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

Proceeding	92053254
Party	Defendant Dwyer Instruments, Inc.
Correspondence Address	DWYER INSTRUMENTS INC 102 INDIANA HIGHWAY 212 MICHIGAN CITY, IN 46361 UNITED STATES
Submission	Motion to Suspend for Civil Action
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Date	12/10/2010
Attachments	dwyerBrief.pdf (6 pages)(127860 bytes) dwyerExhibit1.pdf (54 pages)(2467897 bytes) dwyerExhibit2.pdf (37 pages)(1463159 bytes)

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

SENSOCON, INC.)	
)	
Petitioner,)	Registration No. 3,397,050
)	
v.)	Mark: PRODUCT CONFIGURATION DESIGN
)	
DWYER INSTRUMENTS, INC.))	Cancellation No. 92053254
)	
Registrant-Respondent.))	

**RESPONDENT'S MOTION TO SUSPEND PROCEEDINGS
DUE TO PRIOR PENDING CIVIL ACTION IN FEDERAL DISTRICT COURT**

Pursuant to 37 CFR § 2.117(a) and Section 510.02(a) of the Trademark Trial and Appeal Board Manual of Procedure, Respondent Dwyer Instruments, Inc. ("Dwyer") submits this Motion to Suspend Cancellation Proceeding No. 92053254 until a final determination of the ongoing and prior civil action No. 3:09-cv-00010-TLS-CAN pending between the same parties in the United States District Court for the Northern District of Indiana, the determination of which will have a bearing on this proceeding.

In support of its Motion to Suspend, Respondent states as follows:

1. On January 7, 2009, Dwyer filed a lawsuit against Sensocon, Inc. ("Sensocon") and Tony Kohl (the "Lawsuit"). In its Complaint in the Lawsuit, Dwyer alleged the following: (i) trademark infringement of United States Trademark Registration No. 3,397,050 (the registration at issue in this cancellation proceeding); (ii) trademark infringement of United States Trademark Registration Nos. 694,229 and 946,287; (iii) unfair competition and false designation of original related to Sensocon's use of these same registered marks; (iv) common law trademark infringement, false designation of original and unfair competition; (v) trade dress infringement; and (vi) copyright infringement. On January 12, 2010 Dwyer filed a First Amended Complaint

adding a count for counterfeiting of the mark of Registration No. 3,397,050 (at issue in this Cancellation proceeding). A copy of the First Amended Complaint is attached hereto as Exhibit 1.

2. On October 4, 2010, Sensocn and Kohl filed their Revised Answer and Affirmative Defenses. A copy is attached hereto as Exhibit 2. In their Affirmative Defenses, Sensocn and Kohl alleged the following: (i) U.S. Trademark No. 3,397,050 (at issue in this cancellation proceeding) is invalid and unenforceable (see p. 34, ¶9 of Exhibit 2); and (ii) Trademark No. 3,397,050 and related trade dress is functional, unprotectable under the common law, and not registerable under the Lanham Act (See p. 34, ¶10 of Exhibit 2).

3. The Lawsuit involves issues in common with and identical to those before the TTAB in Cancellation No. 92053254. As in the Lawsuit, Sensocn alleges in the pending Cancellation that Dwyer's registration is functional (Count I of the Cancellation), unprotectable, and was never registrable (Count II). The issues raised in the Cancellation have already been pled, and will be determined by the District Court, in the Lawsuit. The District's Court's determination of these issues will be binding on the Trademark Trial and Appeal Board. *Vining Indus., Inc. v. The Libman Co.*, Cancellation No. 23,564, 1996 TTAB LEXIS 455, at *5 (TTAB, July 16, 1996) (district court's decision on validity of registered mark binding on TTAB). As a result, judicial economy and the potential for inconsistent judgments strongly favor suspension of this Cancellation. *Id.* at *6 (interest of judicial economy and possibility of inconsistent judgments supports suspension pending outcome of district court case); *see also American Computer Associates, Inc. v. Model American Computer Corp.*, Cancellation No. 23,939, 2000 TTAB LEXIS 706, at *2 (TTAB, Sept. 29, 2000) (cancellation proceeding suspended pending disposition of prior cancellation in which discovery was substantially complete); *The Other Telephone Co. v. Connecticut Nat'l Telephone Co., Inc.*, 181 U.S.P.Q. 125, at 127 (TTAB, Feb.

11, 1974) (opposition suspended because both district court and TTAB case involved likelihood of confusion analysis); *Farah v. Topiclear Beauty Products, Inc.*, Opposition No. 151,334, 2003 TTAB LEXIS 405, at *16-17 (TTAB, Aug. 21, 2003); *Softbelly's, Inc. v. Ty, Inc.*, Opposition No. 150,771, 2002 TTAB LEXIS 529, at *6 (opposition suspended because both district court and TTAB proceedings address issue of genericness).

4. This request is made before the expiration of Respondent's period for filing its Answer (currently due on December 18, 2010).

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CONCLUSION

For the aforementioned reasons, Dwyer respectfully requests that all proceedings for Cancellation No. 92053254 be suspended until final determination of the pending civil action in the District Court.

Respectfully submitted,

DWYER INSTRUMENTS, INC.



Date: December 10, 2010

By _____

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CERTIFICATE UNDER 37 CFR 1.10

I hereby certify that this document was filed electronically with the United States Patent and Trademark Office on December 10, 2010

Jonathan P. Duemel

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENT'S MOTION TO SUSPEND PROCEEDINGS DUE TO PRIOR PENDING CIVIL ACTION IN FEDERAL DISTRICT COURT was served by email and U.S. Mail, postage prepaid, upon:

Clifford W. Browning
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204
cbrowning@kdlegal.com

this 10th day of December, 2010.

Carol Boruta

EXHIBIT 1

DOCUMENT FILED PER
COURTS' ORDER #51

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

DWYER INSTRUMENTS, INC.,)	
)	
Plaintiff,)	Case No.: 3:09-cv-00010-TLS-CAN
)	
v.)	Hon. Judge Theresa Springmann
)	
SENSOCON, INC. and)	Magistrate Judge Nuechterlein
TONY E. KOHL,)	
)	
Defendants.)	<u>JURY TRIAL DEMANDED</u>

FIRST AMENDED COMPLAINT

The Plaintiff, Dwyer Instruments, Inc., for its First Amended Complaint, herein alleges:

NATURE OF ACTION

1. This is an action for, *inter alia*, trademark infringement, trade dress infringement, unfair competition, false designation of origin, copyright infringement and counterfeiting to recover profits, compensatory damages, treble damages, prejudgment interest, injunctive relief, and costs, including reasonable attorneys' fees, from Defendants for the injuries Dwyer has suffered and will continue to suffer as a consequence of Defendants' actions.

PARTIES

2. Dwyer Instruments, Inc. (hereafter "DWYER") is an Indiana corporation having its principal place of business at 102 Indiana Highway 212, Michigan City, Indiana 46360.

3. Sensocon, Inc. (hereafter "SENSOCON"), on information and belief, is a Florida corporation.

4. SENSOCON, on information and belief, has an office and principal place of business at 2107 Edgewood Dr. E, Suite C, Lakeland, Florida 33803.

5. Tony E. Kohl (hereafter "KOHL"), on information and belief, is an individual residing in Florida at 5466 Pebble Beach Drive, Lakeland, Florida 33812.

6. On information and belief, KOHL is the owner and operator of SENSOCON.

7. On information and belief, KOHL and SENSOCON have a unity of interest and KOHL has complete effective ownership and control of SENSOCON. On information and belief, KOHL controls SENSOCON and its actions are taken for KOHL's personal benefit.

8. SENSOCON is the alter ego of KOHL.

JURISDICTION AND VENUE

9. This action arises and is brought under the trademark laws of the United States, 15 U.S.C. §1 *et seq.* This action also arises under the copyright laws of the United States, 17 U.S.C. § 501 *et seq.* This action also arises and is brought under Indiana law.

10. This Court has jurisdiction by virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§1331, 1338 and 1367.

11. The Court also has supplemental jurisdiction over the state and common law claims pursuant to 28 U.S.C. §1367 in that the state and common law claims form part of the same controversy as the claims arising under the trademark and copyright laws of the United States.

12. The Court also has original jurisdiction over the common law unfair competition claims pursuant to 28 U.S.C. §1338(b) in that the claims are joined with substantial and related claims arising under the trademark laws of the United States.

13. Venue is appropriate in this district in accordance with 28 U.S.C. §1391 and § 1400(a).

14. On information and belief, SENSOCON, through the direction of KOHL, is and has been conducting continuous and systematic business by selling infringing pressure gauges and related materials and equipment within the State of Indiana and within the Northern District of Indiana.

15. SENSOCON, by direction of KOHL, is transacting business and has committed illegal acts hereinafter complained of in the Northern District of Indiana.

BACKGROUND STATEMENT

16. DWYER has for many years manufactured and sold a variety of industrial pressure gauges, and pressure gauge accessories and related equipment. DWYER's pressure gauges, pressure gauge accessories, and related equipment are distributed and sold within this District and throughout the United States and the world under various trademarks of DWYER.

17. DWYER and SENSOCON are direct competitors for the same customers in connection with pressure gauges, pressure gauge accessories, and related equipment.

18. KOHL was previously employed by DWYER as a District Sales Manager with responsibilities for making sales of DWYER's pressure gauges, pressure gauge accessories, and related equipment. KOHL left DWYER on or about July 20, 2005. KOHL incorporated SENSOCON. KOHL is now the president and owner of SENSOCON.

19. As District Sales Manager of DWYER, KOHL represented DWYER in the sale of DWYER products, including pressure gauges, pressure gauge accessories, and related equipment, and KOHL was therefore intimately familiar with the trademarks DWYER used in connection with DWYER products.

20. After KOHL incorporated SENSOCON and KOHL had left DWYER, DWYER learned of SENSOCON's sale of competing pressure gauges, pressure gauge accessories, and related equipment.

21. KOHL and SENSOCON have been and are currently distributing and selling products, including pressure gauges, pressure gauge accessories, and related equipment, that directly compete with the pressure gauge products of DWYER.

22. SENSOCON sells its pressure gauge products in the same channels of trade that DWYER sells its pressure gauge products in direct competition with DWYER.

23. In addition to KOHL's knowledge of the valuable DWYER marks, KOHL and SENSOCON have been on notice of DWYER's rights and their infringement upon DWYER's rights since at least January 2007.

24. SENSOCON and KOHL are using trademarks in connection with pressure gauge products sold by SENSOCON that include a lettering scheme identical to, or that is as close as possible and confusingly similar to, the trademarks used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. A.

25. SENSOCON and KOHL are using trademarks in connection with pressure gauge products sold by SENSOCON that include a lens identical with, substantially indistinguishable from and confusingly similar to, the trademarks used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. A and C.

26. The lens of the pressure gauges sold by SENSOCON, as illustrated in Ex. A, are slavish copies of the lens shown in DWYER's U.S. Trademark Registration No. 3,397,050. See Ex. D.

27. SENSOCON and KOHL are using trademarks in connection with SENSOCON's sale of pressure gauge products that use names identical to registered trademarks of DWYER for pressure gauge products.

28. SENSOCON and KOHL are using trade dress in connection with pressure gauge products sold by SENSOCON that include a trade dress scheme identical to, or that is as close as possible and confusingly similar to, the trade dress used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. A and C.

29. SENSOCON and KOHL are using printed materials in connection with pressure gauge products sold by SENSOCON that include copyrighted matter of DWYER used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. B and C.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §1114) **(U.S. TRADEMARK REGISTRATION NO. 3,397,050)**

30. DWYER repeats and realleges the allegations contained in paragraphs 1 through 29 of this Complaint.

31. DWYER is the owner of United States Trademark Registration No. 3,397,050, issued by the United States Patent and Trademark Office on the Principal Register on March 18, 2008, for "A PLURALITY OF HORIZONTAL LINES AND A RAISED RECTANGULAR PORTION ON THE LENS OF A PRESSURE GAUGE" (the "Registered Lens Mark"). A copy of this registration is attached hereto as Exhibit D.

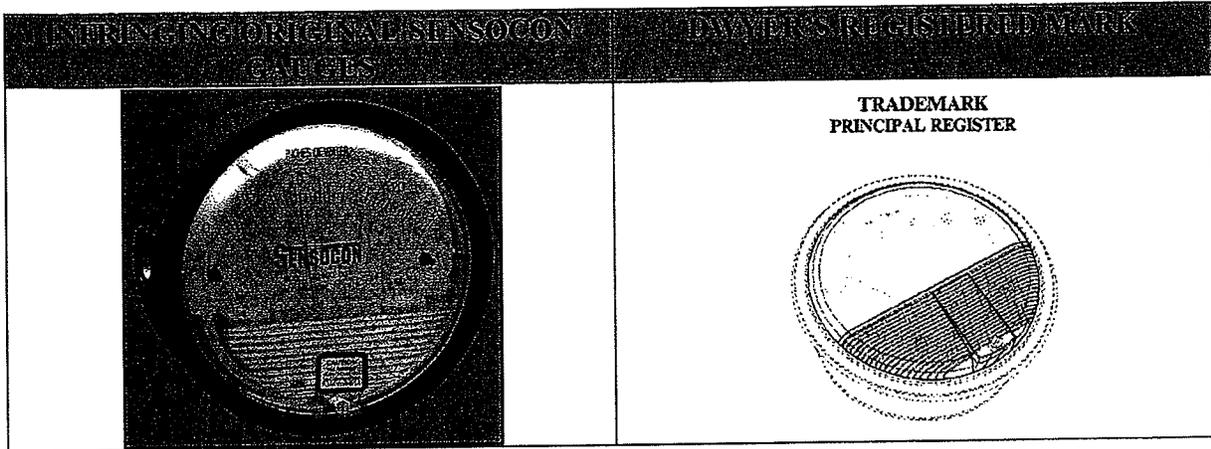
32. Trademark Registration No. 3,397,050 remains in full force and effect.

33. DWYER has developed and is using the Registered Lens Mark to designate the source of DWYER's pressure gauges, and other goods and services related thereto. DWYER's use of the Registered Lens Mark has been substantial and continuous for many years.

34. As a result of substantial sales and advertising by DWYER of the DWYER pressure gauges, the Registered Lens Mark has become favorably known to the public and the trade, and the trademark identifies and distinguishes the source of origin of the DWYER gauges. DWYER's Registered Mark represents a valuable and irreplaceable asset of DWYER.

35. SENSOCON and KOHL use a pressure gauge lens identical with, substantially indistinguishable from and confusingly similar to the Registered Lens Mark in connection with SENSOCON pressure gauges. SENSOCON uses a plurality of horizontal lines and a raised rectangular portion on the lens of a pressure gauge in connection with the sale of SENSOCON gauges as shown in at least SENSOCON's data sheets for its "Series S2000" and "Series P2000" pressure gauges, attached hereto as Exhibit A, that do not originate from DWYER (hereinafter the "Original" SENSOCON pressure gauges).

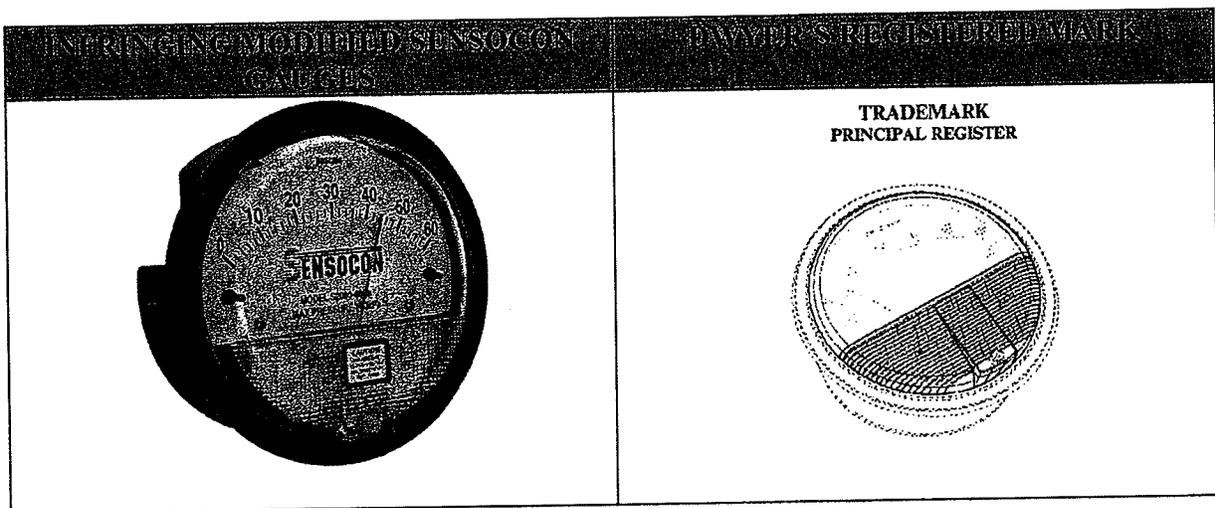
36. The original SENSOCON "Series S2000" and "Series P2000" pressure gauges include lenses incorporating the Registered Lens Mark of DWYER as generally shown by the comparison below:



37. SENSOCON and KOHL use a pressure gauge lens substantially indistinguishable from and confusingly similar to the Registered Lens Mark in connection with SENSOCON pressure gauges as shown in SENSOCON Bulletin 103-1, attached hereto as Exhibit C, (hereinafter the "Modified" SENSOCON pressure gauges).

38. The lens of the Modified SENSOCON pressure gauges as shown in Exhibit C includes a plurality of horizontal lines and a raised rectangular portion.

39. The Modified SENSOCON pressure gauges include lenses incorporating the Registered Lens Mark of DWYER as generally shown by the comparison below:



40. SENSOCON, and KOHL as its owner, president, director and alter ego, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the Registered Lens Mark of DWYER by advertising, offering for sale, and selling in interstate commerce pressure gauge products using a plurality of horizontal lines and a raised rectangular portion on the lens of the pressure gauge that compete with DWYER pressure gauge products.

41. SENSOCON uses the Registered Lens Mark of DWYER in the sale and advertising of pressure gauges as shown in Exhibit A and C. SENSOCON does not identify DWYER as the owner of the Registered Lens Mark, thereby causing a likelihood of confusion as to the source of the pressure gauges sold by SENSOCON.

42. SENSOCON has willfully and deliberately infringed and sought to appropriate unto itself the Registered Lens Mark of DWYER by advertising, offering for sale and selling in interstate commerce pressure gauge products including the Registered Lens Mark and/or confusingly similar marks.

43. The aforesaid acts and conduct of SENSOCON are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of SENSOCON's pressure gauge products.

44. SENSOCON is trading on DWYER's goodwill and reputation for furthering SENSOCON's business.

45. By reason of the aforesaid acts of infringement by SENSOCON, DWYER has been irreparably damaged and unless SENSOCON is enjoined, said acts of SENSOCON will continue and will impair the value of DWYER's Registered Lens Mark and the goodwill associated

therewith, and will threaten the viability of the trademark. Wherefore, DWYER has no adequate remedy at law.

COUNT II

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §1114) **(U.S. TRADEMARK REGISTRATION NO. 694,229)**

46. DWYER repeats and realleges the allegations contained in paragraphs 1 through 45 of this Complaint.

47. DWYER is the owner of United States Trademark Registration No. 694,229, issued by the United States Patent and Trademark Office on the Principal Register on March 8, 1960, for "MAGNEHELIC" for pressure gauges (the "MAGNEHELIC Mark"). A copy of this registration is attached hereto as Exhibit E.

48. Trademark Registration No. 694,229 remains in full force and effect and is incontestable.

49. DWYER has developed and is using the MAGNEHELIC Mark to designate the source of DWYER's pressure gauges, and other goods and services related thereto. DWYER's use of the MAGNEHELIC Mark has been substantial and continuous for many years.

50. As a result of substantial sales and advertising by DWYER of the DWYER pressure gauges, the MAGNEHELIC Mark has become favorably known to the public and the trade, and the trademark identifies and distinguishes the source of origin of the DWYER gauges.

51. DWYER's MAGNEHELIC Mark represents a valuable and irreplaceable asset of DWYER.

52. SENSOCON and KOHL use or have used the identical mark or a confusingly similar mark in connection with the sale of SENSOCON pressure gauges. SENSOCON has used

such mark in connection with the sale of SENSOCON gauges as shown in at least SENSOCON's marketing materials for its "Series S2000" pressure gauges, attached hereto as Exhibit E, that do not originate from DWYER.

53. SENSOCON, and KOHL as its owner, president, director and alter ego, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the MAGNEHELIC Mark of DWYER by advertising, offering for sale, and selling in interstate commerce pressure gauge products using the MAGNEHELIC Mark of DWYER in the sale and advertising of pressure gauges as shown in Exhibit F.

54. SENSOCON has willfully and deliberately infringed and sought to appropriate unto itself the MAGNEHELIC Mark of DWYER by advertising, offering for sale and selling in interstate commerce pressure gauge products through the use of the MAGNEHELIC Mark and/or confusingly similar marks.

55. The aforesaid acts and conduct of SENSOCON are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of SENSOCON's pressure gauge products. SENSOCON is trading on DWYER's goodwill and reputation for furthering SENSOCON's business.

56. By reason of the aforesaid acts of infringement by SENSOCON, DWYER has been irreparably damaged and unless SENSOCON is enjoined, said acts of SENSOCON will continue and will impair the value of DWYER's MAGNEHELIC Mark and the goodwill associated therewith, and will threaten the viability of the trademark. Wherefore, DWYER has no adequate remedy at law.

COUNT III

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §1114)
(U.S. Trademark Registration No. 946,287)

57. DWYER repeats and realleges the allegations contained in paragraphs 1 through 56 of this Complaint.

58. DWYER is the owner of United States Trademark Registration No. 946,287, issued by the United States Patent and Trademark Office on the Principal Register on October 31, 1972, for "DWYER" for pressure gauges (the "DWYER Mark"). A copy of this registration is attached hereto as Exhibit G.

59. Trademark Registration No. 946,287 remains in full force and effect and is incontestable.

60. DWYER has developed and is using the DWYER Mark to designate the source of DWYER's pressure gauges, and other goods and services related thereto. DWYER's use of the DWYER Mark has been substantial and continuous for many years.

61. As a result of substantial sales and advertising by DWYER of the DWYER pressure gauges, the DWYER Mark has become favorably known to the public and the trade, and the trademark identifies and distinguishes the source of origin of the DWYER gauges.

62. DWYER's DWYER Mark represents a valuable and irreplaceable asset of DWYER.

63. SENSOCON and KOHL use or have used the identical mark or a confusingly similar mark in connection with the sale of SENSOCON pressure gauges. SENSOCON has used such mark in connection with the sale of SENSOCON gauges as shown in at least SENSOCON's marketing materials for its "Series S2000" pressure gauges, attached hereto as Exhibit F, that do

not originate from DWYER.

64. SENSOCON, and KOHL as its owner, president, director and alter ego, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the DWYER Mark by advertising, offering for sale, and selling in interstate commerce pressure gauge products using the DWYER Mark in the sale and advertising of pressure gauges as shown in Exhibit F.

65. SENSOCON has willfully and deliberately infringed and sought to appropriate unto itself the DWYER Mark by advertising, offering for sale and selling in interstate commerce pressure gauge products through the use of the DWYER Mark and/or confusingly similar marks.

66. The aforesaid acts and conduct of SENSOCON are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of SENSOCON's pressure gauge products. SENSOCON is trading on DWYER's goodwill and reputation for furthering SENSOCON's business.

67. By reason of the aforesaid acts of infringement by SENSOCON, DWYER has been irreparably damaged and unless SENSOCON is enjoined, said acts of SENSOCON will continue and will impair the value of the DWYER Mark and the goodwill associated therewith, and will threaten the viability of the trademark. Wherefore, DWYER has no adequate remedy at law.

COUNT IV

FEDERAL UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN **(15 U.S.C. §1125)**

68. DWYER repeats and realleges the allegations of paragraphs 1 through 67 of this Complaint.

69. DWYER has used the Registered Lens Mark, the MAGNEHELIC Mark and the DWYER Mark (collectively the "Registered Marks") in commerce since at least as early as 1962, and is presently using the Registered Marks, on or in connection with DWYER pressure gauges, and in connection with advertising literature and manuals for the DWYER pressure gauges to properly designate DWYER as the source of origin of the DWYER pressure gauges.

70. As a result of substantial sales and advertising, and use over a substantial period of time, the Registered Marks have become favorably known to the public and the trade, and identifies and distinguishes the source of the DWYER pressure gauge products.

71. SENSOCON uses the Registered Marks and/or a confusingly similar appropriations in connection with the sale of pressure gauges, as shown in Exhibits A, B, C and F, that do not originate from DWYER.

72. SENSOCON, and KOHL as its alter ego, have willfully and deliberately infringed and sought to appropriate the DWYER trademarks by using marks identical to, or confusingly similar to, the Registered Marks in connection with the advertising, offering for sale and sale of pressure gauge products in interstate commerce that do not originate from DWYER. SENSOCON and KOHL will continue such infringement unless enjoined by this Court.

73. SENSOCON and KOHL's activities constitute use of a false designation of origin in interstate commerce, which wrongfully and falsely designates, describes or represents the origin of SENSOCON's products, services, and information as originating from or being connected with DWYER, and are likely to cause confusion as to SENSOCON's affiliation, connection, or association with DWYER or as to the origin, sponsorship, or approval of SENSOCON's products by DWYER. Such activities exacerbate the confusion because of Kohl's prior employment by DWYER as District Sales Manager.

74. SENSOCON and KOHL's acts are a violation of 15 U.S.C. §1125 in that SENSOCON has used a false designation of origin, or a false description or representation, and has caused such wrongfully and falsely designated products to enter into commerce.

75. SENSOCON has infringed DWYER's Registered Marks as alleged herein with the intent to deceive the public into incorrectly believing that pressure gauge products sold by SENSOCON are made, approved, or sponsored by DWYER or affiliated with DWYER. SENSOCON and KOHL's acts as alleged herein were committed with the intent to deceive and defraud the public.

76. The aforesaid acts and conduct of SENSOCON and KOHL are in violation of 15 U.S.C. §1125 and are likely to cause confusion, mistake and deception as to the source, origin, or sponsorship of SENSOCON's pressure gauge products and equipment.

77. SENSOCON and KOHL have unfairly competed with DWYER by the acts complained of, have done so intentionally, and have caused, and unless enjoined by this Court, will continue to cause irreparable harm, damage and injury to DWYER, which has no adequate remedy at law.

COUNT V

COMMON LAW TRADEMARK INFRINGEMENT/FALSE DESIGNATION OF ORIGIN

78. DWYER repeats and realleges the allegations contained in paragraphs 1 through 77 of this Complaint.

79. DWYER uses the designation "Series 2000" in connection with its pressure gauges and has done so continuously for at least thirty years in interstate commerce. DWYER's mark "Series 2000" used in conjunction with the marketing, sale and distribution of pressure gauges has come to have a secondary meaning indicative of origin, relationship, sponsorship, and/or

association with DWYER. DWYER's use of the "Series 2000" designation in connection with its pressure gauges has entitled DWYER to trademark rights in the common law, in Indiana and nation-wide.

80. SENSOCON and KOHL have sold and marketed pressure gauges under the designations "Series S2000" and "Series P2000" in direct competition to the goods of DWYER marketed under the "Series 2000" mark. As a result, the purchasing public is likely to attribute to DWYER defendant SENSOCON's use of the SENSOCON designations that are confusingly similar to DWYER's "Series 2000" mark in connection with pressure gauges as a source, authorization and/or sponsorship of SENSOCON's goods and services, and therefore, to utilize SENSOCON's goods and services in that erroneous belief.

81. Upon information and belief, SENSOCON and KOHL have intentionally appropriated the DWYER mark by use of confusingly similar designations with the intent of unfairly competing and causing confusion, mistake, and deception as to the source, relationship, sponsorship, and/or association of SENSOCON's goods, and, as such, Defendants have committed trademark infringement under the common law.

82. The aforesaid acts and conduct of SENSOCON and KOHL are in violation of 15 U.S.C. §1125 and are likely to cause confusion, mistake and deception as to the source, origin, or sponsorship of SENSOCON's pressure gauge products and equipment.

83. The Defendants' use of DWYER's mark has caused, is causing and, unless enjoined, will continue to cause irreparable harm and damage to DWYER and its business, reputation and goodwill and has caused DWYER to suffer monetary damages. Unless restrained and enjoined, the Defendants' aforesaid acts will cause DWYER irreparable harm and damage for which there is no adequate remedy at law.

COUNT VI

COMMON LAW UNFAIR COMPETITION

84. DWYER repeats and realleges the allegations contained in paragraphs 1 through 83 of this Complaint.

85. SENSOCON has used the DWYER Registered Marks and DWYER's "Series 2000" mark to confuse actual and potential customers of DWYER as to the source of SENSOCON's products.

86. SENSOCON's deceptive business practices, infringement, and unfair competition have been committed with the intent to cause confusion, to cause mistake, and to deceive.

87. SENSOCON and KOHL have unfairly competed with DWYER by the acts complained of, have done so intentionally, and have caused and, unless enjoined by this Court, will continue to cause irreparable harm, damage and injury to DWYER, which has no adequate remedy at law.

COUNT VII

TRADE DRESS INFRINGEMENT

88. DWYER repeats and realleges the allegations contained in paragraphs 1 through 87 of this Complaint.

89. DWYER's pressure gauges have a distinctive trade dress which has acquired secondary meaning. DWYER's pressure gauge designs are unique, ornamental and the purchasing public identifies the product design with DWYER.

90. SENSOCON makes, uses, sells, offers to sell and/or imports into the United States, for subsequent sale or use, products that directly infringe DWYER's trade dress in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

91. DWYER's trade dress in its ornamental pressure gauge design has been exhaustively marketed, promoted and sold continuously for at least forty years such that it has acquired secondary meaning within the relevant market. SENSOCON has used DWYER's trade dress without authorization of DWYER and continues to trade off the goodwill created and maintained by DWYER in its trade dress.

92. SENSOCON's unauthorized manufacture, use, sale, offer to sell and/or importation into the United States for subsequent use or sale of the protected pressure gauge trade dress infringes upon the rights and goodwill established and maintained by DWYER. SENSOCON's activities cause confusion, mistake, or deception as to the source of SENSOCON's products and Defendants' association with DWYER. Accordingly, DWYER is entitled to injunctive relief pursuant to 15 U.S.C. §1116.

93. SENSOCON's use, through KOHL as its alter ego, of the DWYER trade dress has been willful and, as such, DWYER is entitled to damages pursuant to 15 U.S.C. §1117(a), including SENSOCON's profits, and/or DWYER's actual damages and/or the costs of this action. DWYER is further entitled to its attorneys' fees and costs because of Defendants' conduct.

COUNT VIII

COPYRIGHT INFRINGEMENT

94. DWYER repeats and realleges the allegations contained in paragraphs 1 through 93 of this Complaint.

95. For many years and long prior to the filing of this action, DWYER through its various publications, has made available to the general public throughout the United States, pressure gauge product guides, installation manuals and illustrations. These publications and the illustrations contained therein are copyrightable subject matter under 17 U.S.C. §101 *et seq.*

96. DWYER is the owner of numerous copyrights in publications and patterns. DWYER is the owner of U.S. Copyright Registration No. TX 6-884-813, registered December 18, 2008, for a work entitled Bulletin A-27 (Part No. 12-440212-00 Rev. 3). Attached to this Complaint as Exhibit H is a copy of the copyright registration. Attached to this Complaint as Exhibit I is a copy of the copyrighted work.

97. DWYER's copyright registration constitutes constructive notice to others of its ownership of the works referenced therein.

98. DWYER's copyright registration is *prima facie* evidence of the validity of the copyright, of DWYER's ownership of the works described in the copyrights, and of DWYER's exclusive rights to reproduce, distribute and display the works and produce derivative works based upon the works pursuant to 17 U.S.C. §106.

99. As a previous employee of DWYER, KOHL had access to DWYER's various copyrighted materials.

100. SENSOCON and KOHL have copied and distributed and are continuing to copy and to distribute DWYER's copyrighted works to the general public for SENSOCON and KOHL's own personal gain through SENSOCON's website, product manuals and product specification.

101. SENSOCON Bulletin 103-0 is attached to this Complaint as Exhibit B and is a sample of the infringing works by SENSOCON.

102. SENSOCON Bulletin 103-1 is attached to this Complaint as Exhibit C and is a sample of the infringing works by SENSOCON.

103. Defendants' copying and distribution was and is being done without authorization or permission from DWYER.

104. Defendants' copying and distribution of DWYER's copyrighted works constitutes infringement of Plaintiffs' exclusive rights under 17 U.S.C. § 106 and constitutes copyright infringement under 17 U.S.C. § 501. Defendants' distribution and sales of the copyrighted materials of DWYER also infringes DWYER's copyrights.

105. The actions of SENSOCON and KOHL are willful and intentional and were preceded by notice of DWYER's rights in its copyrighted works. DWYER has been and will continue to be damaged by the acts of SENSOCON and KOHL.

COUNT IX

COUNTERFEITING (15 U.S.C. §1114)

106. DWYER repeats and realleges the allegations contained in paragraphs 1 through 105 of this Complaint.

107. SENSOCON and KOHL have sold, offered for sale, imported and distributed counterfeit DWYER pressure gauges bearing marks that are counterfeits of the Registered Lens Mark of DWYER in the United States and in commerce in violation of 15 U.S.C. §1114.

108. Pressure gauges sold, offered for sale, imported and distributed by SENSOCON, as for example as shown in Ex. A, include a lens having a plurality of lines and a raised rectangular portion as shown in Registration No. 3,397,050 of DWYER (Ex. D).

109. The lenses of the pressure gauges sold by SENSOCON, as for example as shown in Ex. A, are slavish copies of the lens shown in Ex. D.

110. Pressure gauges sold, offered for sale, imported and distributed by SENSOCON include a nongenuine, spurious mark which is identical with or substantially indistinguishable from the Registered Lens Mark of DWYER and that is a counterfeit of the Registered Lens Mark of DWYER.

111. The Registered Lens Mark of DWYER is registered on the Principal Register for pressure gauges and differential pressure gauges under Registration No. 3,397,050. See Ex. D.

112. The Registered Lens Mark is currently in use in commerce by DWYER in connection with pressure gauges and differential pressure gauges.

113. Pressure gauges bearing the Registered Lens Mark are readily identified as DWYER products.

114. Even absent the SENSOCON counterfeit use of the Registered Lens Mark of DWYER, the pressure gauges imported, sold and distributed by SENSOCON are substantially identical in appearance to authentic DWYER pressure gauges.

115. The presence of the SENSOCON counterfeit of the Registered Lens Mark of DWYER on the pressure gauges sold and distributed by SENSOCON is likely to cause consumers to believe that such pressure gauges are authentic DWYER pressure gauges when they are, in fact, counterfeit pressure gauges.

116. SENSOCON's and KOHL's unauthorized sales, offers for sale, importation and distribution of counterfeit pressure gauges bearing a counterfeit of the Registered Lens Mark of DWYER is likely to cause confusion, mistake or deception as to the source, origin or sponsorship of SENSOCON's pressure gauges.

117. SENSOCON and KOHL knew that the pressure gauges it offered for sale, sold, imported and distributed, and which SENSOCON purchased for distribution, were manufactured by a manufacturer located in the People's Republic of China that is not an authorized manufacturer of DWYER pressure gauges and that is not authorized by DWYER to use the Registered Lens Mark of DWYER.

118. SENSOCON and KOHL knew or should have known that the mark on the pressure gauges it offered for sale, sold, imported and distributed, comprising a plurality of horizontal lines and a raised rectangular portion on the lens of the pressure gauges, was a counterfeit of the Registered Lens Mark of Dwyer.

119. SENSOCON and KOHL knew or should have known that the pressure gauges SENSOCON was selling, offering for sale, importing and distributing were counterfeit DWYER pressure gauges bearing a counterfeit of the Registered Lens Mark of DWYER.

120. SENSOCON and KOHL intentionally and willfully sold, offered for sale, imported and distributed pressure gauges bearing a counterfeit of the Registered Lens Mark in commerce knowing that the pressure gauges, and the mark comprising a plurality of horizontal lines and a raised rectangular portion on the lenses of the pressure gauges, were counterfeit.

121. SENSOCON and KOHL have intentionally and willfully used a counterfeit of the Registered Lens Mark of DWYER in commerce in connection with the offering for sale, sale, importation and distribution of pressure gauges.

122. DWYER has suffered irreparable harm to its reputation and goodwill based upon SENSOCON's sales, offering for sale, importing and distribution of counterfeit DWYER pressure gauges bearing a counterfeit of the Registered Lens Mark of Dwyer.

123. DWYER has lost profits which it would have earned through the sale of authentic DWYER pressure gauges but for SENSOCON's unlawful sale and distribution of counterfeit DWYER pressure gauges bearing counterfeit marks.

124. SENSOCON's and KOHL's sale and distribution of counterfeit pressure gauges bearing counterfeit trademarks, through KOHL as its alter ego, was willful.

125. DWYER is entitled to injunctive relief pursuant to 15 U.S.C. §1116.

126. DWYER is entitled to treble damages or treble profits, prejudgment interest, and its reasonable attorney's fees pursuant to 15 U.S.C. §1117(b).

127. DWYER is entitled to elect to recover an award of statutory damages, instead of actual damages and profits, pursuant to 15 U.S.C. §1117(c).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Dwyer Instruments, Inc., requests that this Court:

A. Preliminarily and permanently enjoin SENSOCON, its officers, agents, servants, employees and related companies and those in privity with SENSOCON or in active concert or participation with SENSOCON, specifically including KOHL, from:

(1) Using the Registered Marks and/or the common law marks of DWYER, or any confusingly similar or any colorable imitation marks, in connection with the manufacture, use, sale or offering for sale of pressure gauges, pressure gauge accessories, and any parts or equipment related thereto;

(2) Selling, offering for sale, importing or distributing counterfeit DWYER products;

(3) Doing any other act or thing calculated to, tending to or likely to induce the belief that SENSOCON's products originate with, or are approved by, or are in any way sponsored by or connected with DWYER's business or products; and

(4) Copying and distributing by any means, the copyrighted works of DWYER;

B. Require SENSOCON and KOHL to pay such damages as DWYER has sustained in consequence of SENSOCON and KOHL's trademark infringement, unfair competition, trade dress infringement, false designation of origin and counterfeiting;

C. Require SENSOCON and KOHL to disgorge all profits sustained in consequence of SENSOCON and KOHL's unlawful actions;

D. Award to DWYER an increase in the award of damages up to three times the amount found for deliberate and willful trademark infringement, trade dress infringement and unfair competition by SENSOCON and KOHL pursuant to 15 U.S.C. §1117(b);

E. Award to DWYER treble damages or treble profits for the sale and distribution of counterfeit products bearing counterfeit trademarks pursuant to 15 U.S.C. §1117(b);

F. Award to DWYER prejudgment interest pursuant to 15 U.S.C. §1117(b);

G. Award to DWYER its attorney's fees pursuant to 15 U.S.C. §1117(b);

H. Award to DWYER, at the election of DWYER, statutory damages pursuant to 15 U.S.C. §1117(c);

I. Adjudge and decree that DWYER has a protectable trade dress in its pressure gauge design that has acquired secondary meaning and distinctiveness;

J. Adjudge and decree that SENSOCON and KOHL have infringed and continue to infringe DWYER's trademarks and trade dress;

K. Award to the DWYER its damages in such sum as the Court shall find to be just as a result of SENSOCON and KOHL's acts complained of herein;

L. Require SENSOCON and KOHL to pay such damages for each act of infringement of DWYER's copyrighted works registered before the infringement began under 17 U.S.C. § 504(c)(1)-(2), and require SENSOCON and KOHL to pay DWYER's costs and reasonable attorney fees associated with each act of infringement of Plaintiffs' copyrighted works registered before the infringement began under 17 U.S.C. § 505;

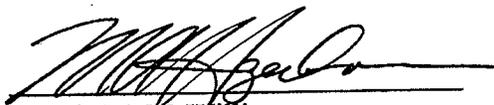
- M. Require SENSOCON and KOHL to pay the costs of this action together with DWYER's attorney's fees, costs and disbursements incurred herein;
- N. Award to DWYER pre-judgment and post-judgment interest; and
- O. Award to DWYER such other and further relief as this Court deems just and equitable.

JURY DEMAND

DWYER demands a trial by jury on all matters decidable by a jury.

Date: October 9, 2009

DWYER INSTRUMENTS, INC.



Dennis M. McWilliams

Jeffrey R. Gray

Mark A. Hagedorn

BARNES & THORNBURG LLP

One N. Wacker Drive, Suite 4400

Chicago, IL 60606

(312) 357-1313

David R. Pruitt

BARNES & THORNBURG LLP

600 1st Source Bank Center

100 North Michigan

South Bend, Indiana 46601

(574) 233-1171

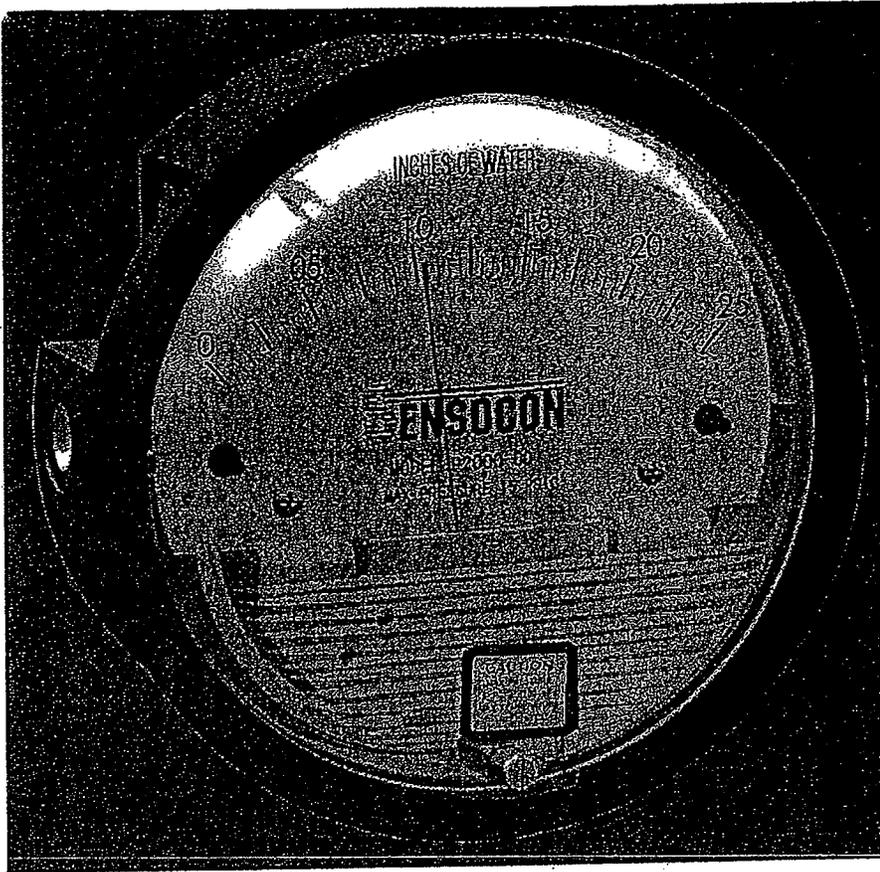
Attorneys for Plaintiff

Dwyer Instruments, Inc.

EXHIBIT A

Series P2000

Low-Cost Differential Pressure Gauge



The Series P2000 is a low cost, diaphragm operated, differential pressure gauge in an ABS housing. The P2000 can be used in applications for measuring positive, negative, or differential pressure with an accuracy of 2%. Standard applications include monitoring filter status, duct static pressure, room pressure, fan or blower pressure, paint booths, dust collectors, and cabinet purging along with many others.

Features

- Mounts in Industry Standard Holes
- Accuracy 2%
- Low-Cost ABS Housing

Applications

- Filter Status
- Duct Static Pressure
- Clean Room Pressure
- Building Pressure
- Fan and Blower Pressure
- Paint Booths
- Dust Collectors
- Glove Box Pressure
- Bubbler Systems
- Cabinet Purging

SPECIFICATIONS

Pressure Limits: -20" Hg to 15 PSI (-0.677 bar to 1.034 bar)

Media compatibility: Air and compatible gasses

Accuracy: +/- 2% full scale (+/- 3% on -0 and +/- 4% on -00) throughout range at 70°F (21°C)

Temperature Ranges: 20° to 140°F (-7° to 60°C)

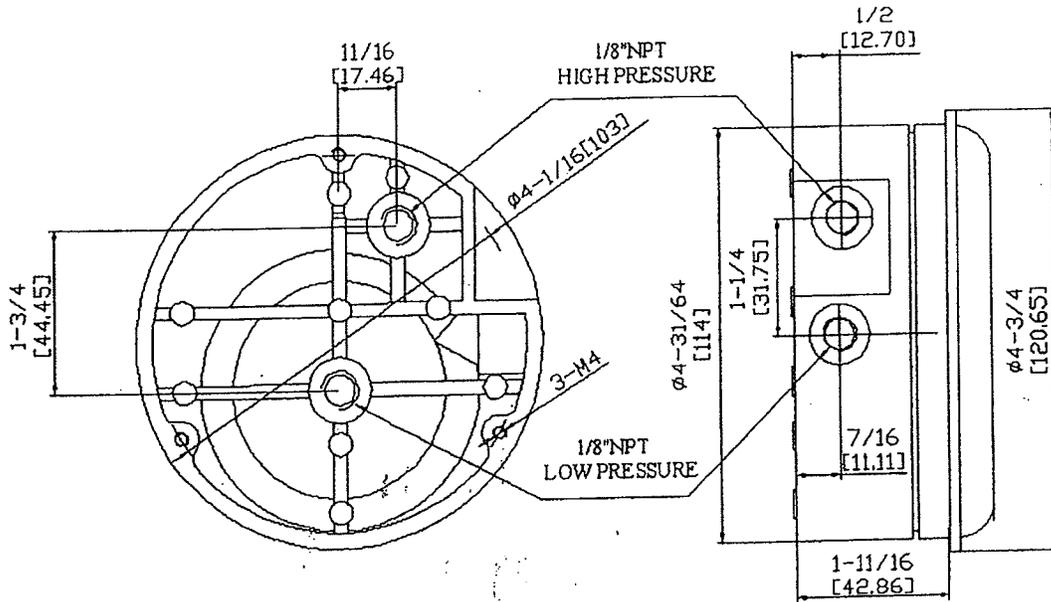
Housing Material: ABS case, bezel, and cover

Process Connection: 1/8" female NPT duplicate high and low pressure taps – one pair side and one pair back.

Weight: 10 oz (283 g)

Accessories: Two 1/8" NPT barbed fittings, two 1/8" NPT plugs, and three mounting tabs and screws.

DIMENSIONAL DRAWINGS



ORDERING INFORMATION

Model Number	Pressure Range	Model Number	Pressure Range
P2000-00	0-0.25"	P2025	0-25"
P2000-0	0-0.5"	P2030	0-30"
P2001	0-1"	P2050	0-50"
P2002	0-2"	P2100	0-100"
P2003	0-3"		
P2004	0-4"		
P2005	0-5"	P2300-0	0.25-0-20.25"
P2006	0-6"	P2301	20.5-0-30.5"
P2008	0-8"	P2302	0-10-1"
P2010	0-10"	P2303	2-0-22"
P2015	0-15"	P2310	5-0-5"
P2020	0-20"	P2320	10-0-10"

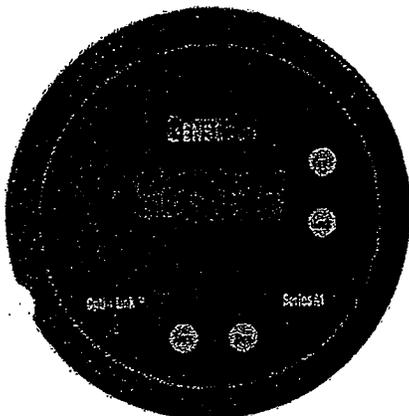
Sensocon, Inc.
 Phone: (863) 248-2800
 Fax: (863) 248-2798

www.sensocon.com

Options

-ASF Adjustable Signal Flag

A1xxx-xx



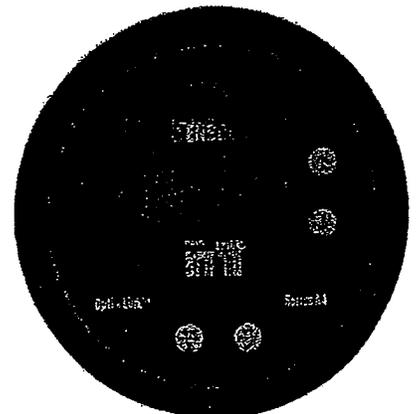
Sensocon, Inc.

OTHER PRODUCTS

The Series A Family of products offers an alternative to the S2000 when better accuracy, a better look or more features are desired. The Series A Family is also available with a 4-20 mA output and the A3 and A4 include 2 8A SPDT relays and an associated software package that allows full configuration of variables such as setpoints, dead band, engineering units and more. The A3 and A4 are also capable of reading out directly in velocity or flow.

www.sensocon.com

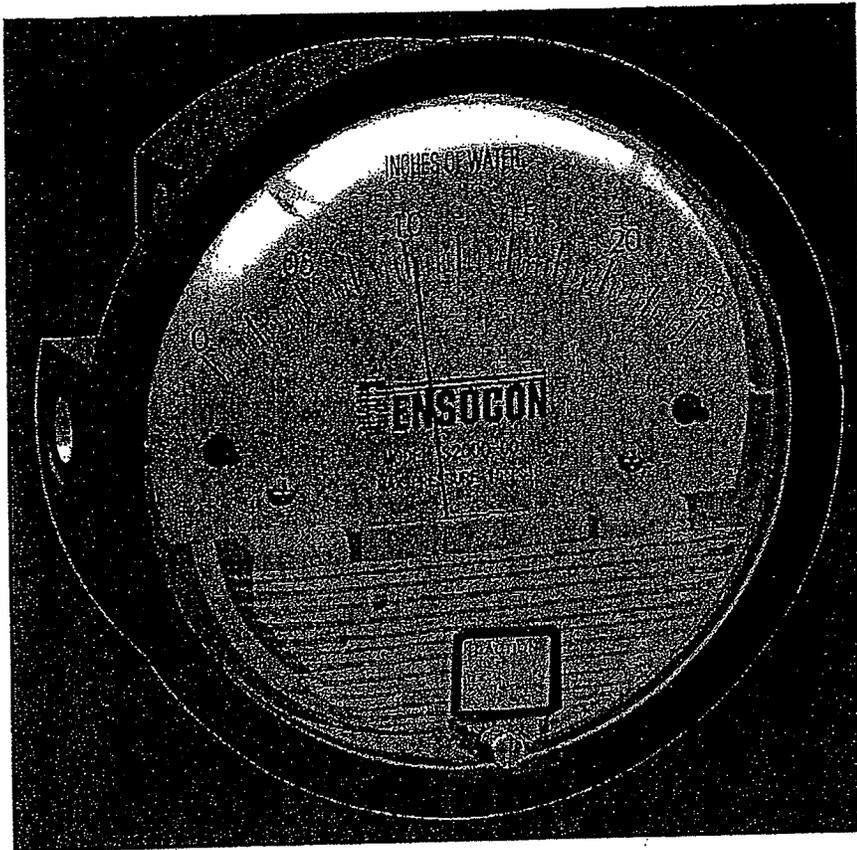
A4xxx-xx



Phone: (863) 248-2800

Series S2000

Low-Cost Differential Pressure Gauge



The Series S2000 is a low cost, diaphragm operated, differential pressure gauge. The S2000 can be used in applications for measuring positive, negative, or differential pressure with an accuracy of 2%. Standard applications include monitoring filter status, duct static pressure, room pressure, fan or blower pressure, paint booths, dust collectors, and cabinet purging along with many others.

Features

- Mounts in Industry Standard Holes
- Accuracy 2%
- Die Cast Aluminum Housing

Applications

- Filter Status
- Duct Static Pressure
- Clean Room Pressure
- Building Pressure
- Fan and Blower Pressure
- Paint Booths
- Dust Collectors
- Glove Box Pressure
- Bubbler Systems
- Cabinet Purging

SPECIFICATIONS

Pressure Limits: -20" Hg to 15 PSI (-0.677 bar to 1.034 bar);
MP option: 35 PSI (2.41 bar); HP option:
80 PSI (5.52 bar)

Media compatibility: Air and compatible gasses

Accuracy: +/- 2% full scale (+/- 3% on -0 and +/- 4% on -00)
throughout range at 70°F (21°C)

Temperature Ranges: 20° to 140°F (-7° to 60°C)

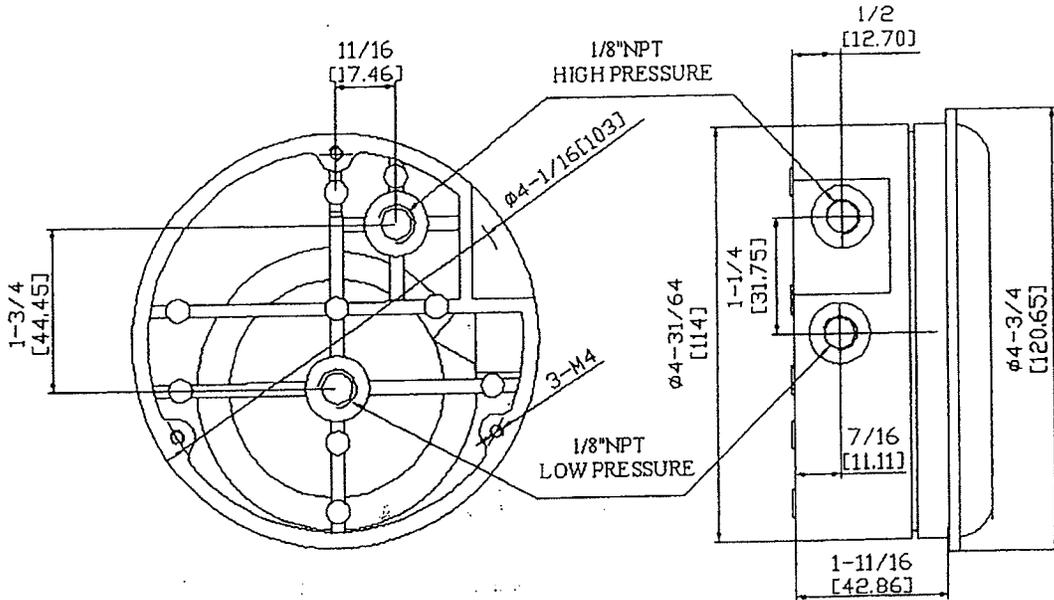
Housing Material: Die cast aluminum case and bezel, with acrylic cover

Process Connection: 1/8" female NPT duplicate high and low pressure taps – one pair side and one pair back.

Weight: 1 lb 2 oz (510 g), MP & HP 2 lb 2 oz (963 g)

Accessories: Two 1/8" NPT barbed fittings, two 1/8" NPT plugs, and three mounting tabs and screws.

DIMENSIONAL DRAWINGS



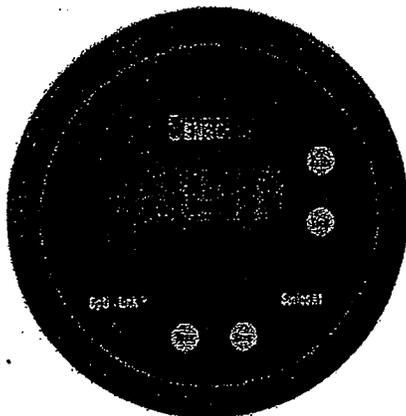
ORDERING INFORMATION

Model Number	Pressure Range	Model Number	Pressure Range
S2000-00	0 - 0.25"	S2025	0 - 25"
S2000-0	0 - 0.5"	S2030	0 - 30"
S2001	0 - 1"	S2050	0 - 50"
S2002	0 - 2"	S2100	0 - 100"
S2003	0 - 3"		
S2004	0 - 4"		
S2005	0 - 5"	S2300-10	0.25 - 0 - 0.25"
S2006	0 - 6"	S2301	0.5 - 0 - 0.5"
S2008	0 - 8"	S2302	1 - 0 - 1"
S2010	0 - 10"	S2304	2 - 0 - 2"
S2015	0 - 15"	S2310	5 - 0 - 5"
S2020	0 - 20"	S2320	10 - 0 - 10"

Sensocon, Inc.
 Phone: (863) 248-2800
 Fax: (863) 248-2798

www.sensocon.com

A1xxx-xx



OTHER PRODUCTS

The Series A Family of products offers an alternative to the S2000 when better accuracy, a better look or more features are desired. The Series A Family is also available with a 4-20 mA output and the A3 and A4 include 2 8A SPDT relays and an associated software package that allows full configuration of variables such as setpoints, dead band, engineering units and more. The A3 and A4 are also capable of reading out directly in velocity or flow.

A4xxx-xx

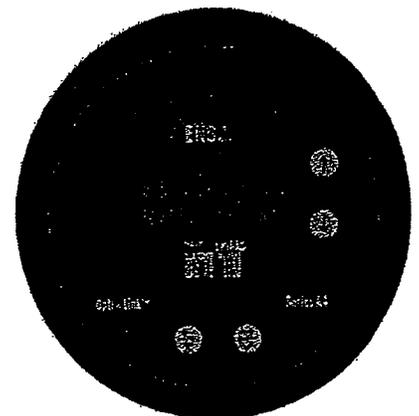


EXHIBIT B

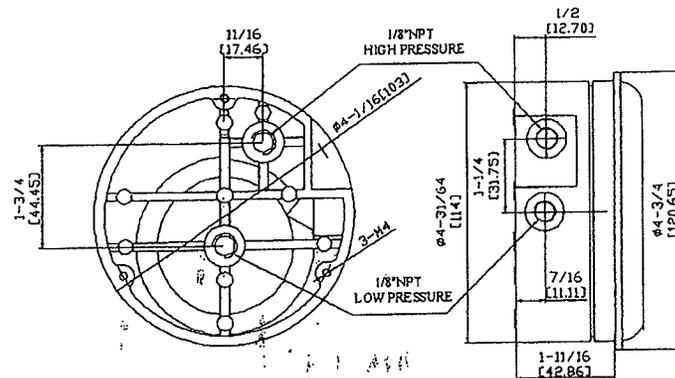
Bulletin 103-0

	Installation and Operation Manual	Series S2000
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Specifications



Pressure Limits: -20" Hg to 15 PSI (-0.677 bar to 1.034 bar); MP option: 35 PSI (2.41 bar); HP option: 80 PSI (5.52 bar)
Media Compatibility: Air and compatible non combustible gases
Accuracy: +/- 2% full scale (+/- 3% on -0 and +/- 4% on -00) throughout range at 70°F (21°C)
Temperature Range: 20 to 140°F (-6.7 to 60°C)
Process Connections: 1/8" female NPT duplicate high and low pressure taps – one pair side and one pair back.
Housing: Die cast aluminum case and bezel, with acrylic cover
Weight: 1 lb 2 oz (510 g), MP & HP 2 lb 2oz (963g)



Installation

- Upon receipt please inspect the instrument for the intended application pressure range.
- Install the instrument in a location free from excessive vibration and where the ambient temperature will not exceed 140°F (60°C)
- All standard S2000 gauges are calibrated in the vertical position. To maintain the specified accuracy, the gauge must be mounted in the vertical position.



Installation and Operation
Manual

Series S2000

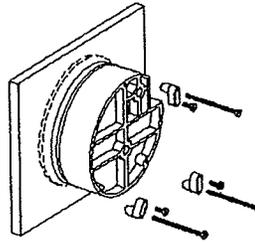
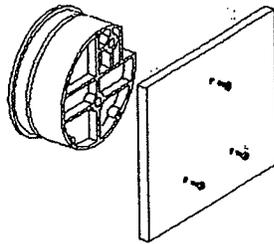
2. Mounting

Surface Mounting

Drill 3 holes spaced equally apart on a 4 1/16" diameter circle to match the holes on the back of the gauge. Secure the gauge with 3 mounting screws of suitable length provided.

Flush or Panel Mounting

Cut an opening in the panel 4 9/16" in diameter. Put the gauge in the panel cutout, attach adapters, and use the 6 mounting screws provided to fasten the gauge in place.



3. Pressure Connections

Positive Pressure Measurement: Connect the pressure tubing to either of the "high pressure" ports and plug the one not in use. One or both of the "low pressure ports" should be open to atmospheric pressure.

Negative Pressure Measurement: Connect the pressure tubing to either of the "low pressure" ports and plug the one not in use. One or both of the "high pressure" ports should be open to atmospheric pressure.

Differential Pressure Measurement: Connect the pressure tubing with the highest pressure to either of the "high pressure" ports and plug the one not in use. Connect the pressure tubing with the lowest pressure to either of the "low pressure" ports and plug the one not in use.

3. Zero Adjustment

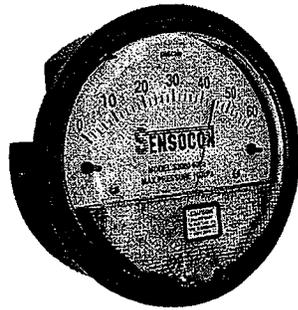
Zero adjustment can be made after the installation. Use the zero adjusting screw at the bottom of the cover to zero the pointer while both the high and low pressure ports are open to atmospheric pressure.

EXHIBIT C

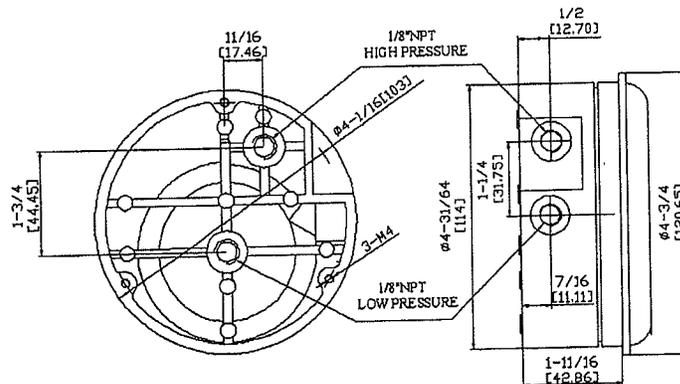
Bulletin 103-1

SENSOCON	Installation and Operation Manual	Series S2000
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1. Specifications



Pressure Limits: -20" Hg to 15 PSI (-0.677 bar to 1.034 bar)
Media Compatibility: Air and compatible non combustible gases
Accuracy: +/- 2% full scale (+/- 3% on -0 and +/- 4% on -00) throughout range at 70°F (21°C)
Temperature Range: 20 to 140°F (-6.7 to 60°C)
Process Connections: 1/8" female NPT. High and Low connections on back and side.
Housing: Die cast aluminum case and bezel, with acrylic cover
Weight: 1 lb 2 oz (510 g)



2. Installation

- Upon receipt please inspect the instrument for the intended application pressure range.
- Install the instrument in a location suitable for the specification of the gauge (listed above).
- All standard S2000 gauges are calibrated in the vertical position. To maintain the specified accuracy, the gauge must be mounted in the vertical position.



Installation and Operation
Manual

Series S2000

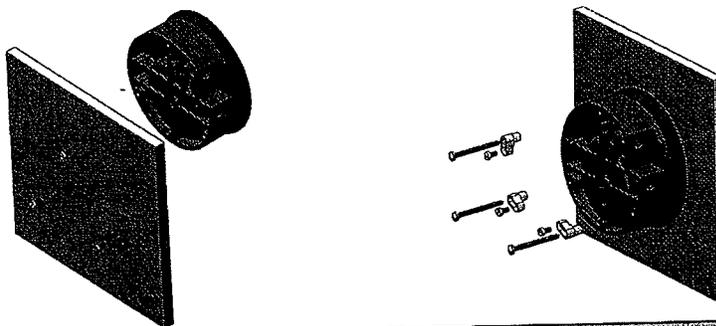
3. Mounting

Surface Mounting

Drill 3 holes spaced equally apart on a 4 1/16" diameter circle to match the holes on the back of the gauge. Secure the gauge with 3 mounting screws of suitable length provided.

Flush or Panel Mounting

Cut an opening in the panel 4 9/16" in diameter. Put the gauge in the panel cutout, attach adapters, and use the 6 mounting screws provided to fasten the gauge to the panel.



4. Pressure Connections

The S2000 has High and Low pressure connections on both the back and side of the gauge which can be used to measure Positive, Negative, or Differential Pressure. The indicating needle will move in the positive direction if the absolute pressure of the High connection is greater than the Low connection. The indicating needle will move in the negative direction if the absolute pressure of the Low connection is greater than the High connection.

If a pressure connection is being made to either the High or the Low pressure port, the unused port (side or back) for the same connection (High or Low) must be plugged with the provided pipe plug.

If a pressure connection is being used to reference atmospheric pressure, it is not necessary to plug the corresponding unused port.

5. Zero Adjustment

Zero adjustment can be made after the installation. Use the zero adjusting screw at the bottom of the cover to zero the pointer while both the high and low pressure ports are open to atmospheric pressure.

EXHIBIT D

Int. Cl.: 9

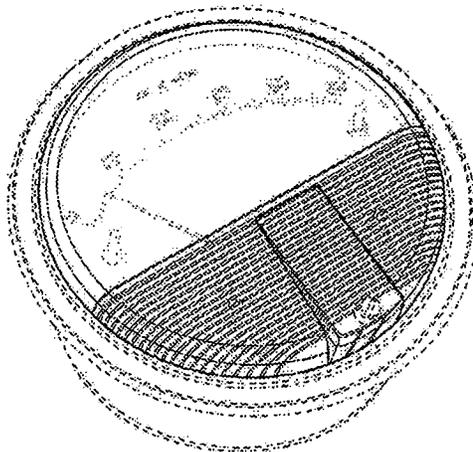
Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,397,050

United States Patent and Trademark Office

Registered Mar. 18, 2008

**TRADEMARK
PRINCIPAL REGISTER**



DWYER INSTRUMENTS, INC. (INDIANA CORPORATION)

102 INDIANA HIGHWAY 212
MICHIGAN CITY, IN 46361

FOR: PRESSURE GAGES AND DIFFERENTIAL
PRESSURE GAGES, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).

FIRST USE 0-0-1962; IN COMMERCE 0-0-1962.

THE MARK CONSISTS OF A PLURALITY OF
HORIZONTAL LINES AND A RAISED RECTAN-
GULAR PORTION ON THE LENS OF A PRESSURE
GAUGE.

SEC. 2(F).

SER. NO. 77-039,625, FILED 11-8-2006.

REBECCA SMITH, EXAMINING ATTORNEY

EXHIBIT E

United States Patent Office

694,229
Registered Mar. 8, 1960

PRINCIPAL REGISTER Trademark

Ser. No. 78,440, filed July 27, 1959

MAGNEHELIC

F. W. Dwyer Mfg. Co. (Illinois corporation)
P.O. Box 373
Michigan City, Ind.

For: PRESSURE GAGES, in CLASS 26.
First use 1949; in commerce 1949.

EXHIBIT F



Sensocoon, Inc.
P.O. Box 538 • Highland City, FL 33846
2125 S. Coorban Rd • Lakeland, FL 33801
Phone: (863) 243-2800 • Fax: (863) 243-2788
YUCS@SENSOCOON.COM

Why should we buy and sell Sensocoon Products?

• Series S2000

- The S2000 is a direct replacement to the Dwyer Series 2000 (Magnohelic)
- The Sensocoon Preferred Distributor Discount results in better prices at low quantities and has the benefit of "mix and match". An order for (1) S2000 will be \$2.50* net less than the Dwyer net price. An order for (25) S2000 with any range combination will be \$44.85 net compared to the probable net price from Dwyer of \$50.80* since mix and match is not allowed – this is a savings of \$5.95* per unit.
- Part numbers are easy to cross reference, the model 2003 from Dwyer is a model S2003 from Sensocoon.

• Series A1000

- The A1000 is a digital differential pressure gauge that is designed to fit into the same size hole as the S2000 for customers that are looking for a better product.
- The standard accuracy is +/- 1% with 0.5% and 0.25% available for customers that require better accuracy.
- Better performance at high and low temperatures. The compensated temperature range is -10°F to 140°F with a thermal effect of only +/- 0.012% FS/°F. Most mechanical gauges are only rated to 20°F and as the temperature changes from the calibrated temperature the accuracy is basically unknown.
- Customer looking for a better product will be happy to pay the slightly higher price (while you increase your margin).

• Series A1010

- The A1010 adds a 4-20 mA output to the A1000 and is perfect for the customer that is either looking to add a transmitter to an existing gauge application or for customers that currently use both a gauge and a transmitter and are looking to lower their maintenance costs.
- Compared to other indicating transmitters on the market and especially applications using both a transmitter and a gauge, the list price of \$135 is very competitive.

EXHIBIT G

United States Patent Office

946,287
Registered Oct. 31, 1972

PRINCIPAL REGISTER Trademark

Ser. No. 362,958, filed June 18, 1970

DWYER

Dwyer Instruments, Inc. (Indiana corporation)
P.O. Box 373
Michigan City, Ind. 46360

For: PRESSURE GAUGES, PRESSURE SWITCHES, COMBINATION PRESSURE SWITCHES AND GAUGES, AIR FILTER GAUGES, KITS FOR AIR FILTER GAUGE SERVICE CONSISTING OF AIR FILTER GAUGE PARTS AND ACCESSORIES, MANOMETERS, OVERPRESSURE SAFETY TRAPS, KITS FOR SERVICING GAS APPLIANCES CONSISTING OF A MANOMETER AND PARTS AND ACCESSORIES THEREFOR, HOOK GAUGES, PITOT TUBES, AIR VELOCITY CALCULATORS, NULL SWITCHES, FLOW METERS, FLOW METER DIRECT READING SCALES, FLOW METER CONVERSION CURVES, METERING VALVES, COMBINATION TEST SETS,

SMOKE GAUGES, THERMOMETERS, CARBON DIOXIDE INDICATORS, MAGNETIC GAUGE MOUNTS, AIR VELOCITY METERS, AIR METERS, AIR METER KITS, AIR VOLUME GAUGES, AIR VOLUME GAUGE KITS, WIND SPEED INDICATORS, WIND METERS, ADJUSTABLE SIGNAL FLAGS, GAS PRESSURE KITS, GAUGE CARRYING CASES, PSYCHROMETERS, SLIDE RULES, ANEMOMETERS, MONOMETER TYPE AIR FLOW BALANCING APPARATUS, COMBINATION SAFEGUARD EQUIPMENT CONSISTING OF DIFFERENTIAL PRESSURE SWITCHES AND PARTS AND ACCESSORIES THEREFOR, AND PARTS AND ACCESSORIES FOR GAUGES, PRESSURE SWITCHES, MANOMETERS, AND FLOW METERS, in CLASS 26 (INT. CL. 9).

First use at least as early as 1931; in commerce at least as early as 1931.

PHILIP YARNALL, Examiner

EXHIBIT H

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

TX 6-884-813

Effective date of registration:

December 18, 2008

Title _____

Title of Work: Bulletin A-27 (Part No. 12-440212-00 Rev. 3)

Completion/ Publication _____

Year of Completion: 2001

Date of 1st Publication: August 30, 2001

Nation of 1st Publication: United States

Author _____

Author: Dwyer Instruments, Inc.

Author Created: text, editing, photograph, illustrations and translation

Work made for hire: Yes

Citizen of: United States

Copyright claimant _____

Copyright Claimant: Dwyer Instruments, Inc.

102 Indiana Highway 212, Michigan City, IN, 46360-1956, United States

Limitation of copyright claim _____

Material excluded from this claim: text, artwork

New material included in claim: text, editing, photograph, illustrations and translation

Rights and Permissions _____

Organization Name: Dwyer Instruments, Inc.

Name: To whom it may concern

Address: 102 Indiana Highway 212

Michigan City, IN 46360-1956 United States

Certification _____

Name: David C. Brezina, Attorney for Applicant

Date: December 18, 2008

Correspondence: Yes

EXHIBIT I

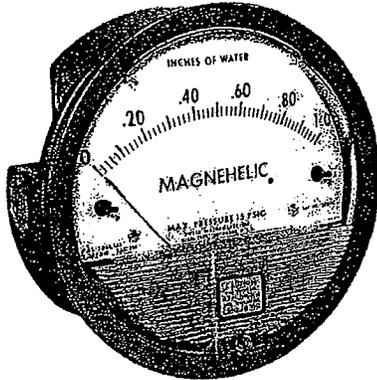
BULLETIN NO. A-27

Magnehelic® Differential Pressure Gage
OPERATING INSTRUCTIONS



SPECIFICATIONS

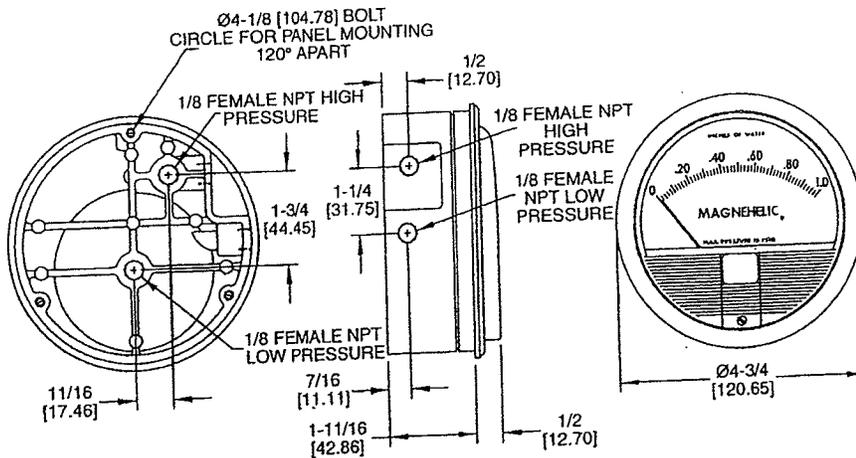
Dimensions: 4-3/4" dia. x 2-3/16" deep.
 Weight: 1 lb. 2 oz. (510 g)
 Finished: Baked dark gray enamel.
 Connections: 1/8" female NPT high and low pressure taps, duplicated, one pair side and one pair back.
 Accuracy: Plus or minus 2% of full scale, at 70°F (21.1°C). (Model 2000-0, 3%; 2000-00, 4%).
 Pressure Rating: 15 PSI (1.03 bar)
 Ambient Temperature Range: 20° to 140°F (-7 to 60°C).
 Standard gage accessories include two 1/8" female NPT plugs for duplicate pressure taps, two 1/8" female NPT pipe thread to rubber tubing adapters, and three flush mounting adapters with screws.



Caution: For use with air or compatible gases only.

For repeated over-ranging or high cycle rates, contact factory.

Not for use with Hydrogen gas. Dangerous reactions will occur.

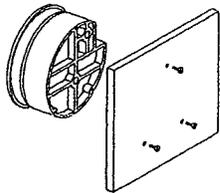


MAGNEHELIC® INSTALLATION

1. Select a location free from excessive vibration and where the ambient temperature will not exceed 140°F (60°C). Also, avoid direct sunlight which accelerates discoloration of the clear plastic cover. Sensing lines may be run any necessary distance. Long tubing lengths will not affect accuracy but will increase response time slightly. Do not restrict lines. If pulsating pressures or vibration cause excessive pointer oscillation, consult the factory for ways to provide additional damping.

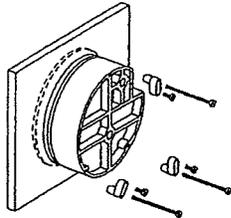
2. All standard Magnehelic gages are calibrated with the diaphragm vertical and should be used in that position for maximum accuracy. If gages are to be used in other than vertical position, this should be specified on the order. Many higher range gages will perform within tolerance in other positions with only rezeroing. Low range Model 2000-00 and metric equivalents must be used in the vertical position only.

3. Surface Mounting



Locate mounting holes, 120° apart on a 4-1/8" dia. circle. Use No. 6-32 machine screws of appropriate length.

4. Flush Mounting



Provide a 4-9/16" dia. opening in panel. Insert gage and secure in place with No. 6-32 machine screws of appropriate length, with adapters, firmly secured in place. To mount gage on 1-1/4"-2" pipe, order optional A-610 pipe mounting kit.

5. To zero the gage after installation

Set the indicating pointer exactly on the zero mark, using the external zero adjust screw on the cover at the bottom. Note that the zero check or adjustment can only be made with the high and low pressure taps both open to atmosphere.

Operation

Positive Pressure: Connect tubing from source of pressure to either of the two high pressure ports. Plug the port not used. Vent one or both low pressure ports to atmosphere.

Negative Pressure: Connect tubing from source of vacuum or negative pressure to either of the two low pressure ports. Plug the port not used. Vent one or both high pressure ports to atmosphere.

Differential Pressure: Connect tubing from the greater of two pressure sources to either high pressure port and the lower to either low pressure port. Plug both unused ports.

When one side of the gage is vented in dirty, dusty atmosphere, we suggest an A-331 Filter Vent Plug be installed in the open port to keep inside of gage clean.

A. For portable use of temporary installation use 1/8" pipe thread to rubber tubing adapter and connect to source of pressure with rubber or Tygon tubing.

B. For permanent installation, 1/4" O.D., or larger, copper or aluminum tubing is recommended. See accessory bulletin S-101 for fittings.

Ordering Instructions:

When corresponding with the factory regarding Magnehelic® gage problems, be sure to include model number, pressure range, and any special options. Field repair is not recommended; contact the factory for repair service.

MAINTENANCE

Maintenance: No lubrication or periodic servicing is required. Keep case exterior and cover clean. Occasionally disconnect pressure lines to vent both sides of gage to atmosphere and re-zero. Optional vent valves, (bulletin S-101), should be used in permanent installations.

Calibration Check: Select a second gage or manometer of known accuracy and in an appropriate range. Using short lengths of rubber or vinyl tubing, connect the high pressure side of the Magnehelic gage and the test gage to two legs of a tee. Very slowly apply pressure through the third leg. Allow a few seconds for pressure to equalize, fluid to drain, etc., and compare readings. If accuracy unacceptable, gage may be returned to factory for recalibration. To calibrate in the field, use the following procedure.

Calibration:

1. With gage case, held firmly, loosen bezel, by turning counterclockwise. To avoid damage, a canvas strap wrench or similar tool should be used.
 2. Lift out plastic cover and "O" ring.
 3. Remove scale screws and scale assembly. Be careful not to damage pointer.
 4. The calibration is changed by moving the clamp. Loosen the clamp screw(s) and move slightly toward the helix if gage is reading high, and away if reading low. Tighten clamp screw and install scale assembly.
 5. Place cover and O-ring in position. Make sure the hex shaft on inside of cover is properly engaged in zero adjust screw.
 6. Secure cover in place by screwing bezel down snug. Note that the area under the cover is pressurized in operation and therefore gage will leak if not properly tightened.
 7. Zero gage and compare to test instrument.
- Make further adjustments as necessary.

Caution: If bezel binds when installing, lubricate threads sparingly with light oil or molybdenum disulphide compound.

Warning: Attempted field repair may void your warranty. Recalibration or repair by the user is not recommended. For best results, return gage to the factory. Ship prepaid to:

Dwyer Instruments, Inc.
Attn: Repair Dept.
102 Indiana Highway 212
Michigan City, IN 46360

Trouble Shooting Tips:

•Gage won't indicate or is sluggish.

1. Duplicate pressure port not plugged.
2. Diaphragm ruptured due to overpressure.
3. Fittings or sensing lines blocked, pinched, or leaking.
4. Cover loose or "O"ring damaged, missing.
5. Pressure sensor, (static tips, Pitot tube, etc.) improperly located.
6. Ambient temperature too low. For operation below 20°F (-7°C), order gage with low temperature, (LT) option.

•Pointer stuck-gage can't be zeroed.

1. Scale touching pointer.
2. Spring/magnet assembly shifted and touching helix.
3. Metallic particles clinging to magnet and interfering with helix movement.
4. Cover zero adjust shaft broken or not properly engaged in adjusting screw.

We generally recommend that gages needing repair be returned to the factory. Parts used in various sub-assemblies vary from one range of gage to another, and use of incorrect components may cause improper operation. After receipt and inspection, we will be happy to quote repair costs before proceeding.

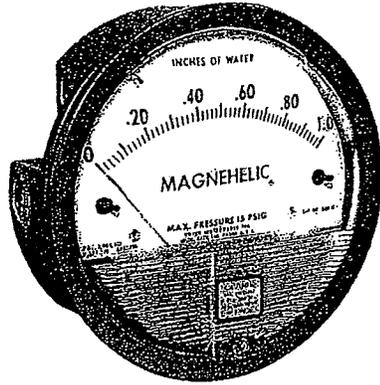
Consult factory for assistance on unusual applications or conditions.

Use with air or compatible gases only.

BULLETIN NO. A-27

Manometro Diferencial Magnehelic®

INSTRUCCIONES Y LISTA DE PARTES



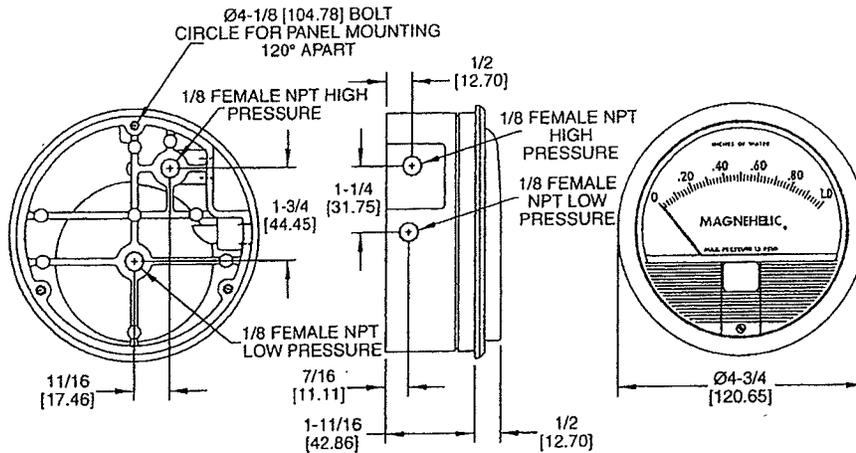
ESPECIFICACIONES

- Dimensiones: diám. 120,65 mm x 55,6 prof.
- Peso: 510 g.
- Terminación: esmalte horneado gris oscuro.
- Conexiones: 1/8" hembra NPT para alta y baja presión, duplicadas (atrás, a los lados).
- Exactitud: ± 2% de fondo de escala a 21 °C
Mod. 2000-0 3%; Mod. 2000-00 4%
- Presión máxima: 15 PSI (0,35 bar)
- Temperatura: -7 a +60°C
- Accesorios: Tapones 1/8" hembra NPT para las conexiones duplicadas, dos adaptadores de rosca 1/8" hembra NPT a tubo de goma; y tres adaptadores para montaje al ras y tornillos.

Atención: solo para uso con aire o gases compatibles.

Para indicaciones de sobrerango repetidas u otras contacte a Fábrica.

Precaución para uso con hidrogeno: el imán del instrumento puede en presencia de hidrógeno liberar gases tóxicos y explosivos. Para este caso, consulte a fábrica.

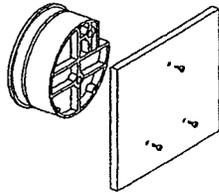


INSTALACIÓN

1. Seleccione un lugar libre de exceso de vibraciones, y donde la temperatura ambiente no supere los 60°C. Evite luz solar directa, para evitar decoloración de la cubierta plástica. Las conexiones de proceso pueden tener cualquier longitud sin afectar la exactitud, pero pueden extender el tiempo de respuesta del instrumento. Si hay pulsación de presión o vibración, consulte a fábrica sobre medios de amortiguación.

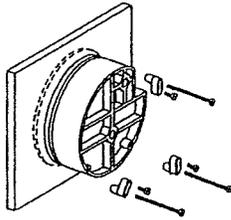
2. Los MAGNEHELIC han sido calibrados con el diafragma vertical, y deben ser usados en esas condiciones. Para otras posiciones, se debe especificar en la orden de provisión. Los de rango elevado pueden ser usados en diversas posiciones, pero se debe reajustar el cero. Los modelos de la serie 2000-00 y equivalentes métricos deben ser usados solo verticalmente.

3. Montaje en Superficie



Perfore tres orificios separados 120° sobre una circunferencia de 105 mm de diám. y sostenga el instrumento con tres tornillos 6-32 de long. apropiada.

4. Montaje al Ras



Perfore un círculo de 115 mm de diám. en el panel, y sostenga el instrumento mediante los. Para montaje sobre cañó, ordene el adaptador A-610 apto para caños de 32 a 50 mm de diám.

5. Puesta a Cero Después de Instalar

Deje las conexiones de presión abiertas a atmósfera y ajuste a cero desde tornillo del panel frontal.

Operacion

Presión Positiva: Conecte la tubería desde la fuente de presión a cualquiera de las dos conexiones de alta presión (HIGH), bloqueando la no usada; Las conexiones de baja (LOW) presión pueden dejarse uno o los dos abiertos a la atmósfera.

Presión Negativa: Repita el procedimiento anterior, conectado en este caso las conexiones de baja presión (LOW). Deje las otras conexiones abiertas.

Presión diferencial: Conecte el tubo correspondiente a la presión más positiva al cualquiera de los conectores de alta presión (HIGH) bloqueando el no usado, y la más baja presión o presión negativa (vacío) al conector de baja presión (LOW). Puede usarse cualquier conector de cada par, dejando siempre uno bloqueado. Si se deja una conexión abierta a la atmósfera, se recomienda el uso de un filtro tipo A-331 en el lugar correspondiente para mantener limpio el interior del instrumento. Para uso portable, o instalación temporaria, uso adaptadores para rosca de tubo de 1/8" a tubo flexible, y conecte a proceso mediante una tubería de goma o Tygon, o equivalente. Para instalación permanente, se recomienda el uso de tubo de cobre o aluminio de por lo menos 1/4" de diám. exterior. Vea el boletín S-101 para accesorios.

MANTENIMIENTO

No se requiere mantenimiento específico alguno, ni lubricación. Periódicamente, desconecte el instrumento, ventee la presión acumulada, y reajuste el cero. Para instalaciones permanentes, se debe usar un juego de válvulas de montaje permanente para el venteo (vea Bol. S-101).

Verificación de Calibración: Desconecte el instrumento de proceso, ventee a atmósfera y deje escurrir condensados. Utilice un manómetro de calidad y exactitud conocidas, y de rango adecuado. Conecte ambos instrumentos en paralelo mediante una T de conexión, y aplique presión lentamente para igualar presiones y eliminar condensados si los hubiera. Compare las lecturas. En caso de discrepancias, el instrumento deberá ser recalibrado en fábrica. Para calibración en campo, siga el siguiente procedimiento.

1. Sujete firmemente la caja del instrumento, y afloje mediante una llave adecuada el anillo de retención de la máscara del mismo. Preste atención de no dañar las partes del mismo.
2. Remueva el frente de plástico y el "O" ring de sello.
3. Desmante los tornillos de la escala, y la escala con cuidado de no dañar la aguja indicadora.
4. La calibración se efectúa moviendo la traba luego de aflojarla. El movimiento de la misma hacia el helicoido corrige la indicación en exceso y viceversa. Reapriete a traba e instale nuevamente la escala.
5. Rearme el instrumento a su condición original. Preste atención a que el eje hexagonal interno (de ajuste a cero) esté posicionado correctamente frente al tornillo de puesta a cero.
6. Coloque la cubierta en posición y apriete hasta fijar. La cubierta sella la cámara de presión del instrumento, por lo que en funcionamiento puede haber pérdidas de no ser adecuadamente colocada.
7. Ajuste a cero y verifique la calibración. Repita el procedimiento según sea necesario.

Atención: Si el anillo de retención se traba al recolocar, lubrique ligeramente con aceite liviano o compuesto de disulfuro de molibdeno.

Cuidado! : La recalibración en campo puede invalidar la garantía. No se recomienda la recalibración por parte del usuario. En caso necesario envíe el instrumento con transporte pago a:

Dwyer Instruments, Inc.
Attn: Repair Department
102 Indiana Highway 212
Michigan City, IN 46360

Localización De Fallas

• *El instrumento no indica, o es lento en reacción.*

1. Conexión duplicada abierta.
2. Diafragma roto por sobrepresión.
3. Tubería de conexión perforada, con pérdidas o pinchazos.
4. Anillo de retención flojo, u "O" ring dañado.
5. Conexión a proceso indebida o inadecuada.
6. Temperatura muy baja. Para este caso ordene tipos LT (baja temperatura).

• *Aguja indicadora fija; Puesta a cero imposible.*

1. La escala esta en contacto con la aguja.
2. El conjunto imán/resorte están en contacto.
3. Hay partículas metálicas adheridas al imán y bloquean la helicoido.
4. Eje de ajuste a cero de la cubierta roto, o montado en forma incorrecta.

Se recomienda en general abstenerse de efectuar la recalibración o reparación en campo, y en cambio enviar el instrumento a fábrica para su reparación. Las partes usadas en cada subconjunto varían de acuerdo al modelo y rango, por lo que es factible el uso incorrecto de partes que darán lugar a resultados erróneos, o fallas inesperadas.

Los instrumentos enviados a fábrica son reparados a nuevo, y nos complacerá enviar un presupuesto de la reparación antes de la misma, previa la inspección del material remitido.

Consulte a fábrica para aplicaciones inusuales o especiales. Utilice estos manómetros solamente con aire o gases compatibles.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

DWYER INSTRUMENTS, INC.,)
Plaintiff,)
v.) CASE NO. 3:09-cv-00010-TLS-CAN
)
SENSOCON, INC. and)
TONY E. KOHL,)
Defendants.)

**DEFENDANTS' REVISED ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants, Sensocon, Inc., and Tony E. Kohl, by counsel, state as follows for their Answer and Affirmative Defenses to Plaintiff's First Amended Complaint:

NATURE OF ACTION

1. This is an action for, inter alia, trademark infringement, trade dress infringement, unfair competition, false designation of origin, copyright infringement and counterfeiting to recover profits, compensatory damages, treble damages, prejudgment interest, injunctive relief, and costs, including reasonable attorneys' fees, from Defendants for the injuries Dwyer has suffered and will continue to suffer as a consequence of Defendants' actions.

ANSWER: Defendants deny the allegations contained in paragraph 1 of Plaintiff's First Amended Complaint.

PARTIES

2. Dwyer Instruments, Inc. (hereafter "DWYER") is an Indiana corporation having its principal place of business at 102 Indiana Highway 212, Michigan City, Indiana 46360.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 2 of Plaintiff's First Amended Complaint.

3. Sensocon, Inc. (hereafter "SENSOCON"), on information and belief, is a Florida corporation.

ANSWER: Defendants admit the allegations contained in paragraph 3 of Plaintiff's First Amended Complaint.

4. SENSOCON, on information and belief, has an office and principal place of business at 2107 Edgewood Dr. E, Suite C, Lakeland, Florida 33803.

ANSWER: Defendants admit the allegations contained in paragraph 4 of Plaintiff's First Amended Complaint.

5. Tony E. Kohl (hereafter "KOHL"), on information and belief, is an individual residing in Florida at 5466 Pebble Beach Drive, Lakeland, Florida 33812.

ANSWER: Defendants admit the allegations contained in paragraph 5 of Plaintiff's First Amended Complaint.

6. On information and belief, KOHL is the owner and operator of SENSOCON.

ANSWER: Defendants admit the allegations contained in paragraph 6 of Plaintiff's First Amended Complaint.

7. On information and belief, KOHL and SENSOCON have a unity of interest and KOHL has complete effective ownership and control of SENSOCON. On information and belief, KOHL controls SENSOCON and its actions are taken for KOHL's personal benefit.

ANSWER: Defendants deny the allegations contained in paragraph 7 of Plaintiff's First Amended Complaint.

8. SENSOCON is the alter ego of KOHL.

ANSWER: Defendants deny the allegations contained in paragraph 8 of Plaintiff's First Amended Complaint.

JURISDICTION AND VENUE

9. This action arises and is brought under the trademark laws of the United States, 15 U.S.C. §1 et seq. This action also arises under the copyright laws of the United States, 17 U.S.C. § 501 et seq. This action also arises and is brought under Indiana law.

ANSWER: Defendants admit the allegations contained in paragraph 9 of Plaintiff's First Amended Complaint.

10. This Court has jurisdiction by virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§1331, 1338 and 1367.

ANSWER: Defendants admit the allegations contained in paragraph 10 of Plaintiff's First Amended Complaint.

11. The Court also has supplemental jurisdiction over the state and common law claims pursuant to 28 U.S.C. §1367 in that the state and common law claims form part of the same controversy as the claims arising under the trademark and copyright laws of the United States.

ANSWER: Defendants admit the allegations contained in paragraph 11 of Plaintiff's First Amended Complaint.

12. The Court also has original jurisdiction over the common law unfair competition claims pursuant to 28 U.S.C. §1338(b) in that the claims are joined with substantial and related claims arising under the trademark laws of the United States.

ANSWER: Defendants admit the allegations contained in paragraph 12 of Plaintiff's First Amended Complaint.

13. Venue is appropriate in this district in accordance with 28 U.S.C. §1391 and § 1400(a).

ANSWER: Defendants deny the allegations contained in paragraph 13 of Plaintiff's First Amended Complaint.

14. On information and belief, SENSOCON, through the direction of KOHL, is and has been conducting continuous and systematic business by selling infringing pressure gauges and related materials and equipment within the State of Indiana and within the Northern District of Indiana.

ANSWER: Defendants deny the allegations contained in paragraph 14 of Plaintiff's First Amended Complaint.

15. SENSOCON, by direction of KOHL, is transacting business and has committed illegal acts hereinafter complained of in the Northern District of Indiana.

ANSWER: Defendants deny the allegations contained in paragraph 15 of Plaintiff's First Amended Complaint.

BACKGROUND STATEMENT

16. DWYER has for many years manufactured and sold a variety of industrial pressure gauges, and pressure gauge accessories and related equipment. DWYER's pressure gauges, pressure gauge accessories, and related equipment are distributed and sold within this District and throughout the United States and the world under various trademarks of DWYER.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 16 of Plaintiff's First Amended Complaint.

17. DWYER and SENSOCON are direct competitors for the same customers in connection with pressure gauges, pressure gauge accessories, and related equipment.

ANSWER: Defendants admit the allegations contained in paragraph 17 of Plaintiff's First Amended Complaint.

18. KOHL was previously employed by DWYER as a District Sales Manager with responsibilities for making sales of DWYER's pressure gauges, pressure gauge accessories, and related equipment. KOHL left DWYER on or about July 20, 2005. KOHL incorporated SENSOCON. KOHL is now the president and owner of SENSOCON.

ANSWER: Defendants admit the allegations contained in paragraph 18 of Plaintiff's First Amended Complaint.

19. As District Sales Manager of DWYER, KOHL represented DWYER in the sale of DWYER products, including pressure gauges, pressure gauge accessories, and related equipment, and KOHL was therefore intimately familiar with the trademarks DWYER used in connection with DWYER products.

ANSWER: Defendants deny the allegations contained in paragraph 19 of Plaintiff's First Amended Complaint.

20. After KOHL incorporated SENSOCON and KOHL had left DWYER, DWYER learned of SENSOCON's sale of competing pressure gauges, pressure gauge accessories, and related equipment.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 20 of Plaintiff's First Amended Complaint.

21. KOHL and SENSOCON have been and are currently distributing and selling products, including pressure gauges, pressure gauge accessories, and related equipment, that directly compete with the pressure gauge products of DWYER.

ANSWER: Defendants admit the allegations contained in paragraph 21 of Plaintiff's First Amended Complaint.

22. SENSOCON sells its pressure gauge products in the same channels of trade that DWYER sells its pressure gauge products in direct competition with DWYER.

ANSWER: Defendants admit the allegations contained in paragraph 22 of Plaintiff's First Amended Complaint.

23. In addition to KOHL's knowledge of the valuable DWYER marks, KOHL and SENSOCON have been on notice of DWYER's rights and their infringement upon DWYER's rights since at least January 2007.

ANSWER: Defendants deny the allegations contained in paragraph 23 of Plaintiff's First Amended Complaint.

24. SENSOCON and KOHL are using trademarks in connection with pressure gauge products sold by SENSOCON that include a lettering scheme identical to, or that is as close as possible and confusingly similar to, the trademarks used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. A.

ANSWER: Defendants deny the allegations contained in paragraph 24 of Plaintiff's First Amended Complaint.

25. SENSOCON and KOHL are using trademarks in connection with pressure gauge products sold by SENSOCON that include a lens identical with, substantially indistinguishable from and confusingly similar to, the trademarks used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. A and C.

ANSWER: Defendants deny the allegations contained in paragraph 25 of Plaintiff's First Amended Complaint.

26. The lens of the pressure gauges sold by SENSOCON, as illustrated in Ex. A, are slavish copies of the lens shown in DWYER's U.S. Trademark Registration No. 3,397,050. See Ex. D.

ANSWER: Defendants deny the allegations contained in paragraph 26 of Plaintiff's First Amended Complaint.

27. SENSOCON and KOHL are using trademarks in connection with SENSOCON's sale of pressure gauge products that use names identical to registered trademarks of DWYER for pressure gauge products.

ANSWER: Defendants deny the allegations contained in paragraph 27 of Plaintiff's First Amended Complaint.

28. SENSOCON and KOHL are using trade dress in connection with pressure gauge products sold by SENSOCON that include a trade dress scheme identical to, or that is as close as possible and confusingly similar to, the trade dress used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. A and C.

ANSWER: Defendants deny the allegations contained in paragraph 28 of Plaintiff's First Amended Complaint.

29. SENSOCON and KOHL are using printed materials in connection with pressure gauge products sold by SENSOCON that include copyrighted matter of DWYER used by DWYER in connection with the sale of DWYER pressure gauges. See Ex. B and C.

ANSWER: Defendants deny the allegations contained in paragraph 29 of Plaintiff's First Amended Complaint.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §1114)
(U.S. TRADEMARK REGISTRATION NO. 3,397,050)

30. DWYER repeats and realleges the allegations contained in paragraphs 1 through 29 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 29 as their answer to paragraph 30 of Plaintiff's First Amended Complaint.

31. DWYER is the owner of United States Trademark Registration No. 3,397,050, issued by the United States Patent and Trademark Office on the Principal Register on March 18, 2008, for "A PLURALITY OF HORIZONTAL LINES AND A RAISED RECTANGULAR PORTION ON THE LENS OF A PRESSURE GAUGE" (the "Registered Lens Mark"). A copy of this registration is attached hereto as Exhibit D.

ANSWER: Defendants admit that Exhibit D is attached to the First Amended Complaint, the terms of which speak for themselves. Defendants deny the remaining allegations contained in paragraph 31 of Plaintiff's First Amended Complaint.

32. Trademark Registration No. 3,397,050 remains in full force and effect.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 32 of Plaintiff's First Amended Complaint.

33. DWYER has developed and is using the Registered Lens Mark to designate the source of DWYER's pressure gauges, and other goods and services related thereto. DWYER's use of the Registered Lens Mark has been substantial and continuous for many years.

ANSWER: Defendants deny the allegations contained in paragraph 33 of Plaintiff's First Amended Complaint.

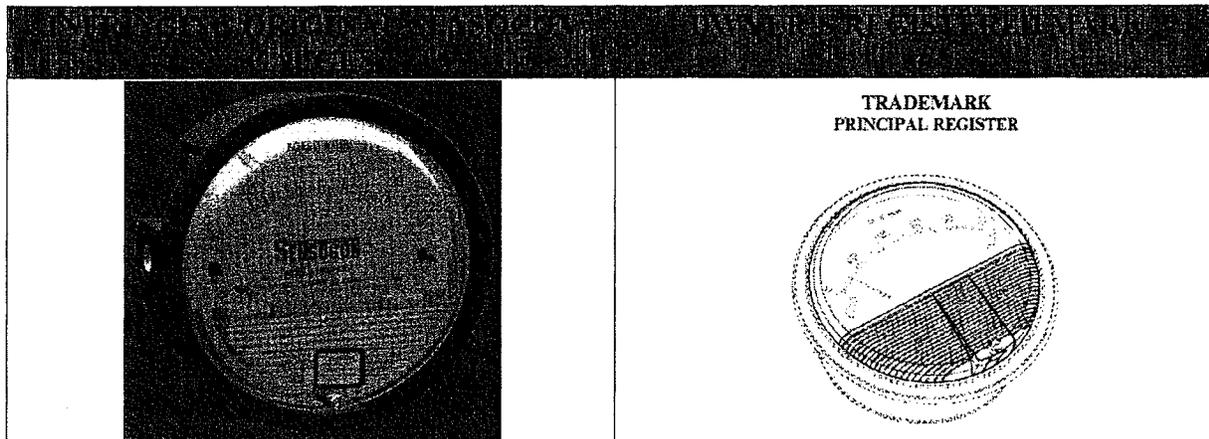
34. As a result of substantial sales and advertising by DWYER of the DWYER pressure gauges, the Registered Lens Mark has become favorably known to the public and the trade, and the trademark identifies and distinguishes the source of origin of the DWYER gauges. DWYER's Registered Mark represents a valuable and irreplaceable asset of DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 34 of Plaintiff's First Amended Complaint.

35. SENSOCON and KOHL use a pressure gauge lens identical with, substantially indistinguishable from and confusingly similar to the Registered Lens Mark in connection with SENSOCON pressure gauges. SENSOCON uses a plurality of horizontal lines and a raised rectangular portion on the lens of a pressure gauge in connection with the sale of SENSOCON gauges as shown in at least SENSOCON's data sheets for its "Series S2000" and "Series P2000" pressure gauges, attached hereto as Exhibit A, that do not originate from DWYER (hereinafter the "Original" SENSOCON pressure gauges).

ANSWER: Defendants deny the allegations contained in paragraph 35 of Plaintiff's First Amended Complaint.

36. The original SENSOCON "Series S2000" and "Series P2000" pressure gauges include lenses incorporating the Registered Lens Mark of DWYER as generally shown by the comparison below:



ANSWER: Defendants deny the allegations contained in paragraph 36 of Plaintiff's First Amended Complaint.

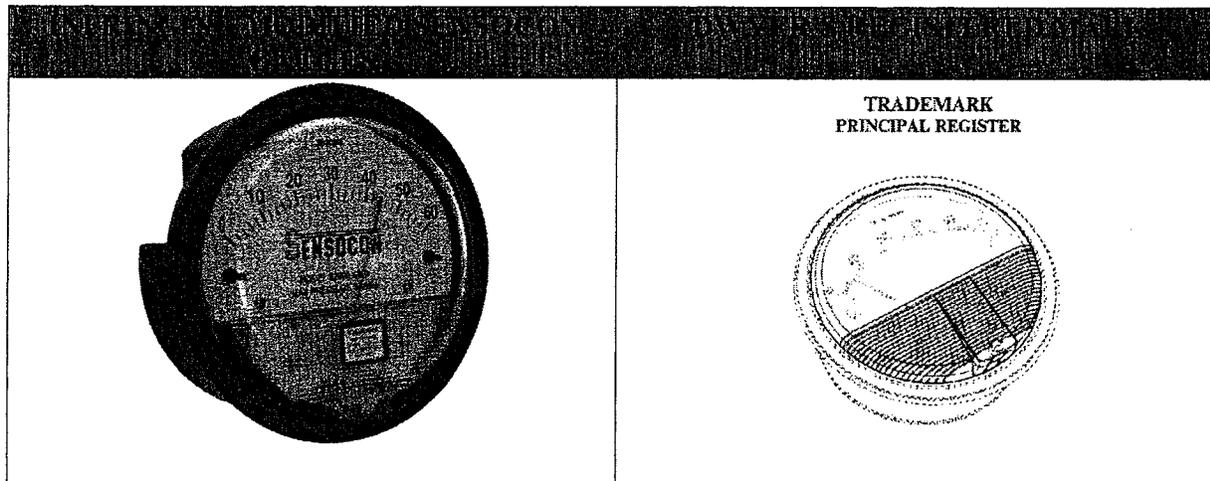
37. SENSOCON and KOHL use a pressure gauge lens substantially indistinguishable from and confusingly similar to the Registered Lens Mark in connection with SENSOCON pressure gauges as shown in SENSOCON Bulletin 103-1, attached hereto as Exhibit C, (hereinafter the "Modified" SENSOCON pressure gauges).

ANSWER: Defendants deny the allegations contained in paragraph 37 of Plaintiff's First Amended Complaint.

38. The lens of the Modified SENSOCON pressure gauges as shown in Exhibit C includes a plurality of horizontal lines and a raised rectangular portion.

ANSWER: Defendants deny the allegations contained in paragraph 38 of Plaintiff's First Amended Complaint.

39. The Modified SENSOCON pressure gauges include lenses incorporating the Registered Lens Mark of DWYER as generally shown by the comparison below:



ANSWER: Defendants deny the allegations contained in paragraph 39 of Plaintiff's First Amended Complaint.

40. SENSOCON, and KOHL as its owner, president, director and alter ego, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the Registered Lens Mark of DWYER by advertising, offering for sale, and selling in interstate commerce pressure gauge products using a plurality of horizontal lines and a raised rectangular portion on the lens of the pressure gauge that compete with DWYER pressure gauge products.

ANSWER: Defendants deny the allegations contained in paragraph 40 of Plaintiff's First Amended Complaint.

41. SENSOCON uses the Registered Lens Mark of DWYER in the sale and advertising of pressure gauges as shown in Exhibit A and C. SENSOCON does not identify DWYER as the owner of the Registered Lens Mark, thereby causing a likelihood of confusion as to the source of the pressure gauges sold by SENSOCON.

ANSWER: Defendants deny the allegations contained in paragraph 41 of Plaintiff's First Amended Complaint.

42. SENSOCON has willfully and deliberately infringed and sought to appropriate unto itself the Registered Lens Mark of DWYER by advertising, offering for sale and selling in interstate commerce pressure gauge products including the Registered Lens Mark and/or confusingly similar marks.

ANSWER: Defendants deny the allegations contained in paragraph 42 of Plaintiff's First Amended Complaint.

43. The aforesaid acts and conduct of SENSOCON are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of SENSOCON's pressure gauge products.

ANSWER: Defendants deny the allegations contained in paragraph 43 of Plaintiff's First Amended Complaint.

44. SENSOCON is trading on DWYER's goodwill and reputation for furthering SENSOCON's business.

ANSWER: Defendants deny the allegations contained in paragraph 44 of Plaintiff's First Amended Complaint.

45. By reason of the aforesaid acts of infringement by SENSOCON, DWYER has been irreparably damaged and unless SENSOCON is enjoined, said acts of SENSOCON will continue and will impair the value of DWYER's Registered Lens Mark and the goodwill associated therewith, and will threaten the viability of the trademark. Wherefore, DWYER has no adequate remedy at law.

ANSWER: Defendants deny the allegations contained in paragraph 45 of Plaintiff's First Amended Complaint.

COUNT II

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C §1114)
(U.S. TRADEMARK REGISTRATION NO. 694,229)

46. DWYER repeats and realleges the allegations contained in paragraphs 1 through 45 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 45 as their answer to paragraph 46 of Plaintiff's First Amended Complaint.

47. DWYER is the owner of United States Trademark Registration No. 694,229, issued by the United States Patent and Trademark Office on the Principal Register on March 8, 1960, for "MAGNEHELIC" for pressure gauges (the "MAGNEHELIC Mark"). A copy of this registration is attached hereto as Exhibit E.

ANSWER: Defendants admit that Exhibit E is attached to the First Amended Complaint, the terms of which speak for themselves. Defendants deny the remaining allegations contained in paragraph 47 of Plaintiff's First Amended Complaint.

48. Trademark Registration No. 694,229 remains in full force and effect and is incontestable.

ANSWER: Defendants deny the allegations contained in paragraph 48 of Plaintiff's First Amended Complaint.

49. DWYER has developed and is using the MAGNEHELIC Mark to designate the source of DWYER's pressure gauges, and other goods and services related thereto. DWYER's use of the MAGNEHELIC Mark has been substantial and continuous for many years.

ANSWER: Defendants deny the allegations contained in paragraph 49 of Plaintiff's First Amended Complaint.

50. As a result of substantial sales and advertising by DWYER of the DWYER pressure

gauges, the MAGNEHELIC Mark has become favorably known to the public and the trade, and the trademark identifies and distinguishes the source of origin of the DWYER gauges.

ANSWER: Defendants deny the allegations contained in paragraph 50 of Plaintiff's First Amended Complaint.

51. DWYER's MAGNEHELIC Mark represents a valuable and irreplaceable asset of DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 51 of Plaintiff's First Amended Complaint.

52. SENSOCON and KOHL use or have used the identical mark or a confusingly similar mark in connection with the sale of SENSOCON pressure gauges. SENSOCON has used such mark in connection with the sale of SENSOCON gauges as shown in at least SENSOCON's marketing materials for its "Series S2000" pressure gauges, attached hereto as Exhibit E, that do not originate from DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 52 of Plaintiff's First Amended Complaint.

53. SENSOCON, and KOHL as its owner, president, director and alter ego, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the MAGNEHELIC Mark of DWYER by advertising, offering for sale, and selling in interstate commerce pressure gauge products using the MAGNEHELIC Mark of DWYER in the sale and advertising of pressure gauges as shown in Exhibit F.

ANSWER: Defendants deny the allegations contained in paragraph 53 of Plaintiff's First Amended Complaint.

54. SENSOCON has willfully and deliberately infringed and sought to appropriate unto

itself the MAGNEHELIC Mark of DWYER by advertising, offering for sale and selling in interstate commerce pressure gauge products through the use of the MAGNEHELIC Mark and/or confusingly similar marks.

ANSWER: Defendants deny the allegations contained in paragraph 54 of Plaintiff's First Amended Complaint.

55. The aforesaid acts and conduct of SENSOCON are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of SENSOCON's pressure gauge products. SENSOCON is trading on DWYER's goodwill and reputation for furthering SENSOCON's business.

ANSWER: Defendants deny the allegations contained in paragraph 55 of Plaintiff's First Amended Complaint.

56. By reason of the aforesaid acts of infringement by SENSOCON, DWYER has been irreparably damaged and unless SENSOCON is enjoined, said acts of SENSOCON will continue and will impair the value of DWYER's MAGNEHELIC Mark and the goodwill associated therewith, and will threaten the viability of the trademark. Wherefore, DWYER has no adequate remedy at law.

ANSWER: Defendants deny the allegations contained in paragraph 56 of Plaintiff's First Amended Complaint.

COUNT III

FEDERAL TRADEMARK INFRINGEMENT (U.S.C. §1114) **(U.S. TRADEMARK REGISTRATION NO. 946,287)**

57. DWYER repeats and realleges the allegations contained in paragraphs 1 through 56 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 56 as their answer to paragraph 57 of Plaintiff's First Amended Complaint.

58. DWYER is the owner of United States Trademark Registration No. 946,287, issued by the United States Patent and Trademark Office on the Principal Register on October 31, 1972, for "DWYER" for pressure gauges (the "DWYER Mark"). A copy of this registration is attached hereto as Exhibit G.

ANSWER: Defendants admit that Exhibit G is attached to the First Amended Complaint, the terms of which speak for themselves. Defendants deny the remaining allegations contained in paragraph 58 of Plaintiff's First Amended Complaint.

59. Trademark Registration No. 946,287 remains in full force and effect and is incontestable.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 59 of Plaintiff's First Amended Complaint.

60. DWYER has developed and is using the DWYER Mark to designate the source of DWYER's pressure gauges, and other goods and services related thereto. DWYER's use of the DWYER Mark has been substantial and continuous for many years.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 60 of Plaintiff's First Amended Complaint.

61. As a result of substantial sales and advertising by DWYER of the DWYER pressure gauges, the DWYER Mark has become favorably known to the public and the trade, and the trademark identifies and distinguishes the source of origin of the DWYER gauges.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 61 of Plaintiff's First Amended Complaint.

62. DWYER's DWYER Mark represents a valuable and irreplaceable asset of DWYER.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 62 of Plaintiff's First Amended Complaint.

63. SENSOCON and KOHL use or have used the identical mark or a confusingly similar mark in connection with the sale of SENSOCON pressure gauges. SENSOCON has used such mark in connection with the sale of SENSOCON gauges as shown in at least SENSOCON's marketing materials for its "Series S2000" pressure gauges, attached hereto as Exhibit F, that do not originate from DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 63 of Plaintiff's First Amended Complaint.

64. SENSOCON, and KOHL as its owner, president, director and alter ego, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the DWYER Mark by advertising, offering for sale, and selling in interstate commerce pressure gauge products using the DWYER Mark in the sale and advertising of pressure gauges as shown in Exhibit F.

ANSWER: Defendants deny the allegations contained in paragraph 64 of Plaintiff's First Amended Complaint.

65. SENSOCON has willfully and deliberately infringed and sought to appropriate unto itself the DWYER Mark by advertising, offering for sale and selling in interstate commerce

pressure gauge products through the use of the DWYER Mark and/or confusingly similar marks.

ANSWER: Defendants deny the allegations contained in paragraph 65 of Plaintiff's First Amended Complaint.

66. The aforesaid acts and conduct of SENSOCON are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of SENSOCON's pressure gauge products. SENSOCON is trading on DWYER's goodwill and reputation for furthering SENSOCON's business.

ANSWER: Defendants deny the allegations contained in paragraph 66 of Plaintiff's First Amended Complaint.

67. By reason of the aforesaid acts of infringement by SENSOCON, DWYER has been irreparably damaged and unless SENSOCON is enjoined, said acts of SENSOCON will continue and will impair the value of the DWYER Mark and the goodwill associated therewith, and will threaten the viability of the trademark. Wherefore, DWYER has no adequate remedy at law.

ANSWER: Defendants deny the allegations contained in paragraph 67 of Plaintiff's First Amended Complaint.

COUNT IV

FEDERAL UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN **(15 U.S.C. §1125)**

68. DWYER repeats and realleges the allegations of paragraphs 1 through 67 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 67 as their answer to paragraph 68 of Plaintiff's First Amended Complaint.

69. DWYER has used the Registered Lens Mark, the MAGNEHELIC Mark and the DWYER Mark (collectively the "Registered Marks") in commerce since at least as early as 1962,

and is presently using the Registered Marks, on or in connection with DWYER pressure gauges, and in connection with advertising literature and manuals for the DWYER pressure gauges to properly designate DWYER as the source of origin of the DWYER pressure gauges.

ANSWER: Defendants deny the allegations contained in paragraph 69 of Plaintiff's First Amended Complaint.

70. As a result of substantial sales and advertising, and use over a substantial period of time, the Registered Marks have become favorably known to the public and the trade, and identifies and distinguishes the source of the DWYER pressure gauge products.

ANSWER: Defendants deny the allegations contained in paragraph 70 of Plaintiff's First Amended Complaint.

71. SENSOCON uses the Registered Marks and/or a confusingly similar appropriations in connection with the sale of pressure gauges, as shown in Exhibits A, B, C and F, that do not originate from DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 71 of Plaintiff's First Amended Complaint.

72. SENSOCON, and KOHL as its alter ego, have willfully and deliberately infringed and sought to appropriate the DWYER trademarks by using marks identical to, or confusingly similar to, the Registered Marks in connection with the advertising, offering for sale and sale of pressure gauge products in interstate commerce that do not originate from DWYER. SENSOCON and KOHL will continue such infringement unless enjoined by this Court.

ANSWER: Defendants deny the allegations contained in paragraph 72 of Plaintiff's First Amended Complaint.

73. SENSOCON and KOHL's activities constitute use of a false designation of origin in interstate commerce, which wrongfully and falsely designates, describes or represents the origin of SENSOCON's products, services, and information as originating from or being connected with DWYER, and are likely to cause confusion as to SENSOCON's affiliation, connection, or association with DWYER or as to the origin, sponsorship, or approval of SENSOCON's products by DWYER. Such activities exacerbate the confusion because of Kohl's prior employment by DWYER as District Sales Manager.

ANSWER: Defendants deny the allegations contained in paragraph 73 of Plaintiff's First Amended Complaint.

74. SENSOCON and KOHL's acts are a violation of 15 U.S.C. §1125 in that SENSOCON has used a false designation of origin, or a false description or representation, and has caused such wrongfully and falsely designated products to enter into commerce.

ANSWER: Defendants deny the allegations contained in paragraph 74 of Plaintiff's First Amended Complaint.

75. SENSOCON has infringed DWYER's Registered Marks as alleged herein with the intent to deceive the public into incorrectly believing that pressure gauge products sold by SENSOCON are made, approved, or sponsored by DWYER or affiliated with DWYER. SENSOCON and KOHL's acts as alleged herein were committed with the intent to deceive and defraud the public.

ANSWER: Defendants deny the allegations contained in paragraph 75 of Plaintiff's First Amended Complaint.

76. The aforesaid acts and conduct of SENSOCON and KOHL are in violation of 15 U.S.C. §1125 and are likely to cause confusion, mistake and deception as to the source, origin, or sponsorship of SENSOCON's pressure gauge products and equipment.

ANSWER: Defendants deny the allegations contained in paragraph 76 of Plaintiff's First Amended Complaint.

77. SENSOCON and KOHL have unfairly competed with DWYER by the acts complained of, have done so intentionally, and have caused, and unless enjoined by this Court, will continue to cause irreparable harm, damage and injury to DWYER, which has no adequate remedy at law.

ANSWER: Defendants deny the allegations contained in paragraph 77 of Plaintiff's First Amended Complaint.

COUNT V

COMMON LAW TRADEMARK INFRINGEMENT /FALSE DESIGNATION OF ORIGIN

78. DWYER repeats and realleges the allegations contained in paragraphs 1 through 77 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 77 as their answer to paragraph 78 of Plaintiff's First Amended Complaint.

79. DWYER uses the designation "Series 2000" in connection with its pressure gauges and has done so continuously for at least thirty years in interstate commerce. DWYER's mark "Series 2000" used in conjunction with the marketing, sale and distribution of pressure gauges has come to have a secondary meaning indicative of origin, relationship, sponsorship, and/or association with DWYER. DWYER's use of the "Series 2000" designation in connection with its

pressure gauges has entitled DWYER to trademark rights in the common law, in Indiana and nation-wide.

ANSWER: Defendants deny the allegations contained in paragraph 79 of Plaintiff's First Amended Complaint.

80. SENSOCON and KOHL have sold and marketed pressure gauges under the designations "Series S2000" and "Series P2000" in direct competition to the goods of DWYER marketed under the "Series 2000" mark. As a result, the purchasing public is likely to attribute to DWYER defendant SENSOCON's use of the SENSOCON designations that are confusingly similar to DWYER's "Series 2000" mark in connection with pressure gauges as a source, authorization and/or sponsorship of SENSOCON's goods and services, and therefore, to utilize SENSOCON's goods and services in that erroneous belief.

ANSWER: Defendants deny the allegations contained in paragraph 80 of Plaintiff's First Amended Complaint.

81. Upon information and belief, SENSOCON and KOHL have intentionally appropriated the DWYER mark by use of confusingly similar designations with the intent of unfairly competing and causing confusion, mistake, and deception as to the source, relationship, sponsorship, and/or association of SENSOCON's goods, and, as such, Defendants have committed trademark infringement under the common law.

ANSWER: Defendants deny the allegations contained in paragraph 81 of Plaintiff's First Amended Complaint.

82. The aforesaid acts and conduct of SENSOCON and KOHL are in violation of 15 U.S.C. §1125 and are likely to cause confusion, mistake and deception as to the source, origin, or sponsorship of SENSOCON's pressure gauge products and equipment.

ANSWER: Defendants deny the allegations contained in paragraph 82 of Plaintiff's First Amended Complaint.

83. The Defendants' use of DWYER's mark has caused, is causing and, unless enjoined, will continue to cause irreparable harm and damage to DWYER and its business, reputation and goodwill and has caused DWYER to suffer monetary damages. Unless restrained and enjoined, the Defendants' aforesaid acts will cause DWYER irreparable harm and damage for which there is no adequate remedy at law.

ANSWER: Defendants deny the allegations contained in paragraph 83 of Plaintiff's First Amended Complaint.

COUNT VI

COMMON LAW UNFAIR COMPETITION

84. DWYER repeats and realleges the allegations contained in paragraphs 1 through 83 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 83 as their answer to paragraph 84 of Plaintiff's First Amended Complaint.

85. SENSOCON has used the DWYER Registered Marks and DWYER's "Series 2000" mark to confuse actual and potential customers of DWYER as to the source of SENSOCON's products.

ANSWER: Defendants deny the allegations contained in paragraph 85 of Plaintiff's First Amended Complaint.

86. SENSOCON's deceptive business practices, infringement, and unfair competition have been committed with the intent to cause confusion, to cause mistake, and to deceive.

ANSWER: Defendants deny the allegations contained in paragraph 86 of Plaintiff's First Amended Complaint.

87. SENSOCON and KOHL have unfairly competed with DWYER by the acts complained of, have done so intentionally, and have caused and, unless enjoined by this Court, will continue to cause irreparable harm, damage and injury to DWYER, which has no adequate remedy at law.

ANSWER: Defendants deny the allegations contained in paragraph 87 of Plaintiff's First Amended Complaint.

COUNT VII

TRADE DRESS INFRINGEMENT

88. DWYER repeats and realleges the allegations contained in paragraphs 1 through 87 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 87 as their answer to paragraph 88 of Plaintiff's First Amended Complaint.

89. DWYER's pressure gauges have a distinctive trade dress which has acquired secondary meaning. DWYER's pressure gauge designs are unique, ornamental and the purchasing public identifies the product design with DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 89 of Plaintiff's First Amended Complaint.

90. SENSOCON makes, uses, sells, offers to sell and/or imports into the United States, for subsequent sale or use, products that directly infringe DWYER's trade dress in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

ANSWER: Defendants deny the allegations contained in paragraph 90 of Plaintiff's First Amended Complaint.

91. DWYER's trade dress in its ornamental pressure gauge design has been

exhaustively marketed, promoted and sold continuously for at least forty years such that it has acquired secondary meaning within the relevant market. SENSOCON has used DWYER's trade dress without authorization of DWYER and continues to trade off the goodwill created and maintained by DWYER in its trade dress.

ANSWER: Defendants deny the allegations contained in paragraph 91 of Plaintiff's First Amended Complaint.

92. SENSOCON's unauthorized manufacture, use, sale, offer to sell and/or importation into the United States for subsequent use or sale of the protected pressure gauge trade dress infringes upon the rights and goodwill established and maintained by DWYER. SENSOCON's activities cause confusion, mistake, or deception as to the source of SENSOCON's products and Defendants' association with DWYER. Accordingly, DWYER is entitled to injunctive relief pursuant to 15 U.S.C. §1116.

ANSWER: Defendants deny the allegations contained in paragraph 92 of Plaintiff's First Amended Complaint.

93. SENSOCON's use, through KOHL as its alter ego, of the DWYER trade dress has been willful and, as such, DWYER is entitled to damages pursuant to 15 U.S.C. §1117(a), including SENSOCON's profits, and/or DWYER's actual damages and/or the costs of this action. DWYER is further entitled to its attorneys' fees and costs because of Defendants' conduct.

ANSWER: Defendants deny the allegations contained in paragraph 93 of Plaintiff's First Amended Complaint.

COUNT VIII

COPYRIGHT INFRINGEMENT

94. DWYER repeats and realleges the allegations contained in paragraphs 1 through 93 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraphs 1 through 93 as their answer to paragraph 94 of Plaintiff's First Amended Complaint.

95. For many years and long prior to the filing of this action, DWYER through its various publications, has made available to the general public throughout the United States, pressure gauge product guides, installation manuals and illustrations. These publications and the illustrations contained therein are copyrightable subject matter under 17 U.S.C. §101 et seq.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 95 of Plaintiff's First Amended Complaint.

96. DWYER is the owner of numerous copyrights in publications and patterns. DWYER is the owner of U.S. Copyright Registration No. TX 6-884-813, registered December 18, 2008, for a work entitled Bulletin A-27 (Part No. 12-440212-00 Rev. 3). Attached to this Complaint as Exhibit H is a copy of the copyright registration. Attached to this Complaint as Exhibit I is a copy of the copyrighted work.

ANSWER: Defendants admit that Exhibits H and I are attached to the First Amended Complaint, the terms of which speak for themselves. Defendants deny the remaining allegations contained in paragraph 96 of Plaintiff's First Amended Complaint.

97. DWYER's copyright registration constitutes constructive notice to others of its ownership of the works referenced therein.

ANSWER: Paragraph 97 of Plaintiff's First Amended Complaint states a legal conclusion. Therefore, no answer is required and no answer is made.

98. DWYER's copyright registration is prima facie evidence of the validity of the copyright, of DWYER's ownership of the works described in the copyrights, and of DWYER's exclusive rights to reproduce, distribute and display the works and produce derivative works based upon the works pursuant to 17 U.S.C. §106.

ANSWER: Paragraph 98 of Plaintiff's First Amended Complaint states a legal conclusion. Therefore, no answer is required and no answer is made.

99. As a previous employee of DWYER, KOHL had access to DWYER's various copyrighted materials.

ANSWER: Defendants deny the allegations contained in paragraph 99 of Plaintiff's First Amended Complaint.

100. SENSOCON and KOHL have copied and distributed and are continuing to copy and to distribute DWYER's copyrighted works to the general public for SENSOCON and KOHL's own personal gain through SENSOCON's website, product manuals and product specification.

ANSWER: Defendants deny the allegations contained in paragraph 100 of Plaintiff's First Amended Complaint.

101. SENSOCON Bulletin 103-0 is attached to this Complaint as Exhibit B and is a sample of the infringing works by SENSOCON.

ANSWER: Defendants deny the allegations contained in paragraph 101 of Plaintiff's First Amended Complaint.

102. SENSOCON Bulletin 103-1 is attached to this Complaint as Exhibit C and is a sample of the infringing works by SENSOCON.

ANSWER: Defendants deny the allegations contained in paragraph 102 of Plaintiff's First Amended Complaint.

103. Defendants' copying and distribution was and is being done without authorization or permission from DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 103 of Plaintiff's First Amended Complaint.

104. Defendants' copying and distribution of DWYER's copyrighted works constitutes infringement of Plaintiffs' exclusive rights under 17 U.S.C. § 106 and constitutes copyright infringement under 17 U.S.C. § 501. Defendants' distribution and sales of the copyrighted materials of DWYER also infringes DWYER's copyrights.

ANSWER: Defendants deny the allegations contained in paragraph 104 of Plaintiff's First Amended Complaint.

105. The actions of SENSOCON and KOHL are willful and intentional and were preceded by notice of DWYER's rights in its copyrighted works. DWYER has been and will continue to be damaged by the acts of SENSOCON and KOHL.

ANSWER: Defendants deny the allegations contained in paragraph 105 of Plaintiff's First Amended Complaint.

COUNT IX

COUNTERFEITING (15 U.S.C. §1114)

106. DWYER repeats and realleges the allegations contained in paragraphs 1 through 105 of this Complaint.

ANSWER: Defendants incorporate and reallege their answers to paragraph 1 through 105 as their answer to paragraph 106 of Plaintiff's First Amended Complaint.

107. SENSOCON and KOHL have sold, offered for sale, imported and distributed counterfeit DWYER pressure gauges bearing marks that are counterfeits of the Registered Lens Mark of DWYER in the United States and in commerce in violation of 15 U.S.C. §1114.

ANSWER: Defendants deny the allegations contained in paragraph 107 of Plaintiff's First Amended Complaint.

108. Pressure gauges sold, offered for sale, imported and distributed by SENSOCON, as for example as shown in Ex. A, include a lens having a plurality of lines and a raised rectangular portion as shown in Registration No. 3,397,050 of DWYER (Ex. D).

ANSWER: Defendants deny the allegations contained in paragraph 108 of Plaintiff's First Amended Complaint.

109. The lenses of the pressure gauges sold by SENSOCON, as for example as shown in Ex. A, are slavish copies of the lens shown in Ex. D.

ANSWER: Defendants deny the allegations contained in paragraph 109 of Plaintiff's First Amended Complaint.

110. Pressure gauges sold, offered for sale, imported and distributed by SENSOCON include a nongenuine, spurious mark which is identical with or substantially indistinguishable from the Registered Lens Mark of DWYER and that is a counterfeit of the Registered Lens Mark of DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 110 of Plaintiff's First Amended Complaint.

111. The Registered Lens Mark of DWYER is registered on the Principal Register for pressure gauges and differential pressure gauges under Registration No. 3,397,050. See Ex. D.

ANSWER: Defendants admit that Exhibit D is attached to the First Amended Complaint, the terms of which speak for themselves. Defendants deny the

remaining allegations of paragraph 111 of Plaintiff's First Amended Complaint.

112. The Registered Lens Mark is currently in use in commerce by DWYER in connection with pressure gauges and differential pressure gauges.

ANSWER: Defendants are without knowledge sufficient to either admit or deny the allegations contained in paragraph 112 of Plaintiff's First Amended Complaint.

113. Pressure gauges bearing the Registered Lens Mark are readily identified as DWYER products.

ANSWER: Defendants deny the allegations contained in paragraph 113 of Plaintiff's First Amended Complaint.

114. Even absent the SENSOCON counterfeit use of the Registered Lens Mark of DWYER, the pressure gauges imported, sold and distributed by SENSOCON are substantially identical in appearance to authentic DWYER pressure gauges.

ANSWER: Defendants deny the allegations contained in paragraph 114 of Plaintiff's First Amended Complaint.

115. The presence of the SENSOCON counterfeit of the Registered Lens Mark of DWYER on the pressure gauges sold and distributed by SENSOCON is likely to cause consumers to believe that such pressure gauges are authentic DWYER pressure gauges when they are, in fact, counterfeit pressure gauges.

ANSWER: Defendants deny the allegations contained in paragraph 115 of Plaintiff's First Amended Complaint.

116. SENSOCON's and KOHL's unauthorized sales, offers for sale, importation and distribution of counterfeit pressure gauges bearing a counterfeit of the Registered Lens Mark of

DWYER is likely to cause confusion, mistake or deception as to the source, origin or sponsorship of SENSOCON's pressure gauges.

ANSWER: Defendants deny the allegations contained in paragraph 116 of Plaintiff's First Amended Complaint.

117. SENSOCON and KOHL knew that the pressure gauges it offered for sale, sold, imported and distributed, and which SENSOCON purchased for distribution, were manufactured by a manufacturer located in the People's Republic of China that is not an authorized manufacturer of DWYER pressure gauges and that is not authorized by DWYER to use the Registered Lens Mark of DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 117 of Plaintiff's First Amended Complaint.

118. SENSOCON and KOHL knew or should have known that the mark on the pressure gauges it offered for sale, sold, imported and distributed, comprising a plurality of horizontal lines and a raised rectangular portion on the lens of the pressure gauges, was a counterfeit of the Registered Lens Mark of Dwyer.

ANSWER: Defendants deny the allegations contained in paragraph 118 of Plaintiff's First Amended Complaint.

119. SENSOCON and KOHL knew or should have known that the pressure gauges SENSOCON was selling, offering for sale, importing and distributing were counterfeit DWYER pressure gauges bearing a counterfeit of the Registered Lens Mark of DWYER.

ANSWER: Defendants deny the allegations contained in paragraph 119 of Plaintiff's First Amended Complaint.

120. SENSOCON and KOHL intentionally and willfully sold, offered for sale, imported and distributed pressure gauges bearing a counterfeit of the Registered Lens Mark in commerce knowing that the pressure gauges, and the mark comprising a plurality of horizontal lines and a raised rectangular portion on the lenses of the pressure gauges, were counterfeit.

ANSWER: Defendants deny the allegations contained in paragraph 120 of Plaintiff's First Amended Complaint.

121. SENSOCON and KOHL have intentionally and willfully used a counterfeit of the Registered Lens Mark of DWYER in commerce in connection with the offering for sale, sale, importation and distribution of pressure gauges.

ANSWER: Defendants deny the allegations contained in paragraph 121 of Plaintiff's First Amended Complaint.

122. DWYER has suffered irreparable harm to its reputation and goodwill based upon SENSOCON's sales, offering for sale, importing and distribution of counterfeit DWYER pressure gauges bearing a counterfeit of the Registered Lens Mark of Dwyer.

ANSWER: Defendants deny the allegations contained in paragraph 122 of Plaintiff's First Amended Complaint.

123. DWYER has lost profits which it would have earned through the sale of authentic DWYER pressure gauges but for SENSOCON's unlawful sale and distribution of counterfeit DWYER pressure gauges bearing counterfeit marks.

ANSWER: Defendants deny the allegations contained in paragraph 123 of Plaintiff's First Amended Complaint.

124. SENSOCON's and KOHL's sale and distribution of counterfeit pressure gauges bearing counterfeit trademarks, through KOHL as its alter ego, was willful.

ANSWER: Defendants deny the allegations contained in paragraph 124 of Plaintiff's First Amended Complaint.

125. DWYER is entitled to injunctive relief pursuant to 15 U.S.C. §1116.

ANSWER: Defendants deny the allegations contained in paragraph 125 of Plaintiff's First Amended Complaint.

126. DWYER is entitled to treble damages or treble profits, prejudgment interest, and its reasonable attorney's fees pursuant to 15 U.S.C. §1117(b).

ANSWER: Defendants deny the allegations contained in paragraph 126 of Plaintiff's First Amended Complaint.

127. DWYER is entitled to elect to recover an award of statutory damages, instead of actual damages and profits, pursuant to 15 U.S.C. §1117(c).

ANSWER: Defendants deny the allegations contained in paragraph 127 of Plaintiff's First Amended Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims against the Defendants are barred by the equitable defenses of laches, estoppel, acquiescence, and unclean hands.

2. Defendants' uses of Plaintiff's DWYER[®] and MAGNEHELIC[®] marks have been comparative marketing fair uses of these marks.

3. Plaintiff's use of the designation "Series 2000" has been solely as a model or style designation, and thus "Series 2000" is unprotectible under either trademark or unfair competition law.

4. Plaintiff's alleged unregistered trade dress is functional and is unprotectible under either trademark or unfair competition law.

5. Plaintiff's MAGNEHELIC[®] mark has become the generic name for differential pressure gauges.

6. Defendants have never sold or offered for sale any SENSOCON[™] brand differential pressure gauges that have the lens design illustrated in Exhibit C of Plaintiff's First Amended Complaint.

7. Defendants are not now selling or offering for sale any SENSOCON[™] brand differential pressure gauges that have the lens design illustrated in Exhibit A, B, or C of Plaintiff's First Amended Complaint.

8. Count IX of the Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted.

9. U.S. Trademark No. 3,397,050 is invalid and unenforceable against the Defendants.

10. The Plaintiff's alleged "Lens Mark" of Counts I, IV, VII and IX is functional and is unprotectible under the common law and is not registerable on either Registers of the U.S. Trademark (Lanham) Act.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that the Court enter judgment in their favor and against Plaintiff, that Plaintiff take nothing by way of its First Amended Complaint, that Defendants be awarded their attorneys' fees and costs for defending against Plaintiff's frivolous counterfeit claim, and that Defendants be awarded all other just and proper relief in the premises.

Respectfully submitted,

/s/Clifford W. Browning

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CERTIFICATE OF SERVICE

I certify that on October 4, 2010, I electronically filed the foregoing Defendant's Revised Answer and Affirmative Defenses to Plaintiff's First Amended Complaint with the Clerk of the Court, using the CM/ECF system, which sent notification of such filing to the following:

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