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Filing date: **10/08/2018**

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

Proceeding No.	91243446
Filing Party	Defendant Admiral Valve, LLC
Other Party	Plaintiff Western Valve Inc.
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	motion and exhibits.pdf(703172 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Admiral Valve, LLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Admiral Valve, LLC has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

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

Respectfully submitted,

/Richard L. Schwartz/

Richard L. Schwartz

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10/08/2018

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

WESTERN VALVE, INC.

Opposer,

v.

ADMIRAL VALVE, LLC

Applicant.

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Opposition No.: 91243446

Serial No.: 87730611

UNOPPOSED MOTION TO SUSPEND PROCEEDINGS

Applicant requests that this Opposition be suspended and in support thereof shows as follows:

1. In the Notice of Opposition as filed on September 5, 2018, the Opposer stated at paragraph 3:

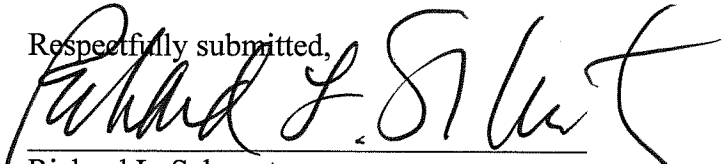
“Opposer was sued by Applicant for common law trademark violation involving the letters “CPV” in the United States District Court for Northern District of Texas, Fort Worth Division. The case is titled *Admiral Valve LLC v. Western Valve Inc. and Western Sales & Testing of Amarillo Inc.*, Civil Action 4:18-cv-347-A.”

2. A copy of the Plaintiff’s First Amended Complaint (without exhibits) as filed on June 12, 2018 in the above-identified federal court civil action is attached hereto as Exhibit 1.

3. Rights in and to the “CPV” mark are at issue in the civil action as well as this Opposition.

Accordingly, per 37 C.F.R. § 2.117(a) and TBMP § 510.02(a), Applicant requests that this Opposition be suspended until termination of the federal court civil action.

Date: October 8, 2018

Respectfully submitted,


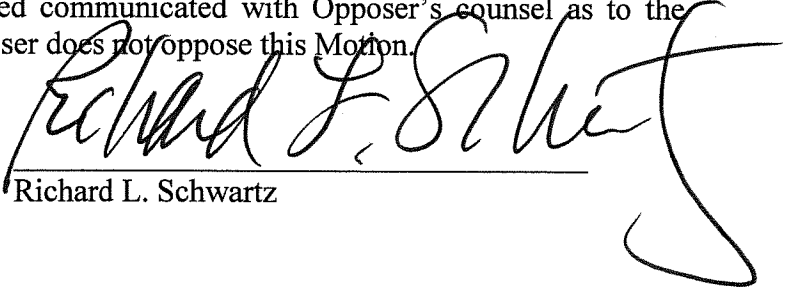
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**ATTORNEYS FOR APPLICANT
ADMIRAL VALVE LLC**

CERTIFICATE OF CONFERENCE

On October 4 2018, the undersigned communicated with Opposer's counsel as to the requested suspension of proceedings. Opposer does not oppose this Motion.


Richard L. Schwartz

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon Opposer Western Valve Inc. via electronic mail service upon Opposer's counsel, on this 8th day of October, 2018.

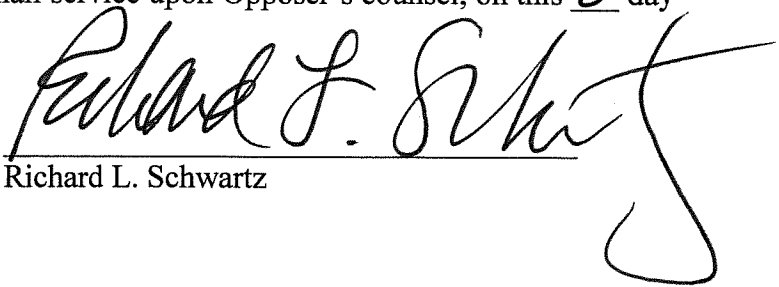

Richard L. Schwartz

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**ADMIRAL VALVE, LLC, d/b/a CPV
MANUFACTURING,**

Plaintiff,

Case No. _____

v.

JURY TRIAL DEMANDED

WESTERN VALVE, INC.,

Defendant.

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Admiral Valve, LLC, d/b/a CPV Manufacturing ("CPV Manufacturing") files this Original Complaint against Defendant Western Valve, Inc. ("Western").

Nature of Action

1. This is an action under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and Texas law for trademark infringement and unfair competition.

Parties

2. Admiral Valve, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 503 School House Rd, Kennett Square, Pennsylvania 19348. It is known in the marketplace as "CPV Manufacturing".

3. Western is a corporation organized and existing under the laws of the State of Texas. Western may be served with process by serving its registered agent, Letricia L. Niegos at 3505 S. Georgia St., Amarillo, Texas 79109.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

5. This Court has personal jurisdiction over Western, because Western is domiciled in and has its principal place of business in Texas and in this District.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) in that Western resides in the Northern District of Texas.

Factual Allegations

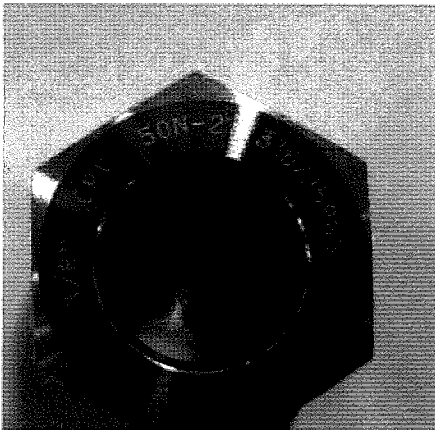
CPV Manufacturing and its CPV Marks

7. CPV Manufacturing is a Pennsylvania-based manufacturer of valves and fittings that are sold throughout the United States and internationally. CPV Manufacturing has been providing to the industrial gas, petrochemical, and ship building industries, high-quality valves and fittings for all platforms, including liquid and gas services, for many decades. CPV Manufacturing is well recognized and known in the industrial gas industry for its high quality manufacturing and engineering services and related products. As such, CPV Manufacturing has enjoyed a hard-earned reputation for quality work and has been an industry leader since the late 1970's.

8. CPV Manufacturing has a common law tradename and trademark in the arbitrary designation, "CPV." It uses the letters "CPV" to promote its high quality manufacturing and engineering services and on its products, packaging, and related promotional materials to identify the source of its products. This CPV mark has been in continuous use for many decades throughout the United States and internationally. *See Exhibit "A-1"* for examples of CPV Manufacturing's

use of its trademark on its fittings and valves. Using this trademark, CPV Manufacturing sold large volumes of its high quality products throughout the United States and the world. See Exhibit "A-2" for examples of CPV Manufacturing's use of its tradename on its website at www.cpvmsg.com and selected pages from its product brochure. CPV Manufacturing's CPV trademark and CPV tradename are collectively referred to hereafter as the "CPV Marks".

9. Praxair, Inc., ("Praxair") a supplier of industrial gases and equipment, has been a customer of CPV Manufacturing for many years. In December 2017, a contractor looking for a replacement fitting called CPV. David London, President of CPV Manufacturing learned that a fitting, which Praxair had bought had failed. Praxair had believed that the fitting had been manufactured by CPV Manufacturing because it was marked with the CPV trademark. See Exhibit "B" attached (photos). Also, note the comparison below:



(CPV fitting with CPV trademark) (Western fitting with false designation)

Praxair had experienced a problem with one of its storage tube trailers where a fitting like the one in Exhibit "B", on one of the high pressure storage tubes on the trailer had failed. CPV Manufacturing informed Praxair that the fitting was not manufactured by CPV Manufacturing, despite the marking of "CPV-2" on the fitting. Shortly thereafter, Western, in a letter to Praxair,

explained that it had made the fitting and labeled it with the CPV mark. So demand and inquiry were then made on Western by CPV Manufacturing regarding misuse of its CPV trademark and the false designation.

10. Western acknowledged it had manufactured three products with the CPV logo on them for Praxair, designated CPV-2nut, CPV-TP-2 and CPV2-1NPSM (the “Infringing Designations”).

11. On about December 14, 2017, Dennis Hatfield, a Vice President of Western wrote Blain C. Dowd, of Praxair, acknowledging that the fittings it had sold to Praxair contained the “CPV-2” marking, and stated that it would “no longer use the CPV-2 size marking on these products.” See Exhibit “C” attached.

12. Western also later stated that this was a “one-time event” on one piece of work for Praxair, where Western needed to match original fittings to some gas cylinders which its affiliate, Western Sales & Testing, had refurbished. Western explained that it needed to make a nut of a particular thread size that was similar to a CPV thread size with which Western was familiar, and therefore it marked the nut “CPV-2” so its people would know the thread size of this particular nut – intending to use “CPV” as a thread-size designation, not as a source indicator. But this explanation did not make sense as there was not a need to designate the product with Plaintiff’s CPV trademark. CPV Manufacturing uses the CPV Marks not to state thread size, but rather to designate the source of its products and services. And information now indicates that this was not a “one-time event.”

13. By letter dated January 5, 2018, counsel for CPV Manufacturing, notified Western that CPV is a common law trademark and that use of the trademark without the express permission of CPV Manufacturing was prohibited. Counsel also directed Western to cease and desist from

using the CPV designation. This action was taken to protect the CPV Marks and CPV Manufacturing's reputation associated with same from further infringement, especially that associated with potentially defective fittings placed into the marketplace by Western. The immediate concern of CPV Manufacturing was (and still is) potential fitting failures on products that Western and/or its affiliates may have manufactured with the CPV Marks on them and placed into the marketplace could occur. This is particularly true also because of public safety matters since the fittings are used in high pressure installations. And there are thousands of these storage tubes used by the major gas companies. This conduct can cause significant injury to CPV Manufacturing and its CPV Marks and its associated hard-earned reputation for its high quality manufacturing and engineering services along with its high quality products. *See Exhibit "D"* attached (the "Demand").

14. The Demand was made upon Western to cease the selling of the products containing the Infringing Designation and for Western to destroy any further fittings and valves marked with the CPV Marks, and to provide evidence of destruction of same, and to provide appropriate notice to buyers of those products in the marketplace to protect CPV Manufacturing, its CPV trademark and its associated goodwill and reputation.

15. By letter dated January 22, 2018, Western's counsel responded that the action by the Western was a "one-time event on one piece of work for Praxair" with the explanation relating to sizing of the thread. In addition Western's counsel stated "Western Sales & Testing is a longtime good customer of CPV Manufacturing, so Western is very familiar with its products", but the letter did not provide the requested assurances. A copy of such correspondence is attached as Exhibit "E".

16. Neither Western nor its counsel answered the important request to assure protection of the CPV Marks and reputation that CPV Manufacturing had previously made. On January 24, 2018, counsel for CPV Manufacturing sent another letter, this time to Western's counsel (Exhibit "F" attached), attempting to get to the bottom of what had really happened, and asking again for the details of Western's conduct. Again these questions were not answered. So counsel for CPV Manufacturing inquired three times more seeking closure of these issues and a reasonable certification from Western to help assure no further infringement was engaged in, and the problems could be considered resolved. *See* Exhibit "G". But after a further delay, finally, on April 6, 2018, Western sent a cryptic letter stating that "to the best of our knowledge, the parts manufactured for the Praxair . . . were the only Western manufactured parts marked with any reference to CPV." (*See* Exhibit "H" attached hereto). Western has yet to provide a credible explanation as to why it intentionally used CPV Manufacturing's long-standing CPV Marks on one of its product lines. And, Western has further failed to directly answer the reasonable inquiries and not provided sufficient information to allow CPV Manufacturing to assure its CPV Marks and related goodwill – and reputation will not be further damaged by this or related conduct.

17. Western's conduct has a substantial likelihood of causing confusion in the marketplace and is potentially seriously damaging to the reputation and business of CPV Manufacturing. This has necessitated CPV Manufacturing filing this action to get to the bottom of what Western really has done with its obviously intentional conduct, which is utilizing CPV Manufacturing's long-established and well recognized CPV Marks, for this illegal marking and the potential for continuing damage to the reputation of Plaintiff.

Count 1

Unfair Competition, False Designation of Origin, and False Descriptions

in Violation of Lanham Act § 43(a) (15 U.S.C. § 1125(a))

18. CPV Manufacturing repeats and reasserts all allegations contained in Paragraphs 1 through 17 above as if they were stated in full herein.

19. The CPV Marks are protectable, distinctive and recognized throughout the United States and the world in connection with CPV Manufacturing's high quality manufacturing and engineering services and related high quality products, including its valves and fittings, in its market. CPV Manufacturing has never licensed nor otherwise authorized Western to use in any manner its CPV Marks.

20. Those in the market for valves and fittings in the industrial gas, petrochemical, and shipping industries associate and identify the CPV Marks with CPV Manufacturing and/or the goods and services CPV Manufacturing provides (or associates them with a single source), including without limitation, the manufacturing and sale of valves and fittings.

21. Western's conduct in commerce in the sale, and offering for sale, of fittings and for related parts to the industrial gas industry, under the CPV trademark, along with Western's use of the CPV Marks and its Infringing Designations, constitutes false designation of origin or sponsorship of Western's goods and services and tends falsely to represent that Western's goods and services originate from CPV Manufacturing (or from the same source that markets and sells goods and services under the CPV Marks) or that such goods and services of Western have been sponsored, approved, or licensed by CPV Manufacturing or are in some way affiliated or connected with CPV Manufacturing, all in violation of 15 U.S.C. § 1125(a). Such conduct is likely to cause and has actually caused marketplace confusion.

22. Western's actions were done willfully with full knowledge of the falsity of such designations of origin and such descriptions or representations and of the statements of fact and thus with the intent to cause confusion, mislead, and deceive the purchaser.

23. Western's unlawful acts constitute use in interstate commerce.

24. Western's unauthorized use of the CPV Marks is irreparably damaging to CPV Manufacturing in the form of: (i) loss of income, sales revenue, and profits; (ii) interference with CPV Manufacturing's ability to exploit its rights; (iii) confusion in the marketplace as to the duly authorized source of the goods and services provided in conjunction with the CPV Marks; (iv) damage to CPV Manufacturing's reputation, including the fact of the lack of quality of the products of Western in the manner described above; and (v) impairment of the goodwill CPV Manufacturing has in its CPV Marks. If not enjoined, CPV Manufacturing will likely continue to suffer irreparable injury to its rights in the CPV Marks and to its business, reputation and goodwill.

25. CPV Manufacturing has no adequate remedy at law.

26. CPV Manufacturing is entitled to preliminary and permanent injunctive relief against Western under 15 U.S.C. § 1116.

27. CPV Manufacturing is entitled to recover from Western its profits, all damages that CPV Manufacturing has sustained from Western's infringement, prejudgment interest, and the costs associated with this action under 15 U.S.C. § 1117.

28. Western's conduct renders this an exceptional case. Accordingly, CPV Manufacturing is also entitled to recover from Western treble damages and reasonable attorney's fees under 15 U.S.C. § 1117.

Count 2

Unfair Competition Under Texas Common Law

29. CPV Manufacturing repeats and reasserts all allegations contained in Paragraphs 1 through 28 above as if they were stated in full herein.

30. CPV Manufacturing is, and at all times mentioned in this Complaint has been, engaged in the business of manufacturing and selling valves and fittings in the industrial gas, petrochemical, and ship building industries, in association with its CPV Marks. CPV Manufacturing owns the CPV Marks identified herein.

31. Western, without CPV Manufacturing's consent, has used a reproduction, counterfeit, copy, or colorable imitation of CPV Manufacturing's CPV Marks in connection with selling, offering for sale, or advertising and/or marketing of fittings and/or related products.

32. Western's use of CPV Manufacturing's CPV Marks and/or the Infringing Designation was and is likely to deceive or cause confusion or mistake as to the source or origin of Western's provided goods. As alleged in more detail above, Western's acts constitute a violation of §43(a) of the Lanham Act. These acts also constitute unfair competition under Texas common law.

33. Unless Western is enjoined from the acts complained of, CPV Manufacturing will suffer irreparable harm, for which CPV Manufacturing has no adequate remedy at law. CPV Manufacturing is entitled to a preliminary and permanent injunction under Texas law.

34. CPV Manufacturing is entitled to recover from Western its lost profits resulting from Western's conduct and for damage to CPV Manufacturing's reputation because of such actions.

Jury Demand

CPV Manufacturing demands a trial by jury on all issues so triable.

Prayer for Relief

WHEREFORE, CPV Manufacturing respectfully requests that the Court:

- A. Preliminarily enjoin Western from continuing to use the CPV Marks (or any Infringing Designation or derivation or colorable imitation thereof), or any of them, including any designation that infringes on the CPV Marks, in conjunction with the sale of fittings and related products in the industrial gas, petrochemical, and ship building industries;
- B. Permanently enjoin Western from continuing to use the CPV Marks (or any Infringing Designation or derivation or colorable imitation thereof), or any of them, in conjunction with the sale of fittings and related products in the industrial gas, petrochemical, and shipbuilding industries;
- C. Compel Western to destroy all improperly marked fittings and related products and all marketing and promotional materials displaying same, and to remove therefrom all references to, the CPV Marks, the Infringing Designation or any other term or mark confusingly similar to the CPV Marks, or any of them;
- D. Award CPV Manufacturing compensatory and treble damages associated with Western's past use of the CPV Marks, and unlawful conduct associated with same, including but not limited to three times Western's profits, and three times the damages sustained by CPV Manufacturing as the result of Western's conduct;
- E. Award CPV Manufacturing its costs incurred herein, prejudgment interest, and attorney's fees; and

F. Award such further and/or alternative relief this Court deems proper.

Dated: May 8, 2018.

Respectfully submitted,

/s/Mack Ed Swindle

Mack Ed Swindle

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