

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

BEEKLEY CORPORATION	)	
	)	
	)	Plaintiff,
v.	)	CIVIL ACTION NO.:
	)	
JESSOP PRECISION PRODUCTS, INC.	)	
d/b/a THE SUREMARK COMPANY	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Beekley Corporation (“Beekley), by and through its attorneys, hereby alleges for its complaint against Jessop Precision Products, Inc., d/b/a The Suremark Company (“Suremark”) as follows:

**THE PARTIES**

1. Beekley is a corporation organized and existing under the laws of the State of Connecticut, with a principal place of business at One Prestige Lane, Bristol, Connecticut.
2. Upon information and belief, Suremark is a corporation organized and existing under the laws of the State of California, with a place of business at 4548 Industrial Street, Simi Valley, California.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because the action involves claims between a citizen of Connecticut (Beekley) and a citizen of California (Suremark), and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.
4. This action arises under the patent laws of the United States, Title 35 of the United States Code, under the trademark laws of the United States, 15 U.S.C. § 1051 et seq., and

under related statutory and common law causes of action. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

5. The Court has personal jurisdiction over Suremark because, upon information and belief, Suremark does business in this district, either directly or through established distribution channels or distributors. In addition, Suremark has advertised, offered to sell and/or sold products which infringe Beekley's patents and trademarks that are the subject of this litigation within this district and has, upon information and belief, contributed to and/or knowingly induced others to engage in infringing conduct. Accordingly, Suremark is subject to the jurisdiction of this Court consistent with the Connecticut Long-Arm Statute (C.G.S. § 52-59b(a)) and the Fourteenth Amendment to the United States Constitution.

6. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400, because Suremark advertised, offered to sell, and/or sold products which infringe Beekley's patents and trademarks that are the subject of this litigation within this District, and upon information and belief, has contributed to and/or knowingly induced others to engage in infringing conduct. Venue in this District is also proper pursuant to 28 U.S.C. § 1391(b)(1) and (c)(2), because Suremark is subject to personal jurisdiction in this District.

### **BACKGROUND**

7. Beekley has invested heavily in researching, developing and marketing simple, low cost, disposable products that help medical imaging, surgical, and radiation oncology professionals improve communication, productivity and patient care. As a result of its efforts, Beekley is a leading manufacturer and seller of such products, including its TOMOSPOT<sup>®</sup> markers used in 3D breast tomosynthesis to identify and/or mark portions of a breast undergoing

mammography, and its POINT GUARDS<sup>®</sup> temporary mark protectors that protect temporary tattoos used to identify radiation treatment fields on patients' skin.

8. Beekley has developed a reputation for being committed to quality and customer care, and the appearance of its products embody goodwill representing those values.

9. Beekley's TOMOSPOT and other mammography markers have a distinctive appearance consisting of a raised, three-dimensional shape in the form of a circle ("the Raised Circle Mark"), a raised, three-dimensional shape in the form of a triangle ("the Raised Triangle Mark") or a raised, three-dimensional shape in the form of a square ("the Raised Square Mark") applied to the front face of a pressure-sensitive adhesive backing used for attaching the marker to a patient's skin. These distinctive product configurations are trademarks of Beekley, and are the subject of the following federal trademark registrations: (i) the Raised Circle Mark is the subject of U.S. Trademark Registration No. 4,697,993 ("the '993 registration") (copy attached as Exhibit A); (ii) the Raised Triangle Mark is the subject of U.S. Trademark Registration No. 4,697,994 ("the '994 registration") (copy attached as Exhibit B), and (iii) the Raised Square Mark is the subject of U.S. Trademark Registration No. 4,697,995 ("the '995 registration") (copy attached as Exhibit C).

10. Beekley's POINT GUARDS products are covered by Beekley's U.S. Patent No. 7,781,041 ("the '041 Patent") (copy attached as Exhibit D) and U.S. Patent No. 8,012,295 ("the '295 patent") (copy attached as Exhibit E), and by Beekley's U.S. Design Patents Nos. D698,029 ("the '029 patent") (copy attached as Exhibit F) and D701,609 ("the '609 patent") (copy attached as Exhibit G).

### **Beekley's First Civil Action Against Suremark**

11. On or about March 6, 2006, Beekley filed a Complaint against Suremark in the United States District Court for the District of Connecticut, Civil Action No. 3:06-CV-00335 (RNC), asserting that Suremark infringed Beekley's U.S. Patent Nos. 6,985,558 ("the '558 Patent") and RE 36,461 ("the '461 Patent"), and Beekley's U.S. Trademark Registration No. 2,708,429 ("the '429 Registration"), based on Suremark's making, using, selling and offering to sell certain mammography markers (the "First Civil Action").

12. On May 18, 2007, Beekley and Suremark entered into a confidential settlement agreement ("the "First Agreement") (redacted copy attached as Exhibit H) pursuant to which the parties agreed to a consent judgment entered by the Court on May 25, 2007. Pursuant to the First Agreement, Beekley granted to Suremark a non-exclusive license under the '558 patent to make and sell limited types of "Licensed Markers." The '558 patent is directed to, *inter alia*, semi-lucent mammography markers. The patented semi-lucent mammography markers include a partially radiopaque, partially radiolucent portion that generates a radiographic image of the breast tissue having the shadow of the marker superimposed thereon, wherein the anatomical detail present in the breast tissue is clearly visible through the radiographic shadow projected by the marker. The Licensed Markers that Suremark is permitted to make and sell under the First Agreement do not include, and Suremark agreed in Paragraph 10 of the First Agreement that during the life of the '558 patent it would not modify any of its existing markers, or introduce, any new markers having certain prohibited features. The '558 patent is still in force, and does not expire until July 28, 2016. The recently introduced TomoMark markers include prohibited feature (i) identified in Paragraph 10 of the First Agreement, and therefore their introduction is a material breach of the First Agreement.

13. Despite its contractual promise not to do so, Suremark has introduced, is offering for sale, and has sold in this District the following 3D breast tomosynthesis markers having prohibited feature (i) identified in Paragraph 10, in breach of the First Agreement: (i) TomoMark Nipple Markers, (ii) TomoMark Scar Markers, (iii) TomoMark Mole Markers, (iv) Tomo-4 markers and (v) Tomo-5 markers. Suremark describes these markers on its website (<http://www.suremark.com/catalog/3d-breast-tomosynthesis>) as “semi-lucent markers specifically formulated for 3D Breast Tomosynthesis scans and diagnosis.” Suremark states on the packaging for these markers that they are “Licensed under patent # 6,985,558.” An image of exemplary packaging for these markers is attached as Exhibit I. This marking is false and misleading because these markers include prohibited feature (i), and therefore are not licensed under the ‘558 patent.

14. Upon information and belief, in manufacturing the TomoMark Mole Marker, Tomo-4 and Tomo-5 markers, Suremark copied the Raised Circle, Raised Triangle and Raised Square Marks of Beekley’s ‘993, ‘994 and ‘995 registrations, respectively. Beekley’s TOMOSPOT<sup>®</sup> 3D breast tomosynthesis markers also embody the Raised Circle, Raised Triangle and Raised Square Marks of Beekley’s ‘993, ‘994 and ‘995 registrations, respectively. Images of Beekley’s TOMOSPOT marks side-by-side with Suremark’s competing TomoMark markers are reproduced below. Each Suremark TomoMark marker is confusingly similar to the respective Beekley TOMOSPOT marker and registered trademark. In addition, Beekley’s TOMOSPOT marks include a distinctive pink and blue trade dress on the front face of the pressure-sensitive adhesive backing, including a pink patterned background with a blue winged hummingbird overlying the pink pattern (the “Pink and Blue Trade Dress”). Suremark’s competing TomoMark markers similarly include a pink patterned background with a blue

winged butterfly overlying the pink pattern. Suremark's pink patterned background with overlying blue winged elements is strikingly similar to Beekley's Pink and Blue Trade Dress, and further enhances the likelihood of confusion between these competing products.

Beekley's TOMOSPOT Markers	Suremark's Infringing TomoMark Markers
 <p>A circular marker with a raised ring. The background is pink and blue with a butterfly illustration. The text 'TomoSPOT®' is on the left and '#782' is on the right.</p>	 <p>A circular marker with a raised ring. The background is pink and blue with a butterfly illustration. The text 'suremark' and 'TOMO-3' is on the right.</p>
 <p>A circular marker with a raised ring. The background is pink and blue with a butterfly illustration. The text 'TomoSPOT™ #785' is on the left.</p>	 <p>A circular marker with a raised ring. The background is pink and blue with a butterfly illustration. The text 'suremark' and 'TOMO-3' is on the right.</p>
 <p>A circular marker with a raised ring. The background is pink and blue with a butterfly illustration. The text 'TomoSPOT® #784' is on the left.</p>	 <p>A circular marker with a raised ring. The background is pink and blue with a butterfly illustration. The text 'suremark' and 'TOMO-4' is on the right.</p>

15. Upon information and belief, Suremark copied the Raised Circle, Raised Triangle and Raised Square Marks, and further, copied Beekley's distinctive Pink and Blue Trade Dress, in order to confuse consumers into believing that the Suremark products are the Beekley

products, or that the Suremark products otherwise are sponsored by or affiliated with Beekley, and otherwise to misappropriate and/or trade on the goodwill of Beekley's products and trademarks.

16. Upon information and belief, the Suremark TomoMark markers exhibit inferior quality, including inferior imaging quality, as compared to the competing Beekley TOMOSPOT markers, and therefore Suremark's sale of the confusingly similar TomoMark markers will cause irreparable damage to Beekley's reputation and goodwill.

**Beekley's Second Civil Action Against Suremark**

17. On or about October 14, 2010, Beekley filed another Complaint against Suremark in the United States District Court for the District of Connecticut, Civil Action No. 3:10-v-01615 (CFD), asserting that Suremark was infringing the '041 patent by making, using, offering to sell and/or selling covers for temporary tattoos used in radiation therapy (the "Second Civil Action").

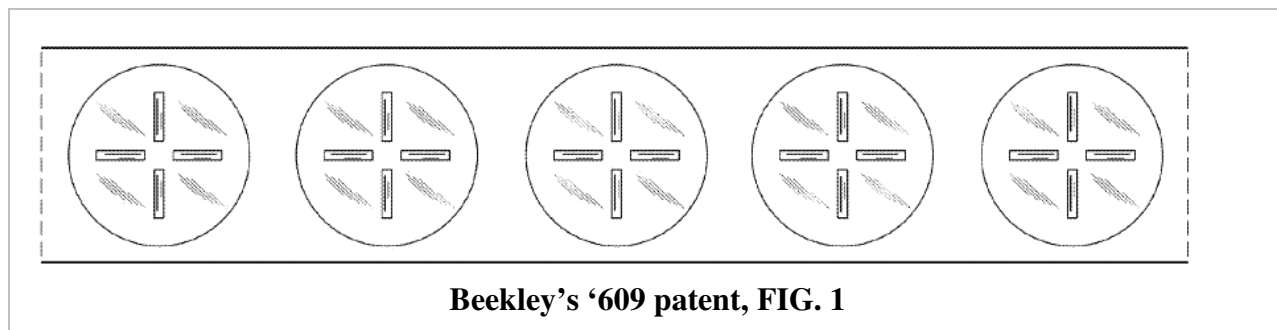
18. On December 24, 2010, Beekley and Suremark entered an agreement settling the Second Civil Action (the "Second Agreement") (copy attached as Exhibit J) pursuant to which Suremark agreed, *inter alia*, that after December 31, 2011, it would not make, have made, import, sell or offer to sell any product covered by, or any product having a method of use covered by, one or more valid claims of the '041 patent, or of any continuation, continuation-in-part, divisional, reexamination or reissue related to the '041 patent.

19. Despite its contractual promise not to do so, Suremark has made, sold and offered for sale in this District and elsewhere the following products that are covered by, the use of which is covered by, and/or which have a method of use covered by, the '041 patent and Beekley's '295 patent, which is a continuation of the '041 patent: (i) PM-300 PortalMarks, (ii) PM-350 PortalMarks, (iii) PM-400 PortalMarks, and (iv) PM-450 PortalMarks. These

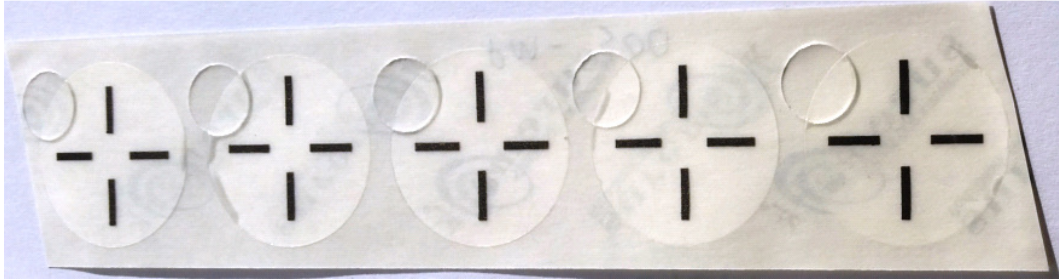
PortalMarks infringe one or more claims of the '041 patent, including at least claims 1, 3, 5-8 and 16 thereof.

20. Suremark had actual knowledge of the '041 patent no later than the Second Civil Action and of the '295 patent no later than April 3, 2013. Upon information and belief, users of these PortalMarks infringe one or more claims of the '295 patent, including at least claims 1-5, 7, 8, 10, 12, 14-28, 31, 32, 34 and 35 thereof. Upon information and belief, Suremark offers to sell and sells these PortalMarks in competition with and as a substitute for Beekley's POINT GUARDS products, and with knowledge or willful blindness to that users utilize them in an infringing manner. Suremark's sales of and activities with respect to these PortalMarks indirectly infringe one or more claims of the '295 patent, including at least claims 1-5, 7, 8, 10, 12, 14-28, 31, 32, 34 and 35 thereof.

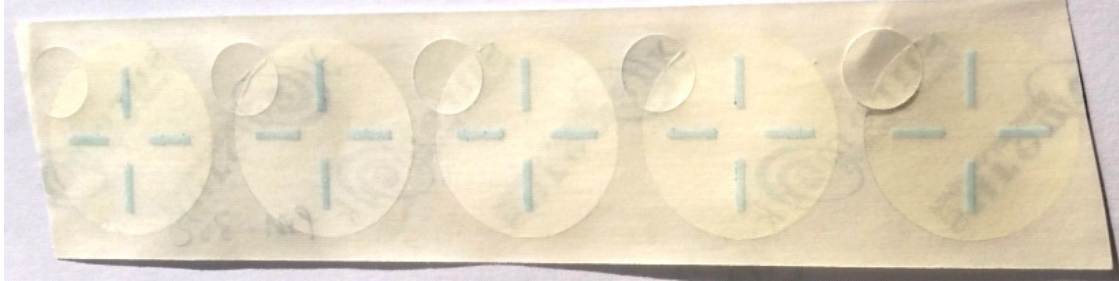
21. The designs of Suremark's infringing PortalMarks are substantially the same as the designs of Beekley's '029 patent and '609 patent, and therefore infringe Beekley's design patents as well. Images of Suremark's infringing PortalMarks and the corresponding designs claimed in Beekley's '029 and '609 patents are reproduced below:



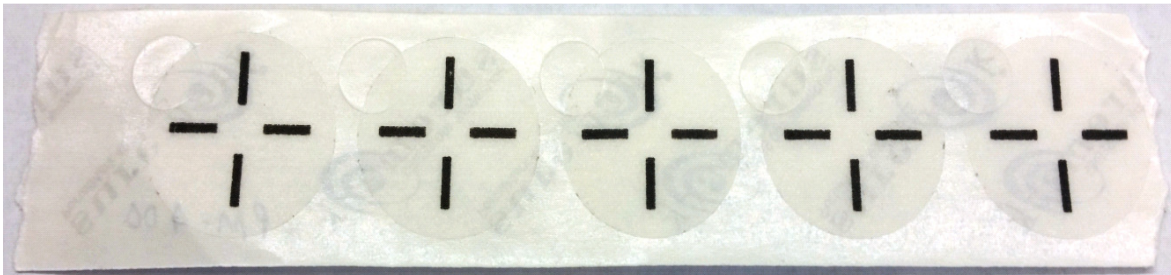




**Suremark's Infringing PM-300 PortalMark**



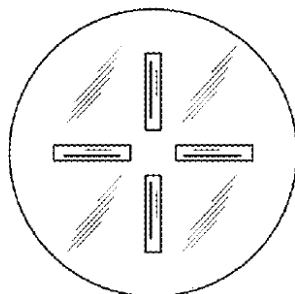
**Suremark's Infringing PM-350 PortalMark**



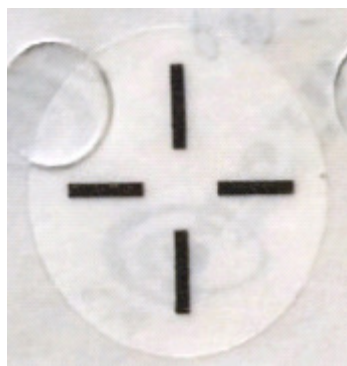
**Suremark's Infringing PM-400 PortalMark**



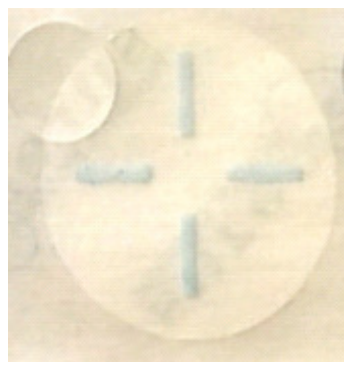
**Suremark's Infringing PM-450 PortalMark**



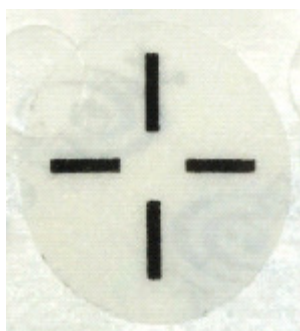
**Beekley's '029 patent, FIG. 1**



**Suremark's Infringing PM300 PortalMark**



**Suremark's Infringing PM350 PortalMark**



**Suremark's Infringing PM400 PortalMark**



**Suremark's Infringing PM450 PortalMark**

**FIRST CLAIM FOR RELIEF  
(Breach of Contract)**

22. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

23. Beekley and Suremark were parties to the First Agreement and the Second Agreement as described herein.

24. Suremark breached the First Agreement by introducing, offering for sale, and selling the following markers having prohibited feature (i) as identified in Paragraph 10 of the First Agreement: (i) TomoMark Nipple Markers, (ii) TomoMark Scar Markers, (iii) TomoMark Mole Markers, (iv) Tomo-4 markers and (v) Tomo-5 markers.

25. Suremark breached the Second Agreement by making, selling and offering sale the following products that are covered by, the use of which is covered by, and/or which have a method of use covered by, the '041 patent and the '295 patent: (i) PM-300 PortalMarks, (ii) PM-350 PortalMarks, (iii) PM-400 PortalMarks, and (iv) PM-450 PortalMarks.

26. As a direct result of Suremark's breach of the First Agreement and the Second Agreement, Beekley has suffered and continues to suffer damages, and further, has suffered and continues to suffer irreparable harm due to the infringing nature of the products sold by Suremark in breach of the First and Second Agreements.

**SECOND CLAIM FOR RELIEF**  
**Infringement of U.S. Patent No. 6,985,558**

27. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

28. Beekley is the assignee of the '558 patent. A copy of the '558 patent is attached as Exhibit K to this Complaint.

29. Suremark has infringed the '558 patent by, among other things, making, using, selling and/or offering to sell radiographic imaging markers in this District and elsewhere in the United States, that are covered by one or more of the claims of the '558 patent, without the permission or authorization of Beekley, including the following: (i) TomoMark Nipple Markers, (ii) TomoMark Scar Markers, (iii) TomoMark Mole Markers, (iv) Tomo-4 markers and (v) Tomo-5 markers.

30. Upon information and belief, Suremark will continue to infringe the '558 patent by making, using, offering to sell and/or selling products covered by one or more claims of the '558 patent unless and until it is enjoined by this Court to stop the infringement.

31. Upon information and belief, Suremark's infringement of the '558 patent has been and continues to be taking place with full knowledge of the '558 patent.

32. Upon information and belief, Suremark's infringement of the '558 patent has been and is willful. Beekley has suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. As a result, Beekley is entitled to damages for infringement and treble damages, as well as a preliminary and permanent injunction against further infringement.

**THIRD CLAIM FOR RELIEF**  
**(Infringement of U.S. Patent No. 7,781,041 by Suremark)**

33. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

34. Beekley is the assignee of the '041 patent. A copy of the '041 patent is attached as Exhibit D to this Complaint.

35. Suremark has infringed the '041 patent by, among other things, making, using, selling and/or offering to sell products in this District and elsewhere in the United States, that are covered by one or more of the claims of the '041 patent, without the permission or authorization of Beekley, including the following: (i) PM-300 PortalMarks, (ii) PM-350 PortalMarks, (iii) PM-400 PortalMarks, and (iv) PM-450 PortalMarks.

36. Upon information and belief, Suremark will continue to infringe the '041 patent by making, using, offering to sell and/or selling products covered by one or more claims of the '041 patent unless and until it is enjoined by this Court to stop the infringement.

37. Upon information and belief, Suremark's infringement of the '041 patent has been and continues to be taking place with full knowledge of the '041 patent.

38. Upon information and belief, Suremark's infringement of the '041 patent has been and is willful. Beekley has suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. As a result, Beekley is entitled to damages for infringement and treble damages, as well as a preliminary and permanent injunction against further infringement.

**FOURTH CLAIM FOR RELIEF**  
**(Infringement of U.S. Patent No. 8,012,295 by Suremark)**

39. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

40. Beekley is the assignee of the '295 patent. A copy of the '295 patent is attached as Exhibit E to this Complaint.

41. Suremark has infringed the '295 patent by, among other things, making, using, selling and/or offering to sell products in this District and elsewhere in the United States, the use of which are covered by one or more of the claims of the '295 patent, without the permission or authorization of Beekley, including the following: (i) PM-300 PortalMarks, (ii) PM-350 PortalMarks, (iii) PM-400 PortalMarks, and (iv) PM-450 PortalMarks.

42. Upon information and belief, Suremark will continue to infringe the '295 patent by making, using, offering to sell and/or selling products the use of which are covered by one or more claims of the '295 patent unless and until it is enjoined by this Court to stop the infringement.

43. Upon information and belief, Suremark's infringement of the '295 patent has been and continues to be taking place with full knowledge of the '295 patent.

44. Upon information and belief, Suremark's infringement of the '295 patent has been and is willful. Beekley has suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. As a result, Beekley is entitled to damages for infringement and treble damages, as well as a preliminary and permanent injunction against further infringement.

**FIFTH CLAIM FOR RELIEF**  
**(Infringement of U.S. Design Patent No. D698,029 by Suremark)**

45. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

46. Beekley is the assignee of the '029 patent. A copy of the '029 patent is attached as Exhibit F to this Complaint.

47. Suremark has infringed the '029 patent by, among other things, making, using, selling and/or offering to sell products in this District and elsewhere in the United States, that are covered by the claim of the '029 patent, without the permission or authorization of Beekley, including the following: (i) PM-300 PortalMarks, (ii) PM-350 PortalMarks, (iii) PM-400 PortalMarks, and (iv) PM-450 PortalMarks.

48. Upon information and belief, Suremark will continue to infringe the '029 patent by making, using, offering to sell and/or selling products covered by the claim of the '029 patent unless and until it is enjoined by this Court to stop the infringement.

49. Upon information and belief, Suremark's infringement of the '029 patent has been and continues to be taking place with full knowledge of the '029 patent.

50. Upon information and belief, Suremark's infringement of the '029 patent has been and is willful. Beekley has suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. As a result, Beekley is entitled to damages for infringement and treble damages, as well as a preliminary and permanent injunction against further infringement.

**SIXTH CLAIM FOR RELIEF**  
**(Infringement of U.S. Design Patent No. D701,609 by Suremark)**

51. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

52. Beekley is the assignee of the '609 patent. A copy of the '609 patent is attached as Exhibit G to this Complaint.

53. Suremark has infringed the '609 patent by, among other things, making, using, selling and/or offering to sell products in this District and elsewhere in the United States, that are covered by the claim of the '609 patent, without the permission or authorization of Beekley, including the following: (i) PM-300 PortalMarks, (ii) PM-350 PortalMarks, (iii) PM-400 PortalMarks, and (iv) PM-450 PortalMarks.

54. Upon information and belief, Suremark will continue to infringe the '609 patent by making, using, offering to sell and/or selling products covered by the claim of the '609 patent unless and until it is enjoined by this Court to stop the infringement.

55. Upon information and belief, Suremark's infringement of the '609 patent has been and continues to be taking place with full knowledge of the '609 patent.

56. Upon information and belief, Suremark's infringement of the '609 patent has been and is willful. Beekley has suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. As a result, Beekley is entitled to damages for infringement and treble damages, as well as a preliminary and permanent injunction against further infringement.

**SEVENTH CLAIM FOR RELIEF**  
**Violation of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)**

57. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

58. Beekley has adopted and extensively used its Raised Circle, Raised Triangle and Raised Square Marks and its Pink and Blue Trade Dress, as identifiers of source for its markers. Beekley has built up substantial goodwill and customer recognition and identification in the Raised Circle, Raised Triangle and Raised Square Marks and in its Pink and Blue Trade Dress for its imaging markers through extensive distribution and sale of imaging markers bearing these Marks, and otherwise through extensive promotion of these Marks, throughout the United States.

59. Beekley is the owner of all right, title and interest to the '993 registration, the '994 registration, and the '995 registration. Copies of the '993, '994 and '995 trademark registrations are attached hereto as Exhibits A-C, respectively.

60. Suremark has misappropriated and applied the Raised Circle, Raised Triangle and Raised Square Marks and/or the Pink and Blue Trade Dress, and/or confusingly similar variations thereof, to its infringing imaging markers, including the following: (i) TomoMark Nipple Markers, (ii) TomoMark Scar Markers, (iii) TomoMark Mole Markers, (iv) Tomo-4 markers and (v) Tomo-5 markers.

61. Suremark's promotion, sale, distribution and use of the infringing TomoMark markers has been and continues to be likely to cause confusion or mistake or to deceive the relevant public as to the source or origin of the infringing TomoMark markers, or otherwise to suggest an affiliation or connection between the infringing TomoMark markers and Beekley, Beekley's Raised Circle, Raised Triangle and Raised Square Marks, and Beekley's Pink and Blue Trade Dress, and/or Beekley's products bearing such Marks or Trade Dress.

62. By the aforementioned actions and conduct, Suremark has violated Lanham Act, § 43(a), 15 U.S.C. § 1125(a) with respect to Beekley's Raised Circle, Raised Triangle and Raised Square Marks, and Beekley's Pink and Blue Trade Dress. Further, the aforementioned actions



and conduct also violate Lanham Act, § 32, 15 U.S.C. § 1114 with respect to Beekley's Raised Circle, Raised Triangle and Raised Square Marks.

63. Suremark's statements on the packaging of its 3D breast tomosynthesis marks that such markers are "Licensed under patent # 6,985,558" is a false and misleading description or representation of fact also in violation of Section 43(a) of the Lanham Act.

64. Upon information and belief, Suremark's misappropriation and use of Beekley's Raised Circle, Raised Triangle and Raised Square Marks, and Beekley's Pink and Blue Trade Dress, and/or confusingly similar variations thereof, and its false and misleading descriptions or representations of fact, have been and are willful, and will continue unless enjoined by this Court. Beekley has suffered, and will continue to suffer, irreparable injury as a result of these willful actions. As a result, Beekley is entitled to damages for Suremark's false and misleading descriptions or representations of fact and infringement and treble damages, as well as a preliminary and permanent injunction against further infringement.

**EIGHTH CLAIM FOR RELIEF**  
**Common Law Trademark Infringement and Unfair Competition**

65. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

66. Beekley has built up valuable goodwill in its Raised Circle, Raised Triangle and Raised Square Marks, and its Pink and Blue Trade Dress.

67. Suremark has traded, and continues to trade, on the goodwill associated with Beekley's Raised Circle, Raised Triangle and Raised Square Marks, and Beekley's Pink and Blue Trade Dress, and misleads the public into believing that Suremark's products are endorsed or sponsored by, or otherwise affiliated with, Beekley.

68. Suremark's unauthorized use of Beekley Marks and Trade Dress is likely to cause confusion, mislead and deceive the public as to the source of Suremark's products, permit Suremark to pass off its products as Beekley's products, and falsely suggest a connection between Suremark and Beekley and their respective products, in violation of the common law of the State of Connecticut, and to the detriment of Beekley.

69. Beekley has no adequate remedy at law, and if Suremark's activities are not enjoined, such activities will continue to cause irreparable harm and injury to the goodwill symbolized by Beekley's Marks and Trade Dress.

#### **NINTH CLAIM FOR RELIEF**

#### **Violation of the Connecticut Unfair Trade Practices Act C.G.S.A. § 42-110a et seq.**

70. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

71. At all times material to this action, Suremark has engaged in trade or commerce in the State of Connecticut within the meaning of the Connecticut Unfair Trade Practices Act ("CUTPA"), Connecticut General Statutes §§ 42-110a et seq. Suremark competes against Beekley in the sale and distribution of the above-mentioned products throughout the State of Connecticut.

72. By committing the acts alleged hereinabove, Suremark has engaged in unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade within the State of Connecticut in violation of Connecticut General Statutes, Section 42-110a et seq., causing Beekley damages and loss of profits. Suremark's unlawful conduct will continue to damage Beekley unless enjoined by this Court, and Beekley has no adequate remedy at law.

73. A copy of this Complaint is being mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut pursuant to Connecticut General Statute § 42-110g(c).

**DEMAND FOR JURY TRIAL**

Beekley requests a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of any and all issues triable of right by a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Beekley requests that Judgment against Defendant Suremark be entered as follows:

- A. Judgment for Beekley that Suremark has breached the First Agreement;
- B. Judgment for Beekley that Suremark has breached the Second Agreement;
- C. Judgment for Beekley that Suremark has infringed the '558 patent;
- D. Judgment for Beekley that Suremark has infringed the '041 patent;
- E. Judgment for Beekley that Suremark has infringed the '295 patent;
- F. Judgment for Beekley that Suremark has infringed the '029 patent;
- G. Judgment for Beekley that Suremark has infringed the '609 patent;
- H. Judgment for Beekley that Suremark has infringed Beekley's Raised Circle, Raised Triangle and Raised Square Marks, and the '993, '994 and '995 trademark registrations therefor, respectively;
- I. Judgment for Beekley that Suremark has infringed Beekley's Pink and Blue Trade Dress;
- J. Judgment against Suremark, its officers, agents, servants, employees, attorneys, and/or those persons in active concert or participation with any of them, preliminarily and

permanently restraining and enjoining such officers, agents, servants, employees, attorneys, and/or persons in active concert or participation with any of them, from directly or indirectly (i) making, offering for sale, or selling prior to July 28, 2016, any marker having a plastic partially radiopaque, partially radiolucent portion that is extruded onto an adhesive label, (ii) making, selling and offering for sale any product that is covered by, the use of which is covered by, and/or which has a method of use covered by, the '041 patent or the '295 patent; (iii) infringing the '558 patent; (iv) infringing the '041 patent; (v) infringing the '295 patent; (vi) infringing the '029 patent; (vii) infringing the '609 patent; (viii) infringing Beekley's Raised Circle Mark or the '993 trademark registration therefor; (ix) infringing Beekley's Raised Triangle Mark or the '994 trademark registration therefor; (x) infringing Beekley's Raised Square Mark or the '995 trademark registration therefor; and (xi) infringing Beekley's Pink and Blue Trade Dress;

K. An accounting and judgment awarding Beekley damages, including without limitation compensatory, consequential and incidental damages for breach of the First and Second Agreements, damages resulting from Suremark's infringement of the '558, '041, '295, '029 and '609 patents pursuant to 35 U.S.C. § 284, damages resulting from Suremark's infringement of the Raised Circle, Raised Triangle and Raised Square Marks, and of the '993, '994 and '995 trademark registrations, respectively, therefor, damages resulting from Suremark's infringement of Beekley's Pink and Blue Trade Dress, and damages resulting from Suremark's false and misleading descriptions or representations of fact;

L. Judgment for treble damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117;

M. Judgment for Beekley awarding attorneys' fees and costs incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117;

N. Judgment for Beekley assessing pre-judgment and post-judgment interest and costs against Suremark, together with an award of such interest and costs, pursuant to 35. U.S.C. § 284 and 15 U.S.C. § 1117; and

O. Such other relief as the Court may deem just and proper.

Dated: March 8, 2016

THE PLAINTIFF  
BEEKLEY CORP.

By



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