence that antiperspirant drug*

¹ In addition, the claims that the AD-APT Technology/Glove achieves a "*31% reduction in sweat*" and that the Air-Tech® technology platform offers "*360° breathability*" making the MaxiFlex® Ultimate™ "*the most breathable glove on the market today*" require adequate substantiation. **Ansell demands that ATG and PIP promptly produce copies of the scientific data and test protocols supporting the above-referenced claims, or confirm that none exist.**

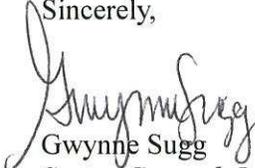


products provide 'complete' protection.")(emphasis added)) Moreover, such a "sweat-free" claim is belied and undermined by the accompanying claim that merely a "31% reduction in sweat" and not a 100% reduction is achieved, the reduction which would be required for the complete absence of any perspiration to enable "sweat-free" conditions.

ATG & PIP Must Immediately Recall All Gloves Sold in the U.S. & Cease Sale & Advertisement of the AD-APT Technology/Glove

The AD-APT Advertisements are not only false and misleading, but the unapproved use of AD-APT Technology/Gloves and its active ingredient(s) to prevent hand perspiration may present significant risks to the health and safety of its users. Accordingly, Ansell hereby demands that ATG and PIP: (1) immediately cease and desist from the AD-APT Advertisements or other promotion of the false and misleading claims and statements described herein; (2) immediately recall all Gloves (and other products containing the AD-APT Technology) sold within the United States to date; (3) destroy or indelibly remove from all Gloves to be sold within the United States the "AD-APT" marking or logos (to the extent all AD-APT Advertisements have ceased and no AD-APT Technology or antiperspirant features are claimed in connection with such Gloves); (4) immediately cease the sale, offer for sale, or other promotion of the AD-APT Technology and/or Gloves within the United States until approval or other affirmative authorization is received from FDA; and (5) promptly issue corrective advertising in a manner sufficient to reach all Glove users and potential purchasers who may have been misled by the AD-APT Advertisements. Ansell further demands that you provide written confirmation as soon as possible, but no later than June 21, 2016, that you will take all such actions demanded above. Should a satisfactory response not be received and corrective action not be taken, Ansell intends to notify the Federal Trade Commission and FDA for their evaluation and investigation into this matter.

Nothing contained in this letter shall be deemed a waiver of any rights that Ansell may have under law or in equity, all of which are expressly reserved.

Sincerely,

Gwynne Sugg
Senior Counsel, Intellectual Property

Attachments

cc: Holiday Banta, Esq., ICE MILLER, LLP (via Federal Express & E-Mail)(counsel for ATG)

Exhibit A

KEEPING HOT HANDS COOL, DRY and PRODUCTIVE

One recurring demand arises in each and every conversation we have: comfort. Today 97% of glove wearers claim that comfort is their number one priority when choosing gloves with the key challenge being sweaty hands. Why?



Maxiflex® Maxiflex® (Patent # 7,212,714)
© 2014 ATG. 8875000001



guaranteed
skin friendly

Find out more: www.atg-glovesolutions.com

The skin, the largest organ of our body, is used to regulate its temperature through thermoregulation (sweating).

On average, our skin contains 900 sweat glands per square inch. However, our hands have 900 more sweat glands per square inch than the rest of our body. The skin on our hands contains 1000 sweat glands per square inch, and on the palms of our hands, there are 2000 per square inch.

Combine this with a gloved hand and it explains why 97% of glove wearers claim comfort is their number one priority when choosing gloves.

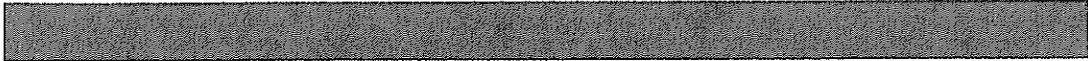
Time for change? We at ATG® think so.

Even when our hands are in a breathable glove, Maxiflex® has assured the best chance for preventing sweaty hands in work environments.

Now the iconic Maxiflex® gets even better thanks to the inclusion of the new AD-APT® Technology from ATG®.

The AD-APT® technology is now available in the Maxiflex® UltraLite®.

CIRCLE 44 ON CARD 100



Now integrated in the
MaxiFlex® Ultimate™

EXCLUSIVE SALES PARTNER:
USA, CANADA, MEXICO



PROTECTIVE INDUSTRIAL PRODUCTS

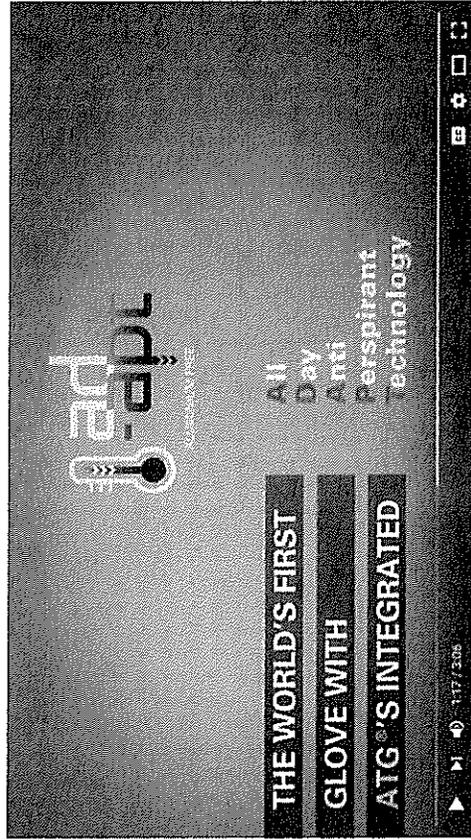
Phone: 518-861-0133 • 800-262-6765
sales@pipusa.com • www.pipusa.com



Intelligent Glove Solutions



Exhibit B



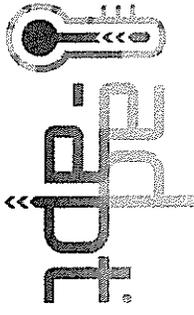
ATG® - AD-APT®
 ATG® - Intelligent Glove Solutions
 141 views
 + Add to Share ... More
 Published on Sep 22, 2015
THE WORLD'S FIRST ANTI-PERSPIRANT FOR GLOVES
 ATG's technology is being continuously developed by a core team that matches market research and marketing analysis with the latest technological developments. This forms the foundation upon which we continually improve the customer experience through constant

Comments are disabled for this video.

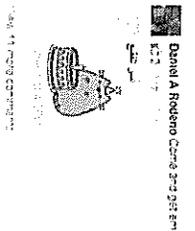
- Up next
- ATG® MaxFlex® Elite™ HD**
 ATG®Gloves
 124 Views
 - ATG® - Investment in Innovation**
 ATG®Gloves
 264 Views
 - MaxFlex® Cut™**
 ATG®Gloves
 1,546 Views
 - MaxFlex® by ATG® (English)**
 ATG®Gloves
 42-44 Views
 - Maxflex Cut Resistant Gloves - GME Supply**
 GME Supply
 2,633 Views
 - ATG® - Our Planet and Sustainability**
 ATG® - 195
 351 Views
 - ATG® MaxChem® HD**
 ATG®Gloves
 112 Views
 - Protección máxima ATG rukavice - Plandia (Protección máxima Z59)**
 PRACOVITE OBEVY Z59, s.r.o.
 5 Views
 - ATG® MaxFlex® Durability**
 ATG®Gloves
 73,523 Views
 - HexArmor Cut Resistant Safety Glove Demonstrations**
 HexArmor - 1,186
 34,784 Views

Exhibit C

KEEPING HOT HANDS COOL, DRY and PRODUCTIVE



ATG - Intelligent Glove Solutions
Learn More About Us
MaxFlex® gloves with our new cooling technology, AD-APT®, reduces sweating by 31% in comparison to other gloves.
The patented AIRtech® technology platform that provides 360° breathability works in partnership with the AD-APT® technology platform to keep your hands cool, dry and productive even in tough conditions.



Timeline Photos 6 of 52

Exhibit D

EXHIBIT B

July 14, 2016

Via FedEx and E-mail : Gwynne.sugg@ansell.com

Gwynne Sugg
Senior Counsel, Intellectual Property
Ansell Healthcare Products LLC
111 Wood Avenue South
Iselin, NJ 08830

Re: Advertising Regarding AD-APT™ Technology

Dear Ms. Sugg:

We represent ATG Lanka (Pvt) Limited (“ATG”) in the above-referenced matter, and we are writing in response to your correspondence dated June 14, 2016, sent on behalf of Ansell Healthcare Products LLC, a subsidiary of Ansell Limited (collectively, “Ansell”), with respect to ATG’s AD-APT technology and advertising. We reviewed your concerns regarding the AD-APT technology and related advertisements. Our review of the materials included as Exhibits to Ansell’s letter, as well as other ATG advertisements, discloses that these materials report data and information confirmed by independent studies and are not intended to mislead consumers. Nonetheless, in an effort to avoid further debate concerning ATG’s AD-APT technology and advertising claims, ATG is in the process of generating new advertisements and website content as discussed further below.

As an initial matter, the YouTube® video referenced in Ansell’s letter as Exhibit B was intended to be a private video posted on ATG’s YouTube channel for internal use only, but the security settings were not set up correctly. The privacy settings for this video have been corrected, and the link for the video referenced in Ansell’s letter now indicates that the video is unavailable. Some of the advertising materials referencing the AD-APT technology are included in third-party advertisements and on third party websites such as vendor websites. ATG has already reached out to and will continue to work with its partners to modify, as necessary, advertising materials related to gloves using the AD-APT technology. ATG asks for Ansell’s patience as it seeks to locate and update advertisements related to the AD-APT technology. ATG expects to be able to complete this updating work by August 11, 2016.

With respect to the other materials and specific content identified in your correspondence, ATG’s new advertising materials related to the AD-APT technology will not contain explicit claims that the AD-APT technology is an “antiperspirant” or that it “reduces sweat.” Prior to Ansell’s letter, ATG was already beginning to delete references to the statement “All Day Anti-Perspirant Technology” in its advertising, and it will continue to implement this change to its advertising materials as part of the update process discussed above. ATG will continue to use the AD-APT brand in connection with its products but will no longer refer to or associate the statement “All Day Anti-Perspirant Technology” with the AD-APT brand, thereby removing the opportunity for consumers to understand the AD-APT brand to refer to an acronym for this statement.

ATG's advertising materials associated with its AD-APT technology do not violate the branding and labeling requirements set forth in 21 U.S.C. § 350 et seq. and are not false and misleading. ATG confirms the following with regard to Ansell's enumerated demands on p. 3 of the letter:

1. ATG is in the process of updating its advertising. The specific advertisements attached to Ansell's letter will no longer be used when that update is complete. ATG will continue to market its AD-APT technology using new advertisements.
2. and 3. A recall is not warranted, and neither is any change to the glove labels, at least because the gloves incorporating AD-APT technology do not bear the statement "All Day Anti-Perspirant Technology" or include any product description on their labels.
4. FDA approval of gloves employing the AD-APT technology is not required.
5. ATG is not aware of any consumer confusion generated as a result of its original advertising. ATG will advertise gloves employing the AD-APT technology with new advertising.

ATG's advertising materials concerning the AD-APT technology are fair, truthful, and in accordance with applicable laws and regulations. We are confident the update process will eliminate any concerns Ansell may have had regarding the content of ATG's advertising of these gloves. Therefore, we consider the matter closed.

Very truly yours,

ICE MILLER LLP



Holiday W. Banta

EXHIBIT C



August 25, 2016

VIA ELECTRONIC MAIL AND PRIORITY DELIVERY

Holiday Banta, Esq.
Ice Miller
One American Square
Suite 2900
Indianapolis, IN 46282-0200

Re: False and Deceptive Claims and Advertising Regarding AD-APT Technology

Dear Ms. Miller:

We acknowledge your letter dated July 14, 2016 on behalf of ATG Lanka (Pvt) Limited ("Letter"), written in response to our Notice Letter of June 14, 2016. While your Letter identifies certain remedial efforts regarding ATG's advertising claims in connection with its AD-APT brand, it does not address the underlying concern regarding claims made by ATG that the primary function of the AD-APT 'aluminium-free' glove technology is to affect human perspiration of the hands. By avoiding this issue, ATG has not sufficiently shown why it believes that FDA approval for its technology is not required. Additionally, ATG's proposed continued use of the AD-APT brand without its explicit "All Day Antiperspirant Technology" claims will not alleviate the legal issue that the AD-APT brand will continue to present implicitly false claims under Section 43(a) of the Lanham Act and FTC Guidelines.

Therefore, based on the fact that your Letter states that ATG plans to continue using its AD-APT brand in connection with, as of yet, undisclosed ingredients for sweat reduction technology in its glove products, Ansell is not in a position to accept ATG's proposed corrections concerning ATG's AD-APT technology and branding representations. We therefore demand that ATG cease and desist use of the AD-APT brand on and in connection with its products.

The "Aluminium Free" Claims and Markings Continue to be False and Misleading under the FDA Regulations.

After active investigation into ATG's 'aluminium free' characterization of the AD-APT technology (Exhibit A -Trademark Registration Specimen filed before the United States Patent and Trademark Office), Ansell asserts that ATG has not addressed the core issue that human sweat reduction technology can be marketed in gloves without FDA oversight. As we previously have asserted, Ansell's continued concerns do not lie within advertising claims alone, but with claims by ATG that the primary function of the AD-APT technology is to provide material that helps human sweat regulation adapt to environmental temperature without disclosing the material's active ingredients.

Ansell has initially performed tests on the content of the MaxiFlex Ultimate 42-874 Glove brand materials and has determined that aluminium salt is in fact present. The 'aluminium free' characterization of the AD-APT technology or **any** type of sweat reducing technology cannot circumvent drug/medical device regulation under The Federal Food, Drug and Cosmetic Act ("FDCA"), 21 U.S.C. § 350 et seq., however, when the technology's material contains an aluminium salt which is regarded by FDA as the active ingredient for the reduction of perspiration.

Although your Letter states that ATG's advertising materials concerning the AD-APT technology are fair, truthful and in accordance with applicable laws and regulations, ATG's 'aluminium free' assertions are neither fair, truthful nor in accordance with applicable U.S. laws and regulations. As such, ATG must immediately recall all gloves sold in the U.S. and cease sale and advertisement of the AD-APT Technology/Glove.

The AD-APT Brand Continues to be Misleading to Consumers under Section 43(a) of the Lanham Act, as well as the FTC Section 5 and Other Federal Regulatory Rules and State Laws that Prohibit Unfair Competition Through Deceptive Claims in Commerce.

First, your Letters' assertion that ATG will continue using and advertising its AD-APT technology without *explicit* claims to 'antiperspirant' or 'reduction of sweat,' does not address, and clearly leaves room for, implicit claims regarding same. Advertising claims are actionable under the Lanham Act and FTC regardless of whether the claim is expressly stated or simply implied.

For example, ATG's AD-APT brand will continue to connote the ability to adapt the human hand from sweat production due to human thermoregulation via its AD-APT technology brand. The reference alone to the word 'ADAPT' creates an impression that the human hand wearing a glove can adapt to body thermoregulation by stopping sweat while wearing the glove. ATG further supports this connotation with its' logo shown in trademark Registration No. 4979458 ("ATG Logo")(Exhibit B-1). The ATG Logo in blue coloration displays a thermometer design alongside the term 'ADAPT,' with arrow indicators in both the thermometer and the letter "P," pointing in a downward motion, implying adaptive control over the effects of human thermoregulation related to the temperature of the hand. A second trademark application for a similar ATG Logo, Serial No. 86595712, shows the same logo in yellow with arrow indicators pointing in an upward motion. (Exhibit B-2) This similarly implies that the technology has an adaptive control function for preventing sweat due to human thermoregulation in hot environments.

The combination of elements in these two logos result in a misleading impression, *See Stanley Labs. v. FTC*, 138 F.2d 388 (9th Cir. 1943) (use of "M.D." in conjunction with the phrase "dependable safeguard" may lead to the conclusion that the product has contraceptive uses). In this case, ATG's AD-APT brand will continue to connote the ability to adapt the human hand from sweat production due to human thermoregulation via its logo displaying a thermometer with motion design alongside the term 'ADAPT.'

Second, as stated in your Letter, ATG has already explicitly disclosed information in its advertising and other materials in the U.S., between the dates of January and June 2016, where it publicly advertised and reported data and independent study results on the reduction of human sweat, known as human thermoregulation, in its MaxiFlex Ultimate 42-

874 Glove brand. In fact, the claim was most recently published on June 27, 2016, in Safety & Health Magazine published during the National Safety Congress & Expo international tradeshow from June 24-27, 2016 (See Exhibit C, p.2). The article touts the tradeshow's "Best in Show" new product introductions appearing at the show with the following narrative:

Now MaxiFlex® gets even better, thanks to the inclusion of our new antiperspirant technology. AD-APT™ All Day AntiPerspirant Technology (ADAPT™) is now integrated into MaxiFlex® Ultimate™ to keep hands cool and sweaty hands dry.

Third, as stated in your Letter, your admission that ATG's use of a YouTube video was intended to be provided for private use versus public use, and is now set for private viewing, only underscores Ansell's concerns that the AD-APT term will continue to be used in a duplicitous and deceitful manner. The video explicitly makes claims for consumers that the gloves provide "all day," "anti-perspirant" properties and ATG admits it will continue to use the video privately.

And finally, although your Letter purports to complete updating all materials and communications regarding explicit claims that AD-APT technology is an "all day" "antiperspirant" that "reduces sweat" by August 11th 2016, just today, August 25th, 2016, we found evidence of ATG's claims offered by the Florida based e-commerce store, Full Source, that sell safety supplies, including the MaxiFlex Ultimate 42-874, as follows (Exhibit D):

Inspired to find a solution to sweaty hands, led us to develop AD-APT, the world's first All Day Anti-Perspirant Technology that we've integrated into the iconic MaxiFlex. The patented AIRtech technology platform that provides 360° breathability works in partnership with the AD-APT technology platform to keep your hand cool, dry and productive even in tough conditions.

As such ATG's explicit claims regarding 'All Day Antiperspirant Technology,' originally made in the U.S. public domain, will continue to be reinforced whether explicitly or implicitly in the U.S. market through a network of U.S. distributors, private customers as well as through internationally-recognized tradeshow, such as the National Safety Conference & Expo, where the message has continued unabated, despite ATG's assertions otherwise.

As a result, although your Letter "contends that ATG's advertising materials concerning the AD-APT technology are fair, truthful and in accordance with applicable laws and regulations," your 'aluminium free' assertions when considered in connection with continued duplicitous and deceptive advertising materials do not rise to the fair, truthful and legal standards of the FDA, FTC and Lanham Act. As such, Ansell reiterates and extends its demand from the June 14, 2016 Notice Letter as follows:

Ansell hereby demands that ATG and PIP: (1) immediately cease and desist from the AD-APT Advertisements or other promotion of the false and misleading claims and statements described herein, including those sold through Full Source (2) immediately recall all Gloves (and other products containing the AD-APT Technology) sold within the United States to date; (3) destroy or indelibly remove from all Gloves to be sold within the United States with the "AD-APT" marking or logos (to the extent all AD-APT Advertisements have ceased and no AD-APT Technology or antiperspirant features are claimed in connection with such Gloves); (4) immediately cease the sale, offer for sale, or other promotion of the AD-APT Technology and/or Gloves within the United States until approval or other affirmative authorization is received from FDA; and (5) promptly

issue corrective advertising in a manner sufficient to reach all Glove users and potential purchasers who may have been misled by the AD-APT Advertisements. Ansell further demands that you provide written confirmation as soon as possible, but no later than September 5, 2016, that you will take all such actions demanded above. Should a satisfactory response not be received and corrective action not be taken, Ansell intends to file an Opposition to ATG's Trademark Application Serial No. 86571248 as well as notify the Federal Trade Commission and FDA for their evaluation and investigation into this matter.

Nothing contained in this letter shall be deemed a waiver of any rights that Ansell may have under law or in equity, all of which are expressly reserved.

Sincerely,

Gwynne Sugg
Senior Counsel,
Global Intellectual Property

EXHIBIT D

Free Shipping on orders over \$99. Use coupon code: **FREESHIP** *Restrictions apply

1-800-975-0986
8:00am-6:00pm EST

90 DAY RETURN POLICY | Weekly Deal

Help ▾

(https://checkout.fullsource.com/c.ACCT7

r_url=1&_ga=1.221445272.187779:



Search by Keyword or Item#

 **SHOPPING CART**
Your Cart Is Empty

Full Source (..) / Work Gloves (./work-gloves) / PIP-42-874

Sale / Clearance

PIP 42-874 MaxiFlex Ultimate Ad-apt Seamless Knit Gloves



(http://fullsourcemedias3.amazonaws.com/ima42-874-A.jpg)

\$3.70 / Each (1 Pair)

☆☆☆☆☆
0 Reviews

Size : ----

-- Select Size -- ▾

Qty:

Add to Cart

Free Shipping Eligible

Please Select a Size

Item#: PIP-42-874
MPN: 42-874

Quantity	Price
1-47	\$3.70
48-143	\$3.59
144+	\$3.52

More Information

PIP 34-874
MaxiFlex Ultimate Gloves
AD-APT Technology
Coated Palm & Fingers
Black & Gray

Item Attributes

Department: Work Gloves (/work-gloves/)
Brands: PIP (/pip-gloves/)
Series: MaxiFlex (/maxiflex-gloves/)
Type: String Knit Gloves (/string-knit-gloves/)
Style: Abrasion Resistant (/abrasion-resistant-work-gloves/)
Style: Coated Palms (/coated-work-gloves/)
Style: Extra Grip (/extra-grip-work-gloves/)
Color: Black (/black-work-gloves/)
Color: Gray (/gray-work-gloves/)
Size: XS to 2XL

Description Reviews Return Policy & Shipping Info

Inspired to find a solution to sweaty hands, led us to develop AD-APT, the world's first All Day Anti-Perspirant Technology that we've integrated into the iconic MaxiFlex. The patented AIRtech technology platform that provides 360° breathability works in partnership with the AD-APT technology platform to keep your hand cool, dry and productive even in tough conditions.

EN 388 is a European Standard. It tests the Abrasion, Cut, Tear and Puncture characteristics of a product to determine its mechanical protection. Performance Level is ranked from 4 to 1, except for cut, which is ranked from 5 to 1.

EN 388 Results: 4131

- Abrasion: 4
- Cut: 1
- Tear: 3
- Puncture: 1



Protective Industrial Products, better known as PIP, offers a variety of safety products from several popular brands such as Bolle, JSP, G-Tek, Bouton, and several more.

[View PIP Products](#)

Recently Viewed



(../pip-42-874/)

PIP 42-874 MaxiFlex Ultimate Ad-apt Seamless Knit Gloves (../pip-42-874/)

\$ 3.70 / Each (1 Pair)

WEEKLY DEAL NEWSLETTER

SIGN UP TO GET A PROMO CODE FOR **\$5 OFF** YOUR FIRST ORDER OF \$50 OR MORE.

Enter your email

SUBSCRIBE

FOLLOW US ON



(https://www.facebook.com/FullSource)



(https://plus.google.com/117274655803648rel=author)



(https://twitter.com/Fullsource/)



(https://www.resellerratings.com)



Click for Review



Security, Privacy, Quality - 100% Guaranteed!



MY ACCOUNT

▶ My Account Information (Https://Checkout.Fullsource.Com/Secure/MyAccount.Ssp)

▶ My Order History (Https://Checkout.Fullsource.Com/Secure/MyAccount.Ssp?R=1#Orderhistory)

▶ Payment Options (Http://Www.Fullsource.Com/Payment-Methods/)

ABOUT US

▶ Company Info (Http://Www.Fullsource.Com/About/Fullsource/)

▶ FAQ (Http://Www.Fullsource.Com/FAQ/)

▶ Office Hours & Location (Http://Www.Fullsource.Com/Office-Hours-And-Location/)

▶ Contact Information (Http://Www.Fullsource.Com/Contact-Information/)

CUSTOMER SERVICE

▶ Shipping Information (Http://Www.Fullsource.Com/Shipping-Policies/)

▶ Returns & Exchanges (Http://Www.Fullsource.Com/Returns-And-Exchanges/)

▶ Order Status & Tracking (Https://Checkout.Fullsource.Com/Secure/MyAccount.Ssp?R=1#Orderhistory)

▶ Customer Live Chat

▶ Terms & Conditions (Http://Www.Fullsource.Com/Customer-Terms-And-Conditions/)

PAYMENT METHODS



FREE SHIPPING

for purchases above \$99*

CONTACT US

1-800-975-0986

Get online help with [Live Chat](#)

EXHIBIT E



After a successful launch at the 2015 NSC Congress & Expo, the New Product Showcase "Best in Show" Awards are back. Online voting begins Sept. 1. Additional products will be added until voting opens.

Note: Product information is provided by manufacturers. This publication has not independently tested manufacturers' products and cannot assume responsibility for the validity of product claims.

3M: 3M® DBI-SALA® Self-Rescue Device The 3M® DBI-SALA® Self-Rescue Device is a flexible device that attaches to your current safety harness and allows you to lower yourself to safety in the event of a fall from height. With the Self-Rescue device, you can work at height without worrying about being left suspended after an arrested fall event. **Booth #1404.**

**SEE THIS PRODUCT
AT THE 2016 NSC
CONGRESS & EXPO**

3M: 3M® DBI-SALA® ExoFIT™ STRATA™ Full-Body Harness The 3M® DBI-SALA® ExoFIT™ STRATA™ Full-Body Harness is the most comfortable, lightest-wearing and truly innovative safety harness we've ever created. Featuring the exclusive LIFTech™ load distribution system, the ExoFit STRATA literally takes the weight off your shoulders and redistributes it down to your hips, dramatically reducing shoulder strain and fatigue. If your safety harness is weighing you down, lighten up with the ExoFit STRATA. **Booth #1404.**

Ansell: HyFlex 11-925 Are you looking for oil protection along with flexibility and dexterity? HyFlex® 11-925 Gloves offer all this and more. Constructed with an 18-gauge liner made of nylon and spandex yarn, HyFlex® 11-925 Gloves provide users with an unrestricted second-skin feel. A unique blend of protection. **Booth #1704.**



Ansell: HyFlex 11-731 Ansell is proud to introduce ultra-lightweight HyFlex® 11-731 Gloves engineered with next-generation Intercept Technology® yarns. Ansell INTERCEPT® Cut Resistance Technology blends engineered and synthetic fibers into high-performance yarns that provide superior cut protection (ANSI Level 2) along with great comfort and high dexterity. The HyFlex® 11-731 features a light-duty 18-gauge seamless liner that provides enhanced flexibility and tactility. Additionally, the thin polyurethane coating provides high dexterity with high abrasion resistance (EN Level 4). A dirt-masking coating color hides dirt. **Booth #1704.**



Armor Guys: Chemiflex Cut Resistant Lightweight, dexterous and chemical-resistant with ANSI Level A3 cut resistance. Say hello to Chemiflex Cut Resistant, the newest addition to Armor Guys' Chemiflex range of gloves. A fully dipped nitrile glove with our patented HCT nitrile microfoam palm coating combined with an HPPE liner – the best in chemical and cut resistance all in one. **Booth #3452.**



ATG-Advanced Technology Gloves: MaxiFlex® Ultimate™ with AD-APT™ Designed and developed as a breathable glove, the MaxiFlex® Ultimate™ has become the benchmark for precision handling in dry environments. Now MaxiFlex® gets even better, thanks to the inclusion of our new antiperspirant technology. AD-APT™ All Day Anti-Perspirant Technology (AD-APT™) is now integrated into MaxiFlex® Ultimate™ to keep hands cool and sweaty hands dry. **Booth #2640.**



Avery Products Corp: Avery UltraDuty Labels with Free GHS & Safety Software Ensure your labels for chemical containers are compliant with the OSHA-mandated Globally Harmonized System (GHS). With Avery, there is no need to purchase expensive labeling software and printer systems to create chemical and safety labels in-house. Avery Ultra Duty Labels and free GHS Wizard Software let you print durable safety and GHS-compliant labels using your existing laser or pigment-based inkjet printer. **Booth #2489.**

