

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

GREENEARTH® CLEANING, L.L.C.,)	
d/b/a GREENEARTH®CLEANING,)	
)	
Plaintiffs,)	Case No. _____
)	
v.)	Division _____
)	
PERSONAL TOUCH VALET)	
WHOLESALE BRONX, INC.)	
Serve: Pon-Gee Lee)	
423 Austin Place)	
Bronx, NY 10455)	
)	
Defendant.)	

PETITION

GreenEarth® Cleaning, L.L.C. d/b/a GreenEarth® Cleaning for its Petition against Personal Touch Valet Wholesale Bronx, Inc., states and alleges as follows:

Parties, Jurisdiction and Venue

1. GreenEarth® Cleaning, L.L.C. (hereinafter referred to as “GreenEarth”) is a Delaware Limited Liability Corporation, also doing business as GreenEarth® Cleaning, with its principal place of business at 51 W. 135th Street, Kansas City, Missouri 64145.

2. GreenEarth is the assignee of all contracts, licenses, licensed products, licensed processes, patents, trademarks, tradenames and intellectual property rights and holds all rights, title and interest in and to said contracts, licenses, licensed products, licensed processes, patents, trademarks, tradenames and intellectual property which are the subject of GreenEarth’s claims herein.

3. Personal Touch Valet Wholesale Bronx, Inc. (hereinafter referred to as “Personal Touch”) is a New York corporation doing business in Bronx, New York as a wholesale

drycleaning business, and a former licensee of GreenEarth's intellectual property, with a location of 423 Austin Place, Bronx, New York, 10455.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in this judicial district; because Personal Touch is subject to personal jurisdiction in this judicial district; and the parties' agreements provide for venue in this Court.

5. This Court has jurisdiction over the subject matter of the Petition pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1338; and 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Personal Touch because the parties entered into a contract in the State of Missouri, and Personal Touch specifically consents in the parties' agreement to the jurisdiction of this Court.

Common Allegations to all Claims

7. Since at least August 24, 1999, GreenEarth has owned numerous patents for the use of liquid silicone as a drycleaning solvent.

8. GreenEarth has registered its patents with the USPTO as summarized in the following table:

Case Number	Patent Number	Country	Status
43732	5,865,852	U.S.A.	Granted
43733	5,942,007	U.S.A.	Granted
43734	6,063,135	U.S.A.	Granted
43735	6,042,618	U.S.A.	Granted
43736	6,056,789	U.S.A.	Granted
43737	6,042,617	U.S.A.	Granted

43738	6,086,635	U.S.A.	Granted
43739	6,059,845	U.S.A.	Granted
57678	8,123,819	U.S.A.	Granted
521734		U.S.A.	Pending
523949	8,613,804	U.S.A.	Pending

9. The patents (“Patents”) are presently in force. A copy of the base patent, Patent Number 5,942,007 is attached hereto as **Exhibit 1**. The remaining patents are variations of Patent Number 5,942,007.

10. Since at least as early as 1999, GreenEarth has used the trademark GREENEARTH with liquid silicone drycleaning services.

11. GreenEarth has registered the GREENEARTH standard character trademark, its leaf and water droplet design mark and the IT’S GOOD FOR EVERYBODY standard character trademark with the USPTO as summarized in the following table:

Trademark	Classes	Registration Number	Date of Registration
GREENEARTH	35 and 37	2,413,095	December 12, 2000
DESIGN ONLY (GreenEarth – Leaf and Water Droplet)	35 and 37	2,496,831	October 9, 2001
IT’S GOOD FOR EVERYBODY	35 and 37	2,488,599	September 11, 2001

12. These trademarks (the “Marks”) are alive, in good standing, unrevoked, are deemed incontestable, serving as *prima facie* evidence of GreenEarth’s ownership of the

Registered Marks, their validity, and GreenEarth's exclusive right to use them in connection with the services identified therein.

13. The Marks have been used for an extensive amount of time—for 15 years—and GreenEarth has expended substantial amounts of money promoting its Marks, further evidence that the Marks serve to identify GreenEarth as the source of services that bear the Marks.

Personal Touch's Infringing and Unfair Conduct

14. On October 4, 2012, GreenEarth entered into a Letter of Understanding ("Contract") with Personal Touch. A copy of the Letter of Understanding is attached hereto as **Exhibit 2**.

15. Pursuant to the Contract, GreenEarth licensed Personal Touch to use the Marks, the Patents, its licensed products and its licensed processes (collectively referred to as "Licensed Property") in connection with the operation of Personal Touch's wholesale drycleaning businesses, and GreenEarth agreed to and did grant Personal Touch certain rights in and to such Licensed Property.

16. Under the terms of the Contract, the Network Affiliate Rules ("Network Rules") became a part of the contract and were incorporated by reference therein into the Contract. A copy of the Network Affiliate Rules is attached hereto as **Exhibit 3**.

17. According to Paragraph 2 of the Contract, GreenEarth granted to Personal Touch a "limited term, nontransferable, and nonexclusive license to:

- a. Utilize the Licensed Processes and the Licensed Products in Drycleaning operations at the locations and in the number of Drycleaning Machines and Transfer Recovery Dryers as shown in Exhibit A, enclosed with this Letter of Understanding.

- b. Use the Marks in connection with Drycleaning services furnished by you at retail at the Plant and at Dry Store locations where Drycleaning is exclusively processed using the Licensed Products and Processes, as shown in Exhibit A.

18. Pursuant to Paragraph 4 of the Contract, Personal Touch agreed to pay GreenEarth an “Affiliation Fee based upon the number of Drycleaning Machines that will be using our Licensed Processes or Licensed Products, and the number of Transfer Recovery Dryers used by said machines, determined in accordance with Exhibit B (enclosed herewith).”

19. Pursuant to Paragraph 6 of the Contract, “The term of [the] Letter of Understanding shall begin on the first day of the month following the date your first licensed machine begins operation and, unless terminated sooner (as permitted in the Network Rules), shall continue for an initial term of one (1) year.”

20. Pursuant to Paragraph 7 of the Contract, Personal Touch agreed that it would “...follow and abide by the Network Rules and any changes to those Rules as we may issue from time to time.”

21. The machine using GreenEarth’s Licensed Process and Patents is a 2006 Firbimatic EcoPro 3125 machine.

22. Paragraph 1.3 of the Network Rules defines “Confidential Information” as “(a) the Licensed Processes and (b) all other information supplied to Licensee or to which Licensee becomes exposed during the term hereof which is (if in writing) marked by Licensor as confidential, secret or proprietary or (if not in writing) is described (within ten (10) days of Licensee’s exposure to the information) as confidential, secret, or proprietary in a written memorandum furnished to Licensee by Licensor. Notwithstanding the foregoing “Confidential Information” shall not include:

- (a) Information which is in the public domain at the time of disclosure to Licensee or information which later comes into the public domain through no fault, error, or omission of Licensee;
- (b) Information which Licensee can prove (by written documentation) was in its possession prior to the time of disclosure of the information by Licensor; and
- (c) Information which later comes into Licensee's possession through the disclosure of a third party owning no duty to Licensor or any Associate of Licensor."

23. Paragraph 1.8 of the Network Rules defines "Licensed Products" as "the chemicals, substances, and other materials listed on Exhibit C (enclosed with the Letter of Understanding), together with any new or revised chemicals, substances, or other materials offered or sold to Licensees by any entity using any of the Marks. The term includes, but is not limited to, the chemicals, substances, and materials, or specific uses thereof, covered by the Patent Application or by any Patent, together with any and all improvements thereon, and any and all know-how associated with the use of the Licenses Products in the Licensed Processes."

24. Paragraph 1.9 of the Network Rules defines "Licensed Processes" as "the Drycleaning processes and procedures set forth in the Confidential GreenEarth Drycleaning Processes disclosure to be furnished to Licensees by Licensor upon execution of the Letter of Understanding. The Licensed Processes include, but are not limited to, the processes, procedures, and other inventions disclosed in the Patent Application or covered by any Patent, together with any and all improvements thereon, and any and all know-how associated with the use of the Licensed Products in the Licensed Processes."

25. Paragraph 1.10 of the Network Rules defines “Licensee” as “any establishment offering Drycleaning services and which has entered into a Letter of Understanding with Licensor. A licensee is also called an “Affiliate.”

26. Paragraph 1.11 of the Network Rules defines “Licensor” as GreenEarth® Cleaning L.L.C., a Delaware limited liability company.”

27. Paragraph 1.12 of the Network Rules defines “Marks” as “trademarks, service marks, and other commercial symbols set forth on Exhibit C (enclosed with the Letter of Understanding), which Marks are owned by Licensor.”

28. Paragraph 1.14 of the Network Rules defines “Patent” as “any letters patent that issue as a result of or based on the Patent Applications or the inventions disclosed therein, including (without limitation), any continuations or continuations in part or divisionals.”

29. Paragraph 2.2 of the Network Rules provides that “Each Licensee acknowledges that (a) Licensee has read these Network Rules, and (b) Licensee has been given an opportunity to confer with counsel and clarify any provision that Licensee did not understand. Each Licensee understands and accepts the terms, conditions, and covenants contained in these Network Rules as being reasonable and necessary to maintain Licensor’s goodwill in the Marks.”

30. Paragraph 5.1 provides that:

“Affiliate shall pay an Affiliation Fee based on: (i) the number of Drycleaning Machines in which Licensee may use the Licensed Processes or Licensed Products, plus (ii) the number of Transfer Recovery Dryers used by said Drycleaning Machines. The annual Affiliation Fee shall be payable in advance for a license period of twelve months duration and the amount of the annual Affiliation Fee shall be determined in accordance with Exhibit B. The annual

Affiliation Fee for each Drycleaning Machine or Transfer Recovery Dryer shall be due on the first day of the month following the date each machine begins operating using the Licensed Processes. At such time as the Licensee increases, decrease, or otherwise changes the number and/or type of machines eligible for the Licensed Processes or the Licensed Products, or the number of Transfer Recovery Dryers, Licensee shall provide Licensor notice thereof, and, unless and until Licensor objects, Exhibit A shall be adjusted accordingly, effective as of the first day of the month follow the month in which the said notice is given. Licensor may change the Per-Machine Fee or the Per-Transfer Recovery Dryer Fee used in calculating the Affiliation Fee no more often than annually by providing sixty (60) days' prior written notice to the Licensee.”

31. Paragraph 10.1 of the Network Rules provides that “If any licensee(e) fails to make any payment to Licensor when the same is due; or (f) otherwise violates these Network Rules or breaches the Letter of Understanding, then the Letter of Understanding shall be deemed terminated and the Licensee shall be deemed disaffiliated with the GreenEarth® Affiliate Network upon the expiration of the applicable cure period (as described below) without the need for any further action or notice, provided that the breach or violation is not cured during the applicable cure period to the satisfaction of the Licensor.”

32. Paragraph 10.2 of the Network Rules provides that “For the events, breaches, and/or violations described in clauses (a), (b) and (f) of Section 10.1, the cure period is thirty (30) days; for the events, breaches and/or violations described in clauses (c) and (e) of Section 10.1, the cure period is five (5) days....In each case in which there is a cure period, the

applicable cure period commences upon the date when notice of the event, breach, and/or violation is provided....”

33. Paragraph 11.1 of the Network Rules provides that “Each Licensee shall pay to Licensor or its Associates within fifteen (15) days after the effective date of termination of the Letter of Understanding and disaffiliation from the GreenEarth Affiliate Network all amounts owed to Licensor or its Associates which have accrued, but which are then unpaid.”

34. Paragraph 11.2 provides that “After disaffiliation from the GreenEarth Affiliate Network, each Licensee shall:

....

(c) Furnish to Licensor, within thirty (30) days after the effective date of disassociation, evidence satisfactory to Licensor of Licensee’s compliance with the provisions of this Section 11.2 and Section 11.3 hereof.

35. Paragraph 11.3 provides that “[u]pon termination of the Letter of Understanding and disaffiliation from the GreenEarth Affiliate Network (for any cause), each disaffiliated Licensee shall immediately cease to use any Confidential Information and return to Licensor all copies of the Confidential Information.”

36. Paragraph 11.4 provides that “All obligations of Licensor and Licensee under Sections 4, 11.1 through 11.3 and 12.4 of the Network Rules shall continue, notwithstanding termination of the Letter of Understanding and/or disaffiliation from the GreenEarth Affiliate Network.

37. Personal Touch failed to pay its Affiliation Fee for use of GreenEarth’s Licensed Product, Licensed Processes, Patents and Marks from November 1, 2013 through the present.

38. Personal Touch has continued to use GreenEarth's Licensed Product, Licensed Processes and Patents from November 1, 2013 through the present.

39. On July 9, 2014 GreenEarth sent a notice of Personal Touch's patent and trademark infringement. A copy of the July 9, 2014 letter is attached hereto as **Exhibit 4**. In the letter, GreenEarth notified Personal Touch in writing that it had no right to continue use of liquid silicone as a drycleaning solvent or to continue using GreenEarth's logo and name upon failure to pay fees due under the parties' agreements. The letter was signed for by Personal Touch on July 14, 2014.

40. The very next day, July 15, 2014, Personal Touch obtained three (3) five-gallon containers of silicone for use in its drycleaning machines.

41. As of September 30, 2014, Personal Touch was continuing to use silicone as a drycleaning solvent. A copy of a September 30, 2014 photograph of Personal Touch's Certificate of Operation is attached hereto as **Exhibit 5**.

42. As of the filing of this lawsuit, Personal Touch has failed and refused to respond to GreenEarth's correspondence.

43. Based upon information and belief, Personal Touch continues to use GreenEarth's Patents, Licensed Processes and Licensed Products in direct violation of the agreements and GreenEarth's intellectual property rights, to the damage and detriment of GreenEarth.

44. As a result of Personal Touch's continued use of GreenEarth's products and processes, licensing fees are due and payable for the 2013-2014 and 2014-2015 periods. Thus, Personal Touch owes to GreenEarth \$5,000.00 in licensing fees, plus late fees and all accrued and future interest. As of the date of filing this petition, Personal Touch has failed and refused to

pay the total amount due. Personal Touch failed to timely cure the default pursuant to paragraph 10.2 of the contracts, or to cure the default at any time prior to the filing of the lawsuit.

45. Personal Touch has failed to cease using GreenEarth's Licensed Product, Licensed Processes and Patents as required by 11.3 of the Network Rules and has failed to pay to GreenEarth all amounts owed to GreenEarth as required by 11.1 of the Network Rules.

46. Paragraph 13.5 of the Contract provides for attorneys' fees, accounting fees, expenses and costs to Licensor in an action brought to enforce the Contract.

COUNT I
BREACH OF CONTRACT

47. GreenEarth hereby restates, re-alleges and incorporates by reference paragraphs 1 through 46 as though fully set forth herein.

48. GreenEarth and Personal Touch entered into a written licensing contract wherein GreenEarth licensed Personal Touch to use its Marks, Patents, Licensed Processes and Licensed Products in connection with the operation of Personal Touch's drycleaning business, and GreenEarth agreed to and did grant Personal Touch certain rights in and to those Marks, Patents, Licensed Processes and Licensed Products.

49. GreenEarth has performed all of the obligations required of it under the Contract and Network Rules.

50. Personal Touch has failed to perform and has breached its obligations under the Contract and Network Rules, including, but not limited to, its failure to cease using GreenEarth's Patents, Licensed Processes and Licensed Products upon termination of the Contract and Network Rules and its failure to pay licensing fees for the time period during which it has continued to use GreenEarth's Patents, Licensed Processes and Licensed Products.

51. GreenEarth has been injured and has incurred damages as the result of Personal Touch's breach. The precise amount of damages on the licensing contract regarding Personal Touch's "Annual Fee" obligation is \$5,000, plus late fees and interest. The damages suffered by GreenEarth as a result of the breaches of the licensing agreement concerning the unlawful use of GreenEarth's intellectual property rights has not yet been ascertained.

52. GreenEarth has been required to retain the law firm of Duggan Shadwick Doerr & Kurlbaum, LLC and has incurred attorneys' fees and costs to pursue its rights and remedies in this lawsuit. Pursuant to Paragraph 13.5 of the Network Rules, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable accounting and legal fees, to the extent incurred with respect to the issues for which licensor prevails. GreenEarth seeks recovery of all attorneys' fees and costs incurred herein.

COUNT II
DECLARATORY RELIEF

53. GreenEarth hereby restates, re-alleges and incorporates by reference paragraphs 1 through 52 as though fully set forth herein.

54. On or about October 4, 2012 and continuing through October 31, 2013, GreenEarth and Personal Touch entered into the Contract and Network Rules wherein GreenEarth granted Personal Touch a non-transferable, and nonexclusive license to:

- a. Utilize the Licensed Processes and the Licensed Products in Drycleaning operations at the locations and in the number of Drycleaning Machines and Transfer Recovery Dryers; and
- b. Use the Marks in connection with Drycleaning services furnished by Personal Touch at retail at the Plant and at Dry Store locations where Drycleaning is exclusively processed using the Licensed Products and Processes.

55. Pursuant to the Contract all “Marks” and “Patents” as defined by the Contract are held by GreenEarth exclusively, as are all Licensed Processes and Licensed Products. Upon disaffiliation under the Contract, specifically but not limited to, Paragraph 11.2, Personal Touch shall:

....

- (c) Furnish to Licensor, within thirty (30) days after the effective date of disassociation, evidence satisfactory to Licensor of Licensee’s compliance with the provisions of this Section 11.2 and Section 11.3 hereof.

56. Paragraph 11.3 provides that “[u]pon termination of the Letter of Understanding and disaffiliation from the GreenEarth Affiliate Network (for any cause), each disaffiliated Licensee shall immediately cease to use any Confidential Information and return to Licensor all copies of the Confidential Information.”

57. On July 9, 2014 GreenEarth notified Personal Touch in writing that it had no right to continue use of liquid silicone as a drycleaning solvent or to continue using GreenEarth’s logo and name upon failure to pay fees due under the parties’ agreements.

58. Despite its disaffiliation, Personal Touch has failed and refused to comply with Paragraphs 11.2 and 11.3 of the Network Rules. Specifically, based on information and belief, Personal Touch continues to use all Patents, Licensed Products and Licensed Processes in direct violation of the contracts and GreenEarth’s intellectual property rights.

59. An actual controversy has arisen and now exists between GreenEarth and Personal Touch concerning their respective rights and duties in that GreenEarth contends that Personal Touch continues to use, contrary to law and contract, the Patents, Licensed Products and Licensed Processes in direct violation of contract and termination of the licensing agreement.

60. GreenEarth seeks a declaration of rights and duties arising under the agreements with respect to its ownership interest in the Patents, Licensed Products and Licensed Processes.

COUNT III
PATENT INFRINGEMENT

61. GreenEarth hereby restates, re-alleges and incorporates by reference paragraphs 1 through 60 as though fully set forth herein.

62. On August 24, 1999, U.S. Patent No. 5,942,007 (the “5,942,007 Patent”) was duly and legally issued in the name of GreenEarth Cleaning, LLP. A copy is attached hereto as **Exhibit 1**.

63. The 5,942,007 Patent is presently in force.

64. The 5,942,007 Patent covers the use of liquid silicone as a solvent in drycleaning using steps 1 through 7.

65. Additional patents containing variations of the 5,942,007 Patent have been duly and legally issued to GreenEarth Cleaning, LLP, as set forth in Paragraph No. 8 herein.

66. Personal Touch has used liquid silicone as a drycleaning solvent since obtaining a license from GreenEarth in 2012.

67. Personal Touch is no longer a licensee of GreenEarth and, therefore, beginning November 1, 2013, was no longer entitled to use GreenEarth’s patented process for the use of liquid silicone as a drycleaning solvent.

68. Upon information and belief, Personal Touch has infringed one or more claims of the Patents by continuing to utilize liquid silicone as a drycleaning solvent and completing steps 1 through 7 of the 5,942,007 Patent, as well as the registered variations on the 5,942,007 Patent.

69. If Personal Touch’s infringement of the Patents is found to constitute an exceptional case, then GreenEarth is entitled to recover its attorneys’ fees.

70. Upon information and belief, Personal Touch intends to continue in its infringing acts, unless restrained by this Court.

71. Personal Touch's acts have damaged and will continue to damage GreenEarth, and GreenEarth has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, GreenEarth prays for judgment and relief against Personal Touch as follows:

(a) Finding that: (i) Personal Touch has breached the parties' Contract; and (ii) Personal Touch has violated 35 U.S.C. § 271;

(b) Declaring, without limitation, that:

i. GreenEarth is the exclusive owner of the Patents, Licensed Products and Licensed Processes; and

ii. Personal Touch has no present or future right to use of the Patents, Licensed Products and Licensed Processes;

(c) An order that Personal Touch and those in active concert or participation with Personal Touch be permanently enjoined from infringing the Patents of GreenEarth;

(d) An award of a reasonable royalty of at least \$5,000.00, including late fees and interest;

(e) An award of damages adequate to compensate GreenEarth for Personal Touch's breach of contract and infringement, including but not limited to lost profits as measured by Personal Touch's profits;

(f) An award of any applicable penalties;

(g) Pursuant to 35 U.S.C. § 284, an award increasing damages up to three times the amount found or assessed due to the willful and deliberate nature of the infringement;

(h) Pursuant to the parties' contract and 35 U.S.C. § 285, an award of reasonable attorneys' fees;

(i) An award of pre- and post-judgment interest;

(j) An award of costs and expenses; and

(k) Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

GreenEarth hereby demands a trial by jury on all matters so triable.

DUGGAN SHADWICK DOERR & KURLBAUM LLC

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