

JUDGE BAER

12 CV 7042

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CARGILL, INCORPORATED,

Plaintiff,

v.

INTERNATIONAL EXCHANGE
SERVICES, LLC,

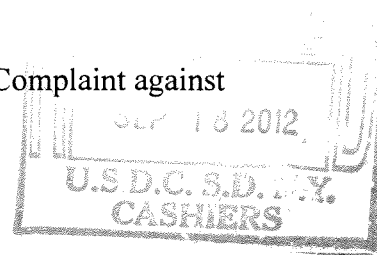
Defendant.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

Cargill, Incorporated ("Cargill"), by its attorneys, Jones Day, for its Complaint against International Exchange Services, LLC ("IES"), alleges as follows:



NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief as well as penalties under the Clean Air Act ("CAA" or the "Act"), and for a breach of contract and warranties, all arising out of IES's failure to comply with its obligations under the Renewable Fuel Standards ("RFS") adopted pursuant to CAA Section 211(o), 42 U.S.C. § 7545(o). IES transferred to Cargill products that are invalid under the RFS and then subsequently refused to correct the transfer as required by the RFS. As described more fully below, IES's refusal to correct the transfer both violates the CAA and breaches its contract with Cargill. Cargill has a right to commence a CAA citizen suit and to assert its breach of contract claims, both of which it does here.

PARTIES

2. Cargill, among other things, is a marketer and distributor of fuels, energy products, and related futures and energy products. It is a Delaware company that maintains its principal place of business in Minnesota.

3. IES, a commodities trader, is a Delaware limited liability company with its principal place of business in Florida. At all times relevant to this lawsuit, IES engaged in commodities trading through an office located at 2 World Financial Center, Suite 4302, New York, New York 10281.

JURISDICTION, VENUE, AND NOTICE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1355, and 1367, and 42 U.S.C. § 7604(a).

5. Pursuant to 28 U.S.C. §§ 1391 and 1395, venue properly lies in this Court because a substantial part of the events giving rise to the claims occurred in this judicial district, where the relevant IES broker office was located.

6. On June 15, 2012, Cargill provided to IES and relevant federal and state officials a formal 60-day notice in accordance with Section 304(b) of the CAA, 42 U.S.C. § 7604(b), of Cargill's intent to commence a civil action against IES with regard to IES's noncompliance with the RFS. No lawsuit has been commenced by any federal or state bodies to cure this noncompliance by IES.

FACTS

Federal Law Governing Trading In Renewable Identification Numbers

7. Cargill produces and markets biodiesel and ethanol from a range of feedstocks and participates in global energy markets.

8. One of the products Cargill buys and sells in these markets are Renewable Identification Numbers ("RINs").

9. A RIN is a 38-character numeric code generated by the producer or importer of renewable fuel that represents a gallon of renewable fuel produced or imported in the United States.

10. To ensure the production and importation of specific volumes of renewable fuel in the United States, the RFS rule requires refiners, blenders, and importers of gasoline or diesel fuel (referred to as “obligated parties”) as well as exporters of renewable fuel to meet annual Renewable Volume Obligations (“Obligations”). *See* 40 C.F.R. Part 80, Subparts K and M. To do so, obligated parties must acquire sufficient RINs to demonstrate compliance with their mandated Obligations. *See id.*

11. A RIN is invalid under the RFS rule if it “does not represent renewable fuel.” 40 C.F.R. §§ 80.1131(a)(6) and 80.1431(a)(1)(vi). The RFS rule prohibits the transfer or sale of invalid RINs, whether by an obligated party or by any other party. 40 C.F.R. §§ 80.1160(b)(2) and 80.1460(b)(2). A seller must “correct the transfer of invalid RINs to another party.” 40 C.F.R. §§ 80.1131(b)(3) and 80.1431(b)(3).

12. An active secondary market has developed for the purchase and sale of RINs.

Contract Between Cargill And IES

13. IES is engaged in the business of selling RINs as good, valid, and appropriate to be used by obligated parties to meet their annual Obligations.

14. On or about April 26, 2010, Cargill purchased a total of 1,200,000 RINs from IES.

15. Cargill paid IES for these RINs.

16. Cargill re-sold these RINs to other companies. Cargill did so believing that the RINs purchased from IES were good and valid.

17. Cargill subsequently learned that 1,190,895 of these RINs, purportedly originated from the producer Double Diamond Biofuels Inc. (“Double Diamond”), were not generated by Double Diamond and were not valid RINs.

18. Upon learning that the above RINs were invalid, Cargill requested that IES correct the transfer of the invalid RINs. By a letter dated May 23, 2012, IES refused Cargill’s request.

COUNT ONE

Violations of the CAA

19. Cargill repeats and realleges each and every allegation contained in Paragraphs 1 through 18 above as though fully set forth herein.

20. IES’s refusal to correct the transfer to Cargill of 1,190,985 invalid RINs is a violation of IES’s obligation under the RFS rule “to correct the transfer of invalid RINs” by replacing them with valid RINs. 40 C.F.R. §§ 80.1131(b)(3) and 80.1143(b)(3).

21. IES is therefore in violation of Section 211(o) of the CAA, 42 U.S.C. § 7545(o). Every day that IES has refused and continues to refuse to correct the transfer to Cargill of invalid RINs constitutes an independent violation of the CAA and the RFS regulations that implement it.

22. Unless enjoined by this Court, IES will continue violating the CAA and implementing regulations.

23. Cargill is entitled to costs and reasonable attorneys’ fees under the CAA for prosecuting this citizen suit.

COUNT TWO

Breach of Contract

24. Cargill repeats and realleges each and every allegation contained in Paragraphs 1 through 23 above as though fully set forth herein.

25. In exchange for payment of an agreed upon amount, IES agreed to provide Cargill with an agreed upon number of valid RINs. Cargill paid IES for these RINs, which payment IES received and accepted.

26. IES failed to deliver to Cargill the agreed upon number of valid RINs.

27. Accordingly, IES breached its contract with Cargill, thereby causing Cargill to suffer damages. Due to this breach, Cargill is entitled to actual damages in an amount to be determined at trial.

COUNT THREE

Breach of Warranties

28. Cargill repeats and realleges each and every allegation contained in Paragraphs 1 through 27 above as though fully set forth herein.

29. The transactions between Cargill and IES referenced herein involved the sale of goods. IES made various warranties to Cargill under Article 2 of the Uniform Commercial Code (“UCC”). These warranties include the following:

- a) Express warranty that the RINs were good and valid (UCC § 2-313);
- b) Warranty of good title (UCC § 2-312);
- c) Implied warranty of fitness for a particular purpose (UCC § 2-315); and
- d) Implied warranty of merchantability (UCC § 2-314).

30. By failing to deliver valid RINs to Cargill, IES breached these warranties, thereby causing Cargill to suffer damages. Due to this breach, Cargill is entitled to actual damages in an amount to be determined at trial.

WHEREFORE, Cargill respectfully prays that judgment be entered in its favor and against IES as follows:

- a) A declaration that IES is in violation of the CAA and implementing RFS regulations by failing to correct the transfer of invalid RINs to Cargill;
 - b) An order directing IES to correct the transfer of invalid RINs to Cargill;
 - c) An order enjoining IES from engaging in any transfers of biodiesel RINs out of its EPA Moderated Transaction System account or otherwise until the transfer of invalid RINs to Cargill is corrected;
 - d) An assessment of civil penalties of up to \$37,500 per day for each violation of the CAA and implementing RFS regulations;
 - e) An award of Cargill's actual damages in an amount to be proven at trial;
 - f) An award of pre- and post-judgment interest, as allowed by law;
 - g) An award of Cargill's costs herein, including reasonable attorneys' fees;
- and
- h) An award of such other and further relief to Cargill as this Court may deem just and proper.

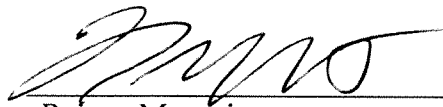
JURY DEMAND

Cargill demands a trial by jury for all issues so triable as a matter of right.

Dated: September 18, 2012
New York, New York

Respectfully submitted,

JONES DAY



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