

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
(Austin Division)**

DPF ALTERNATIVES OF TEXAS, LLC,

Plaintiff,

v.

DET DIESEL EMISSION TECHNOLOGIES,
LLC, and SYNERGY CATALYST, LLC,

Defendants.

Civil Action No.: 1:24-cv-00288

COMPLAINT

Plaintiff DPF Alternatives of Texas, LLC, (“Plaintiff” or “DPF Texas”), by and through its undersigned counsel, brings this action against DET Diesel Emission Technologies, LLC (“DET”) and Synergy Catalyst, LLC (“Synergy”) (collectively “Defendants”) and alleges, on knowledge and to its own actions and otherwise upon information and belief, as follows:

PRELIMINARY STATEMENT

1. This action by DPF Texas seeks compensation and redress from Defendants’ unlawful business practices that have harmed DPF Texas directly, through Defendants’ false claims and unlawful business practices.

2. Beginning in 2021, Defendants heavily promoted and advertised that they had achieved patent protection on its technology and processes that it was offering to the public, and in particular, targeting DPF Texas and other franchisees of DPF Alternatives, LLC (“DPF Alternatives”).

3. In 2021 and continuing to today, Defendants have no issued patents, either through assignment or license, let alone any patent that covers its offered technology and processes.

4. Relying on these demonstrably false claims of patent ownership and other false promises, DPF Texas was induced to enter into agreements to sell and offer Defendants' products and services on the express understanding that Defendants would aggressively enforce their (non-existent) patent rights, inducing DPF Texas to overpay for unpatented materials and services at the risk of being "locked out" by Defendants.

5. This action seeks redress for Defendants' unlawful use of false marking and false advertising under the patent statute, the Lanham Act, and the Sherman Act.

PARTIES

6. DPF Alternatives of Texas, LLC, a franchisee of DPF Alternatives, LLC is a Texas limited liability company with its principal place of business located at 520 CR108 #13, Hutto, Texas 78634.

7. Upon information and belief, Defendant DET Diesel Emission Technologies, LLC is a Texas limited liability company with its principal place of business located at 1122 West Bethel Road, #400, Coppell, Texas 75019.

8. Upon information and belief, Defendant Synergy Catalyst, LLC is a Texas limited liability company with its principal place of business located at 1122 West Bethel Road, #400, Coppell, Texas 75019.

9. Upon information and belief, Defendants operate under and use the assumed name "Recore."

10. Upon information and belief, both Defendants are single-member LLC, with both Defendants operating under the same sole member and shareholder.

11. Upon information and belief, both Defendants use the same location, resources, and staff in the operation of their businesses.

12. Upon information and belief, Defendants have comingled their business operations together, including their business assets such as their use and holding themselves out as “Recore” businesses.

13. Defendants are alter egos of each other and/or constitute a single business enterprise.

JURISDICTION

14. This court has jurisdiction over this action pursuant to 15 U.S.C. §§ 2 and 1121, 28 U.S.C. § 1331, and 35 USC § 292.

15. This court has jurisdiction over Defendants as they regularly transacted business in and with persons located in the State of Texas, including directing its business to the State of Texas and has purposely availed itself of the benefits of the State of Texas.

16. Defendants also have contacts with the State of Texas arising from the acts forming the basis of DPF Texas’s claims.

VENUE

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred within this District.

BACKGROUND FACTS

18. DPF Texas is a franchisee of DPF Alternatives, a nationwide franchise that specializes in providing diesel particulate filter (DPF) services to the diesel industry.

19. Broadly speaking, a DPF is a device designed to remove diesel particulate matter or soot from the exhaust gas of a diesel engine.

20. The diesel particulate matter in the exhaust contains carbon compounds that have not burned because of local low temperatures where the diesel fuel is not fully atomized. These local low temperatures occur at the cylinder walls of the engine and at

the surface of large droplets of fuel. In turn, the fuel can turn into a carbon deposit at these low temperature areas.

21. Modern diesel engines use a DPF as part of its exhaust system to capture carbon particles and then intermittently burn them by using fuel injected into the post-combustion injection into the exhaust stream or fuel injected into the exhaust stream before the filter. This prevents carbon buildup at the expense of wasting a small quantity of fuel.

22. This process of active regeneration of the DPF ensures proper filtration during day-to-day operation of the engine, however, particulate matter will still build up over time that requires forced regeneration or replacement of the DPF.

23. In particular, the DPF Alternative's installed on all diesel engines since 2007 need service by trained technicians and specialized equipment to perform forced regeneration or replacement of the DPF Alternatives.

24. The DPF Alternatives brand is well known in the industry for its ultrasonic diesel particulate filter cleaning process and warranty services of DPF Alternatives.

25. DPF Alternatives is the only national franchise brand to offer a trade-secret ultrasonic technology, along with two patent pending pieces of equipment, to completely recover and restore diesel emissions components in diesel engines manufactured in 2007 or later.

26. DPF Alternatives' ultrasonic technology allows safe recovery of these components that contain precious metals such as rhodium, platinum, and palladium to their Original Equipment (OE) specifications at very minimal costs. The recovery of these components is necessary to remove soot and ash that reduces air flow rates to unacceptable levels, causing the diesel engine's computer system to greatly reduce power output or shut down the engine completely. Permanently removing or altering these components is in violation of both federal and state laws for commercial vehicles and equipment.

27. The DPFs that DPF Texas services are generally cylindrically shaped with an inner cylindrical filter also referred to as the “core” of the DPF. DPF Alternatives can use its ultrasonic process to fully recover the core. However, if the core is damaged, the unit must either be replaced or “re-cored.”

28. DPF Texas is provided equipment, training, and other resources by DPF Alternatives to provide DPF Alternatives’ services and products for servicing DPF units.

29. DPF Alternatives also maintains a list of approved vendors that DPF Texas and other franchisees may work with to supplement the DPF Texas Alternatives services and products offered at each location.

STATEMENT OF THE CLAIM

30. On or about July 2021, DPF Alternatives was contacted by Peter Lambe, a sales representative from “Recore,” the trade name of Defendants.

31. Lambe was offering to sell DPF Alternatives’ franchisees equipment and services on behalf of Recore that Lamb claimed was patented technology.

32. In particular, Defendants claimed that they had patented equipment and a method of “re-coring” a DPF.

33. Defendants claimed its patent technology and equipment could remove the core of the DPF, allowing for repair or replacement of the DPF.

34. Defendants also made a presentation for its Recore products and services that explicitly stated its equipment and processes were patented.

35. Defendants used threats of its patent exclusivity to coerce DPF Texas into purchasing Defendants’ Recore products and services.

36. Defendants also used threats of selling its Recore technology to nearby competitors of DPF Texas with territorial exclusivity, which, if true, would substantially harm DPF Texas.

37. The protected territory would be Zip Codes within 60 miles of Hutto, Texas.

38. Based on the representations made by Defendants concerning the patented technology, DPF Texas agreed to purchase Defendants' Recore products and services.

39. On or about August 2022, DPF Texas purchased equipment from Defendants including a "press" to perform re-coring of DPFs as well as additional equipment.

40. In order to purchase the equipment from Defendants, Defendants induced DPF Texas to enter into a third-party financing agreement.

41. To induce DPF Texas to enter into the financing agreements, Defendants affirmatively represented that the Recore equipment and processes were protected by an issued U.S. Patent.

42. To induce DPF Texas to enter into the financing agreement, Defendants affirmatively represented that DPF Texas would receive a protected territory for DPF Texas's use of the Recore equipment and process.

43. Defendants have never provided any agreement to DPF Texas concerning the protected territory that Defendants stated would be part of the purchasing Defendants' equipment.

44. After agreeing to purchase Defendants' equipment, DPF Texas learned that Defendants did not have any issued patents, let alone a patent that covered the Recore equipment and processes.

45. After agreeing to purchase Defendants' equipment, DPF Texas learned that Recore would not provide DPF Texas with an exclusive territory and reserved the right to establish additional Recore franchisees within DPF Texas's territory.

46. After agreeing to purchase Defendants' equipment, DPF Texas learned that the purchased press and equipment was worth less than 10% than the purchase price of the equipment, the greatly inflated value of the equipment directly attributed to Defendants' claim of patent protection for the equipment.

47. DPF Texas has been directly harmed through Defendants' actions.

48. DPF Texas has been unable to transition to an alternative supplier of the same equipment due to the long-term agreements Defendants coerced DPF Texas to enter based on the Defendants' statements that its equipment and processes were patented. Another supplier of the "re-coring" equipment and technology is ready and available to supply DPF Texas at prices that reflect the actual value of the equipment, rather than the value inflated by Defendants.

49. Additionally, Defendants have made direct threats to enforce their non-existent patent rights against DPF Texas should they even attempt to seek other suppliers for the re-coring equipment and technology.

50. Moreover, upon investigation into the purportedly "new" equipment and processes Defendants claim to have invented, the same equipment and method for removing the core of a DPF had been invented by another at least prior to 2014, who had publicly disclosed and offered it for sale at least as early as 2014.

51. In particular, Peter Lambe visited the inventor of technology, who showed Mr. Lambe how the technology and equipment worked.

52. Without the inventor's permission, Defendants proceeded to commercialize the technology and equipment that Peter Lambe had viewed.

53. Any purported patent rights for any employee, officer, or representative of Defendants would be barred by 35 U.S.C. § 102 for at least (1) not being the inventor of the technology; (2) being publicly disclosed and/or offered for sale more than one year prior to the filing date of any patent application.

FIRST CLAIM FOR RELIEF
FALSE MARKING UNDER 35 USC § 292

54. The allegations of the previous paragraphs are incorporated herein by reference.

55. Under 35 U.S.C. § 292, a party is liable for false marking when it “marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word “patent” or any word or number importing that the same is patented, for the purpose of deceiving the public.

56. Defendants sell and offer their “Recore” DPF re-coring equipment and technology to the public.

57. Defendants have publicly advertised that their “Recore” DPF re-coring equipment and technology was “patented.”

58. At the time Defendants advertised that their “Recore” DPF re-coring equipment and technology was patented, Defendants knew that it had no issued or licensed patents, let alone a claim of an issued or licensed patent that would encompass its DPF re-coring equipment and technology.

59. Defendants falsely represented it had a patent with the intent of deceiving the public, and in particular DPF Texas, to convince DPF Texas enter into agreements with Defendants that have detrimentally affected DPF Texas’s ability to compete in the marketplace.

60. DPF Texas has been harmed in the marketplace through Defendants’ false representations by being unable to terminate the agreement it was induced into entering based on the false patent claims or switching to an alternative supplier of competing equipment and processes.

SECOND CLAIM FOR RELIEF

FALSE DESCRIPTIONS UNDER 15 USC § 1125 (LANHAM ACT § 43)

61. The allegations of the previous paragraphs are incorporated herein by reference.

62. Defendants have made and continue to make false statements of fact in commercial advertisements and in commercial statements about its DPF re-coring equipment and technology.

63. The false statements of fact made by Defendants have actually deceived or have the tendency to deceive a substantial segment of the audience for Defendants' commercial advertisements and commercial statements.

64. Defendants' deception has been material, in that it is likely to influence the purchasing decision of members of the audience for the commercial advertisements and commercial statements.

65. Defendants caused the commercial advertisements and commercial statements containing false statements of fact to enter interstate commerce.

66. DPF Texas has been injured as a result of the false statements made by Defendants.

67. Defendants have acted in bad faith in making its false statements of fact in commercial advertisements and commercial statements about its DPF re-coring equipment and technology.

68. Pursuant to 35 U.S.C. § 1125(a)(1), Defendants are liable to DPF Texas for the false statements of fact.

69. Pursuant to 35 U.S.C. § 1117, DPF Alternatives is entitled to an award of Defendants' profits, damages sustained by DPF Texas, and the costs of this action.

THIRD CLAIM FOR RELIEF

MONOPOLIZATION OF TRADE UNDER 15 USC § 2 (SHERMAN ACT § 2)

70. The allegations of the previous paragraphs are incorporated herein by reference.

71. Defendants have excluded competitors from the DPF service market by falsely asserting that the DPF re-coring equipment and technology it manufactures and sells are covered are patented technology.

72. Defendants' false advertisements and statements about its patent rights have induced DPF Texas into an agreement on the condition that Defendants' DPF re-

coring equipment and technology was a protected by issued U.S. Patents and that it was the only supplier of the DPF re-coring equipment and technology.

73. Defendants have possessed monopoly power in the distinct submarket for DPF re-coring equipment, or there has been a dangerous probability of Defendants achieving monopoly power in the distinct submarket for DPF re-coring equipment and other economically relevant markets.

74. Defendants have acted with specific intent to monopolize the distinct submarket for DPF re-coring equipment and other economically relevant markets.

75. Defendants have engaged in predatory or anticompetitive conduct in the distinct submarket for DPF re-coring equipment and other economically relevant markets.

76. DPF Alternatives has suffered antitrust damages as a result of Defendants' monopolistic actions.

77. Pursuant to 15 U.S.C. § 2, Defendants are liable to DPF Texas for Defendants' monopolization or attempted monopolization of the distinct submarket for DPF re-coring equipment and other economically relevant markets.

78. Pursuant to 15 U.S.C. § 15, DPF Texas is entitled to an award of threefold the damages it sustained, and the cost of suit, including a reasonable attorney's fees for Defendants' monopolization or attempted monopolization of the distinct submarket for DPF re-coring equipment and other economically relevant markets.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff DPF Texas prays judgement against Defendants, jointly and severally, as follows:

- A. That Defendants are held to have falsely marked upon, or falsely affixed to, unpatented articles and processes sold and offered by Defendants the word "patent" or other words importing that the articles or processes are patented, for the purpose of deceiving the public;

- B. That Defendants are held to have falsely used in advertising, in connection with unpatented articles and processes sold and offered by Defendants, the word "patent" or other words that the articles or processes are patented, for the purpose of deceiving the public;
- C. That Defendants are held to have possessed unlawful monopoly power in the distinct submarket for DPF re-coring equipment and other economically relevant markets, or that there has been a dangerous probability Defendants achieving unlawful monopoly power in the distinct submarket for DPF re-coring equipment and other economically relevant markets;
- D. Award DPF Texas its damages sustained from Defendants' unlawful patent marking, false advertising, and unlawful monopoly power in amount determined at trial;
- E. Award DPF Texas treble damages it sustained, and the cost of suit, including reasonable attorneys' fees;
- F. Entry of an injunction enjoining Defendants, its officers, directors, employees, agents, licensees, subsidiaries and affiliated companies, successors, and assigns, and any and all persons in active concert or participation with any of them, from:
 - a. Engaging in any conduct suggesting or tending to suggest that any product or service promoted, advertised, performed, or offered for sale by Defendants is protected by a valid and subsisting patent; and
 - b. Conveying the impression to the public through communications, displays, advertising, packaging or otherwise that any product or service offered by Defendants is protected by a valid and subsisting patent;
- G. Award any other legal or equitable remedies to which DPF Texas be entitled, including all remedies provided for in 15 U.S.C. § 1117(a);
- H. Award DPF Texas interest and post-judgment interest; and
- I. Award such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff seeks a trial by jury on all matters triable.

Dated: March 18, 2024

Respectfully submitted,

By: /s/Erik J. Osterrieder

Erik Osterrieder
KEARNEY, MCWILLIAMS & DAVIS
55 Waugh Drive, Suite 150
Houston, TX 77007
Tel: (713) 201-0303
eosterrieder@kmd.law

Michael B. Marion (*pro hac vice*
forthcomming)
BYCER & MARION
7220 N. 16th Street, Suite H
Phoenix, AZ 85020
Tel: (602) 944-2277
michael@bycermarion.com
Attorneys for Plaintiff
DPF ALTERNATIVES OF TEXAS, LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DPF Alternatives of Texas, LLC

(b) County of Residence of First Listed Plaintiff Williamson (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Erik J. Osterrieder Kearney, McWilliams & Davis 55 Waugh Dr. Ste. 150

DEFENDANTS

DET Diesel Emission Technologies LLC Synergy Catalyst, LLC

County of Residence of First Listed Defendant Denton (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 USC 292; 15 USC 2, 1125,

Brief description of cause: false patent marking, antitrust violations, and false or misleading statements of fact in advertising or business

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Mar 18, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/Erik J. Osterrieder/

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE