

2. As described more fully below, Defendant wrongfully and willfully adopted a name and mark confusingly similar to that of Voltaix's famous VOLTAIX mark for Defendant's unrelated company and its closely related products.

3. In June 1986, Voltaix was founded and adopted the name and mark VOLTAIX in connection with its products. Since its founding in 1986, Voltaix's products have included a wide array of products for, among other things, the solar energy field. Voltaix has registered the trademark "VOLTAIX" with the United States Patent and Trademark Office.

4. Defendant recently began using the mark NANOVOLTAIX as its company's name and as a trademark to identify its goods and services. Defendant's goods and services include goods and services related to the solar energy field.

5. The term "nano" generically refers to something small. It is a term widely used in many fields which collectively are referred to as "nanotechnology." The term "nanotechnology" covers virtually any field of technical endeavor.

6. Defendant has simply added the generic term "nano" as a prefix in front of the highly distinctive VOLTAIX name and mark. The name and mark NANOVOLTAIX is confusingly similar to the mark VOLTAIX, especially when used for identical or very closely related goods and services, as is the case here.

7. Upon learning of Defendant's unauthorized and unlawful use of the NANOVOLTAIX name and mark, Voltaix requested an immediate halt to the infringement. Defendant refused to stop its use of the name and mark, however, and persists in its unlawful use of a name and mark virtually identical to Voltaix's name and mark.

8. Defendant's use of the NANOVOLTAIX name and mark creates a likelihood of confusion among the relevant public. Voltaix seeks equitable relief, compensatory damages, trebled, punitive damages, and attorneys' fees and costs incurred by reason of Defendant's conduct.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Voltaix's federal trademark claims under 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court has jurisdiction over Voltaix's request to cancel a trademark registration under 15 U.S.C. § 1119. This Court has jurisdiction over Voltaix's unfair competition claim under 28 U.S.C. § 1338(b). Finally, this Court has jurisdiction over all claims under 28 U.S.C. § 1332 because the amount in controversy is in excess of \$75,000, excluding interest and costs, and there is complete diversity between Voltaix and Defendant.

10. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial portion of the property that is the subject of this action (Voltaix's trademarks, etc.) is situated in this District.

THE PARTIES

11. Plaintiff Voltaix, LLC is a Delaware limited liability corporation with its principal place of business located in North Branch, New Jersey.

12. Since 1986, Voltaix has been using the name and mark VOLTAIX in connection with, among other things, manufacturing chemicals for the semiconductor industry and for the solar energy industry.

13. The VOLTAIX mark is registered with the United States Patent and Trademark Office.

14. On information and belief, Defendant NanoVoltaix, Inc. is a Delaware corporation with its principal place of business in Arizona.

15. On information and belief, NanoVoltaix commenced operations sometime in 2006.

16. On information and belief, NanoVoltaix is using the NanoVoltaix name and mark in connection with goods and services related to the solar energy field.

BACKGROUND FACTS

17. Since Voltaix was founded in 1986, it has used the VOLTAIX name and mark in connection with its goods and services.

18. The VOLTAIX name and mark was created by Voltaix. It is arbitrary and coined. The VOLTAIX name and mark is highly distinctive and has acquired secondary meaning as Voltaix has exclusively used the name and mark openly, continuously and nationally for over twenty years in connection with its goods and services. Relevant consumers have come to associate the VOLTAIX name and mark with its impeccable reputation and high quality of Voltaix's products.

19. Since 1986, Voltaix has made and sold, among other things, products for the solar energy field. Voltaix is a leading manufacturer of critical materials used in the manufacture of solar cell related products.

20. As a result of Voltaix's efforts and substantial investment, VOLTAIX brand products have been exceptionally well received among the solar cell manufacturing industry.

21. The name and mark VOLTAIX is the repository of substantial goodwill and is integral to the reputation of Voltaix's business.

22. The name and mark VOLTAIX functions as a trademark to designate VOLTAIX's goods and services. This mark is highly distinctive, and has been in open, continuous and nationwide use for over twenty (20) years. The VOLTAIX name and mark has acquired secondary meaning.

23. Voltaix is the owner of U.S. Trademark Reg. No. 2,954,404 for the mark VOLTAIX, INC. U.S. Reg. No. 2,954,404 was applied for on January 8, 2004 and duly issued on May 24, 2005 for the goods "chemicals used in the manufacture of semiconductors and photovoltaic devices." A copy of U.S. Reg. No. 2,954,404 is attached as Exhibit A.

24. Voltaix is the owner of U.S. Trademark Reg. No. 2,992,964 for the mark VOLTAIX. U.S. Reg. No. 2,992,964 was applied for on January 9, 2004 and duly issued on September 6, 2005 for the goods "chemicals used in the manufacture of semiconductors and photovoltaic devices." A copy of U.S. Reg. No. 2,992,964 is attached as Exhibit B.

25. Voltaix's U.S. Trademark Reg. No. 2,954,404 claims a date of first use of January 1990.

26. Voltaix's U.S. Trademark Reg. No. 2,992,964 claims a date of first use of June 1986.

27. Voltaix's trademark registrations provide nationwide constructive notice that Voltaix claims exclusive rights to use the VOLTAIX name and mark and any name and mark confusingly similar thereto.

DEFENDANT'S INFRINGING ACTIVITIES

28. On information and belief, beginning in 2006, Defendant NanoVoltaix adopted and began to use the name NanoVoltaix for its business and in connection with its goods and services. NanoVoltaix's adoption and use of the NANOVOLTAIX name and mark were used without Voltaix's authority or permission and in reckless disregard of Voltaix's rights and its federal trademark registrations.

29. On information and belief, Defendant NanoVoltaix operates a website, www.NanoVoltaix.com, which prominently uses the name and mark NANOVOLTAIX to advertise and promote its NanoVoltaix branded solar energy products, thereby reaching out to potential customers across the nation and beyond, and creating the false impression in those potential customers' minds that NanoVoltaix is affiliated with Voltaix.

30. On information and belief, a principal of Defendant NanoVoltaix, Henk de Waard, is a former employee of an Arizona based company known as ASM America, Inc. ("ASM"). ASM and Voltaix have done business together for many years. While Mr. de Waard was employed by ASM, he had direct contact with Voltaix. Thus, Mr. de Waard was well aware of and knew of the name and mark VOLTAIX and the longstanding use by Voltaix of its name and mark in connection with its goods and services. On information and belief, Mr. de Waard was involved in selecting the name and mark NanoVoltaix.

31. On information and belief, NanoVoltaix's selection of the name and mark NanoVoltaix was done with full knowledge and awareness of Voltaix, and its name and mark.

32. Promptly upon learning of Defendant's infringing use of Voltaix's mark, Voltaix contacted Defendant and requested that it cease and desist from its infringing activities and change the name of its company. Defendant, however, refused to comply. Defendant has persisted in its unlawful use of a name and mark virtually identical to Voltaix's name and mark.

33. On information and belief, Defendant's unlawful use of the NANOVOLTAIX name and mark has caused and unless restrained by this Court, will continue to cause, embarrassing and damaging confusion among the public.

34. Defendant's use of the NANOVOLTAIX name and mark will exploit and trade on the goodwill which Voltaix has developed in its mark as well as damage Voltaix's impeccable reputation.

35. On information and belief, as a result of the likelihood of confusion generated by Defendant's unauthorized use of a name and mark virtually identical to Voltaix's name and mark, Defendant is able to attract customers who mistakenly believe that they are purchasing Voltaix products. Defendant will not only wrongfully benefit from Voltaix's valuable and hard-earned goodwill, but also jeopardize Voltaix's reputation.

36. Defendant has filed at least two trademark applications for the mark NANOVOLTAIX.

37. One application was filed on August 8, 2008, and asserts a date of first use of March 24, 2006. This application has been assigned U.S. Ser. No. 77/542,413. Defendant filed this application in three different classes for a variety of goods and services relating to the solar energy field, including the following:

Class 9 – manufacturing equipment for the production of solar grade silicon, silicon wafer, photovoltaic solar cells and modules, supporting frames, and parts and accessories thereof; apparatus and systems for converting electronic radiation to electrical energy, namely, photovoltaic solar cells, modules and systems;

Class 37 – installation, repair, retrofit and maintenance of manufacturing equipment for the production of solar grade silicon, silicon wafer, photovoltaic solar cells, modules and systems, supporting frames, and parts and accessories thereof; installation and maintenance of photovoltaic installations; and

Class 42 – design of solar photovoltaic solar cells, modules and systems; technology planning and consulting in the field of solar energy.

38. The second application was filed on or about April 20, 2006 and asserts a date of first use of March 24, 2006. This application issued as U.S. Registration No. 3,208,703 on February 13, 2007. This registration recites the services “management and business consulting services in the field of nanotechnology.”

39. Voltaix is entitled to protect the good-will and reputation inherent in its federally registered mark, VOLTAIX, and is likewise entitled to exclusive enjoyment of that mark due to its extensive use of the mark. Unless Defendant’s continued unlawful use of the name NANOVOLTAIX is restrained by this Court, Voltaix will suffer substantial irreparable injury for which it has no adequate remedy at law.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

40. Voltaix realleges the allegations contained in paragraphs 1 through 39 as its paragraph 40.

41. Under 15 U.S.C. §1115(b)(5), the filing of an application to register provides a right of priority which is nationwide in effect, provided that, as here, the application subsequently matures into a registration. Defendant's use of the name and mark NANOVOLTAIX is in violation of 15 U.S.C. §1114 and constitutes federal trademark infringement.

42. Defendant's use of the name and mark NANOVOLTAIX has been in interstate commerce or has had a substantial effect on interstate commerce.

43. Voltaix has requested Defendant to voluntarily cease its use of the name NANOVOLTAIX, but Defendant has refused to do so.

44. Unless restrained by this Court, Defendant's use of the name NANOVOLTAIX will irreparably damage Voltaix, for which Voltaix has no adequate remedy at law. NanoVoltaix's use of the NanoVoltaix name and mark is without permission or authority of Voltaix and is likely to cause confusion, to cause mistake and to deceive.

COUNT II

VIOLATION OF SECTION 43 (A) OF THE LANHAM ACT

45. Voltaix realleges the allegations contained in paragraphs 1 through 44 as its paragraph 45.

46. Defendant's unauthorized use of the name NANOVOLTAIX falsely designates the origin of Defendant's goods and services and tends falsely to represent Defendant as being legitimately connected with Voltaix.

47. By reason of the foregoing, Defendant has violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

48. As a direct and proximate result of Defendant's unlawful conduct, Voltaix has suffered and unless Defendant is enjoined by this Court, will continue to suffer, substantial irreparable injury for which there is no adequate remedy at law.

49. Such acts by NanoVoltaix are in violation of 15 U.S.C. § 1125(a), in that NanoVoltaix has used in connection with goods and/or services a false designation of origin and/or a false or misleading description or representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of NanoVoltaix's goods and/or services with Voltaix and/or of Voltaix's goods and/or services with NanoVoltaix, or as to the origin, sponsorship or approval of NanoVoltaix's goods and/or services or commercial activities by NanoVoltaix and/or as to the origin, sponsorship or approval of Voltaix's goods and/or services or commercial activities by NanoVoltaix.

COUNT III

UNFAIR COMPETITION BY INFRINGEMENT OF PLAINTIFF'S COMMON LAW TRADEMARK RIGHTS

50. Voltaix realleges the allegations contained in paragraphs 1 through 49 as its paragraph 50.

51. In view of its first, continuous, prominent and exclusive use of the name and mark VOLTAIX, Voltaix has acquired, at common law, a protectable interest in said name and mark.

52. By reason of the confusion and the likelihood of continued confusion engendered by Defendant's use of the name NANOVOLTAIX, Defendant has infringed, and will continue to infringe, upon Voltaix's rights in its distinctive mark. Defendant

began and has persisted in this infringing conduct intentionally and willfully, and with full knowledge of Voltaix's rights.

53. As a direct and proximate result of Defendant's repeated and persistent acts of unfair competition, Voltaix has suffered and unless Defendant is enjoined by this Court, will continue to suffer, substantial and irreparable injury for which it has no adequate remedy at law.

**COUNT IV
WILLFUL INFRINGEMENT**

54. Voltaix realleges the allegations contained in paragraphs 1 through 53 as its paragraph 54.

55. On information and belief, NanoVoltaix's selection of the name and mark NANOVOLTAIX was done with full knowledge and awareness of Voltaix, and its name and mark VOLTAIX.

56. NanoVoltaix has infringed upon Voltaix's name and mark with the intent to deceive the public into believing that NanoVoltaix goods and services are made, provided, approved by, sponsored by or affiliated with, Voltaix.

**COUNT V
CANCELLATION OF U.S. REG. NO. 3,208,703**

57. Voltaix realleges the allegations contained in paragraphs 1 through 56 as its paragraph 57.

58. On or about February 13, 2007, Registration No. 3,208,703 on NANOVOLTAIX for goods described as "management and business consulting services in the field of nanotechnology" issued to NanoVoltaix.

59. On information and belief, any “management and business consulting services” NanoVoltaix may conduct are conducted in the solar energy field. The recited field of “nanotechnology” is so broad as to encompass virtually anything, and based on NanoVoltaix’s business, it is likely to consult in the field of solar energy.

60. Voltaix is likely to be damaged by said Registration No. 3,208,703 in that the mark NANOVOLTAIX for services identified as “management and business consulting services in the field of nanotechnology” is likely to cause confusion, to cause mistake and to deceive. Voltaix’s continued and legal use of its marks will be impaired by the continued registration of Registration No. 3,208,703.

COUNT VI
STATE MISAPPROPRIATION

61. Plaintiff realleges the allegations contained in paragraphs 1 through 60 as its paragraph 61.

62. Defendant’s acts as set forth above constitute misappropriation in violation of the statutes of New Jersey, N.J.S.A. §§ 56: 4-1, *et seq.*

63. Defendant’s misappropriation of Plaintiff’s name and mark has caused and will continue to cause irreparable injury and damage to Plaintiff’s business, reputation and goodwill. Plaintiff has no remedy at law for this injury.

COUNT VII
STATE TRADEMARK INFRINGEMENT

64. Plaintiff realleges the allegations contained in paragraphs 1 through 63 as its paragraph 64.

65. Defendant's use of the name and mark NANOVOLTAIX is in violation of the Statutes of New Jersey, N.J.S.A. 56:3-13a *et seq.*

66. Unless restrained by this Court, Defendant's use of the name and mark NANOVOLTAIX will irreparably damage Plaintiff for which Plaintiff has no adequate remedy at law.

COUNT VIII
STATE TRADEMARK DILUTION

67. Plaintiff realleges the allegations contained in paragraphs 1 through 66 as its paragraph 67.

68. Defendant's use of the NANOVOLTAIX name and mark is likely to cause dilution of the distinctive quality of Plaintiff's valuable VOLTAIX name and mark and is likely to cause injury to Plaintiff's business reputation in violation of N.J.S.A. 56:3-13a *et seq.*

69. Defendant's dilution of Plaintiff's name and mark has caused and will continue to cause irreparable injury and damage to Plaintiff's business, reputation and goodwill. Plaintiff has no adequate remedy at law to prevent this injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Voltaix, LLC respectfully requests this Court to:

A. Preliminarily and permanently enjoin Defendant, and any person associated with Defendant, from (1) directly or indirectly using the name and mark NANOVOLTAIX or any name or mark confusingly similar thereto; and (2) directly or indirectly using any other name or mark likely to dilute the distinctive quality of Plaintiff's mark or injure its business reputation; and (3) further prosecuting the pending

trademark application it has that includes the mark NANOVOLTAIX, namely U.S. Ser. No. 77/542,413.

B. Direct Defendant to deliver up for destruction or other disposition within thirty days of the entry of judgment all advertising and other materials in their actual or constructive possession that violate the terms of any injunction entered herein or which bear any designation in violation hereof;

C. Under 15 U.S.C. §1119, order the Commissioner of Trademarks to cancel Registration No. 3,208,703.

D. Direct Defendant to recall all advertising or other materials not yet disseminated to the trade or consumers that violate the terms of any injunction entered herein, or bear any designation in violation thereof;

E. Direct Defendant to account for all profits derived from its wrongful activities and to turn them over, trebled, to Plaintiff;

F. Order Defendant to pay Plaintiff all of Plaintiff's damages, trebled, resulting from Defendant's misconduct, including full compensation for the injury to Plaintiff's goodwill and business reputation;

G. Order Defendant to pay Plaintiff punitive damages for Defendant's intentional acts of infringement and unfair competition;

H. Declare this an exceptional case and that Plaintiff Voltaix be awarded its reasonable attorneys' fees.

I. Award Voltaix the costs and disbursements of this action, including reasonable attorneys' fees; and

J. Grant such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff Voltaix, LLC hereby demands trial by jury.

Dated: January 12, 2009

Respectfully submitted,

s/ William J. O'Shaughnessy
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Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26 and 46

Reg. No. 2,954,404

United States Patent and Trademark Office

Registered May 24, 2005

**TRADEMARK
PRINCIPAL REGISTER**

Voltaix, Inc.

VOLTAIX, INC. (NEW JERSEY CORPORATION)
197 MEISTER AVENUE
NORTH BRANCH, NJ 08876

FOR: CHEMICALS USED IN THE MANUFACTURE OF SEMICONDUCTORS AND PHOTOVOLTAIC DEVICES, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 1-0-1990; IN COMMERCE 1-0-1990.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INC"., APART FROM THE MARK AS SHOWN.

SER. NO. 76-569,570, FILED 1-8-2004.

TANYA AMOS, EXAMINING ATTORNEY

Exhibit A

Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26, and 46

Reg. No. 2,992,964

United States Patent and Trademark Office

Registered Sep. 6, 2005

**TRADEMARK
PRINCIPAL REGISTER**

VOLTAIX

VOLTAIX, INC. (NEW JERSEY CORPORATION)
197 MEISTER AVENUE
NORTH BRANCH, NJ 08876

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: CHEMICALS USED IN THE MANUFAC-
TURE OF SEMICONDUCTORS AND PHOTOVOL-
TAIC DEVICES, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26
AND 46).

SN 76-570,189, FILED 1-9-2004.

FIRST USE 6-0-1986; IN COMMERCE 6-0-1986.

TANYA AMOS, EXAMINING ATTORNEY

Exhibit B