

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

Trans-Radial Solutions, LLC,

Plaintiff,

v.

Burlington Medical, LLC, Mr. John Williams,
Fox Three Partners, LLC, and Phillips Safety
Products, Inc.

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Trans-Radial Solutions, LLC (“TRS”), by and through its attorneys, files this Complaint against Defendant Burlington Medical, LLC (“Burlington”), Defendant Mr. John Williams (“Williams”), Defendant Fox Three Partners, LLC (“Fox Three”), and Defendant Phillips Safety Products, Inc. (“Phillips”) (collectively, “the Defendants”) and allege, upon knowledge, information, and belief as to Defendants’ actions and the actions of others, as follows:

NATURE OF THE ACTION

1. This action arises in part under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, based on infringement of TRS’s United States Patent Number 9,795,346 (the “346 Patent”).

2. This action further arises under the copyright laws of the United States, 17 U.S.C. §§ 101, *et seq.*, based on infringement of TRS’s Copyright Registration Number VAu 1-260-031 (the “031 Registration”).

3. This also is an action in law and equity for unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as well as Virginia statutory and common law.

4. This action further arises under 18 U.S.C. §§ 1836, *et seq.*, the Defend Trade Secrets Act of 2016, based on the theft of TRS trade secrets.

5. This action also sounds in breach of contract, negligence, conspiracy, and other causes of action under Virginia statutory and common law.

6. TRS seeks injunctive relief as well as damages.

THE PARTIES

7. TRS is a South Carolina Limited Liability Company having its principle place of business at 1324 Hobbysville Road, Roebuck, South Carolina 29376.

8. Burlington is a Virginia Limited Liability Company having a place of business located at 3 Elmhurst Street, Newport News, Virginia 23603.

9. Williams is the Chief Executive Officer (“CEO”) and an owner of Burlington and resides in proximity to his company.

10. Fox Three is a Virginia company having a place of business located at 1072 Laskin Road, Suite 201, Virginia Beach, Virginia 23451, and acquired Burlington *ca.* May 2015.

11. Phillips is a New Jersey company having a place of business located at 123 Lincoln Blvd., Middlesex, New Jersey 08846-1071, which manufactures radiation protection products for itself and the other Defendants.

JURISDICTION AND VENUE

12. As introduced, this is an action for patent infringement arising under 35 U.S.C. § 271; for copyright infringement arising under 17 U.S.C. § 501; for Trademark (Lanham) Act claims pursuant to 15 U.S.C. § 1125(a); for theft of trade secrets pursuant to 18 U.S.C. § 1836; and for various state and common law claims.

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1338, and 15 U.S.C. § 1121. Moreover, the jurisdictional prerequisite imposed by 17 U.S.C. § 411(a) is satisfied by the '031 Registration. The Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over state and common law claims, which form part of the same case or controversy.

14. This Court has personal jurisdiction over Defendants because Defendants conduct business in the Commonwealth of Virginia and this Judicial District directly and/or through their agents and distributors and/or on information and belief Defendants have sufficient contacts with this Judicial District and have purposely availed themselves of the privilege of conducting activities in this jurisdiction by advertising, selling, offering for sale, supplying, and/or causing to be supplied products that infringe the TRS's '346 Patent, by making infringing derivative copies of the subject matter of the TRS's '031 Registration, and by infringing TRS's trademarks and trade dress in a manner that is likely to confuse the relevant universe of consumers to mistake the Defendants as being the source of the TRS's goods or to mistake the Defendants' infringing goods as being those of TRS.

15. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400 because (a) the Defendants are subject to personal jurisdiction in this Judicial District and (b) a substantial part of the events giving rise to the claims occurred in this Judicial District.

FACTUAL BACKGROUND

TRS and Its Intellectual Properties

16. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

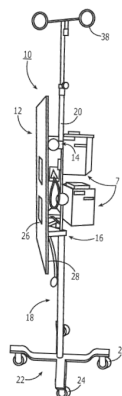
17. TRS has been a pioneer in the radiation shield industry since 2014. Reduction of radiation exposure is essential in a healthcare facility to maximize safety, efficacy, and career longevity of medical personnel. Without this reduction, radiation exposure can shorten the careers of medical personnel and negatively affect their health. Since 2014, dozens of hospitals, doctors and healthcare providers have used TRS's Rad-Guard™ brand Radiation Shields and other TRS radiation shielding products to decrease radiation exposure to doctors, nurses, and other attending medical personnel in health care operations.

18. TRS has expended tremendous resources researching, developing, manufacturing, marketing and selling radiation shielding products including its Rad-Guard™ Radiation Shields and Cardio-TRAP® brand radial access catheterization systems to reduce radiation exposure in healthcare environments.

19. As a result of its innovative products and inventions, TRS intellectual properties include patents, patent applications, trade secrets, trademarks and service marks, and copyrights.

The Asserted Patent

20. On October 24, 2017, the United States Patent and Trademark Office ("USPTO") duly and lawfully issued the '346 Patent, entitled "Radiation Shield Assembly." The inventions claimed in the '346 Patent relate to radiation shield assemblies connectable to medical device hangers. A copy of the '346 Patent is attached as **Exhibit A** with its Figure 1 reproduced here:



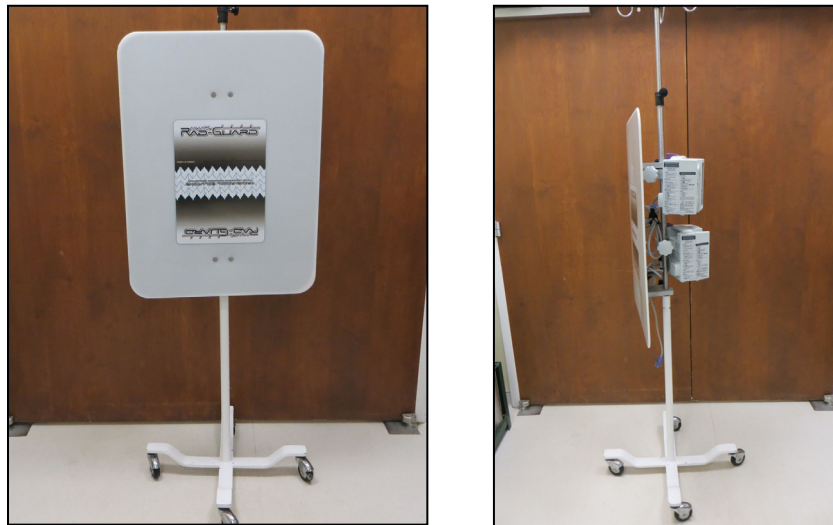
21. By assignment recorded in the United States Patent and Trademark Office, and as reflected on the face of the '346 Patent, TRS is the owner and assignee of all rights, title and interest in and to the '346 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

The Asserted Copyright Registration

22. In the regular course of its business, TRS via its officers and employees creates original works of authorship and registers claims of copyright in the works with the United States Copyright Office.

23. One of the original works of authorship assigned to and beneficially owned by TRS is entitled "TRS Web Images." The copyright in the TRS Web Images was registered with the United States Copyright Office on September 11, 2016 and received Registration Number VAu 1-260-031 (the '031 Registration). A copy of the '031 Registration is attached as **Exhibit**

B. Photographs under the '031 Registration are reproduced here:



24. TRS provided copies of these images to Burlington in order for Burlington to create sales brochures for the Rad-Guard™ Radiation Barrier.

Unlawful and Infringing Activities of The Defendants

25. Burlington, at the direction of Fox Three and Williams, and Phillips, at the direction of Burlington, Fox Three and Williams, make, sell, or offer to sell radiation shields that are covered by one or more claims of the '346 Patent.

26. Burlington and Phillips do not have permission to practice the claims of the '346 Patent; accordingly, Burlington and Phillips directly and/or indirectly infringe the '346 Patent by making, using, selling and offering for sale radiation shields in this district that are covered by one or more claims of the '346 Patent.

27. Burlington was called Burlington Medical Supplies, Inc. prior to its purchase by Fox Three in or around May 2015, as described in further detail below.

28. Williams was the CEO of Burlington before and after its purchase by Fox Three. Williams is an owner of Burlington, and the evidence will show that his company Burlington is merely the alter ego of Williams.

29. On October 15, 2014, TRS entered a business relationship with Williams and Burlington in which the Defendants agreed to distribute products made by TRS.¹

30. On or about December 29, 2014, TRS provided twenty-four (24) miniature Cardio-TRAP[®] systems called "Mini-TRAPs" to Burlington to be used for Burlington sales demonstrations. The twenty-four Mini-TRAPs are valued at approximately six thousand dollars (\$6,000.00). Despite requests from TRS for the return of the Mini-TRAP systems, Burlington continues to unlawfully possess them.

31. In or around January 2015, TRS provided four (4) Rad-Guard[™] Radiation Shields to Burlington for demonstration purposes. These Rad-Guard[™] Radiation Shields are

¹ The Distribution Agreement dated October 15, 2014, has not been attached as it contains confidential information, including pricing information. A copy of the Distribution Agreement can be provided to the Court and the Defendants upon request and subject to appropriate confidentiality protections.

valued at approximately four thousand dollars (\$4,000.00). Despite requests from TRS for the return of its Rad-Guard™ Radiation Shields, Burlington continues to unlawfully possess them.

32. Beginning in early 2015, TRS provided training for Burlington salespeople and also loaned multiple TRS products to Burlington to be used by its salespeople for sales demonstrations.

33. In or around February 2015, Burlington created a sales brochure using the copyrighted photographs supplied to Burlington by TRS (note that “Allen Key” is misspelled which will be addressed below):

Burlington Medical Supplies Rad-Guard

Included:

- RAD-GUARD
- Locking Mechanisms
- Alan Key





Attach the Locking Mechanisms to the RAD-GUARD and then to the pole



RAD-GUARD
attached to IV pole with other equipment

Cat# RAD-GUARD, SMALL	16"H X 24"W
Cat# RAD-GUARD, LARGE	32"H X 24"W
Cat# RAD-GUARD, XLARGE	48"H X 22"W
Cat# RAD-GUARD, CUSTOM	? "H X ? "W

Order Today!

Call 1-800-221-3466

Contact your local BMS Sales Rep
or Email info@burmed.com



Burlington Medical Supplies, Inc.

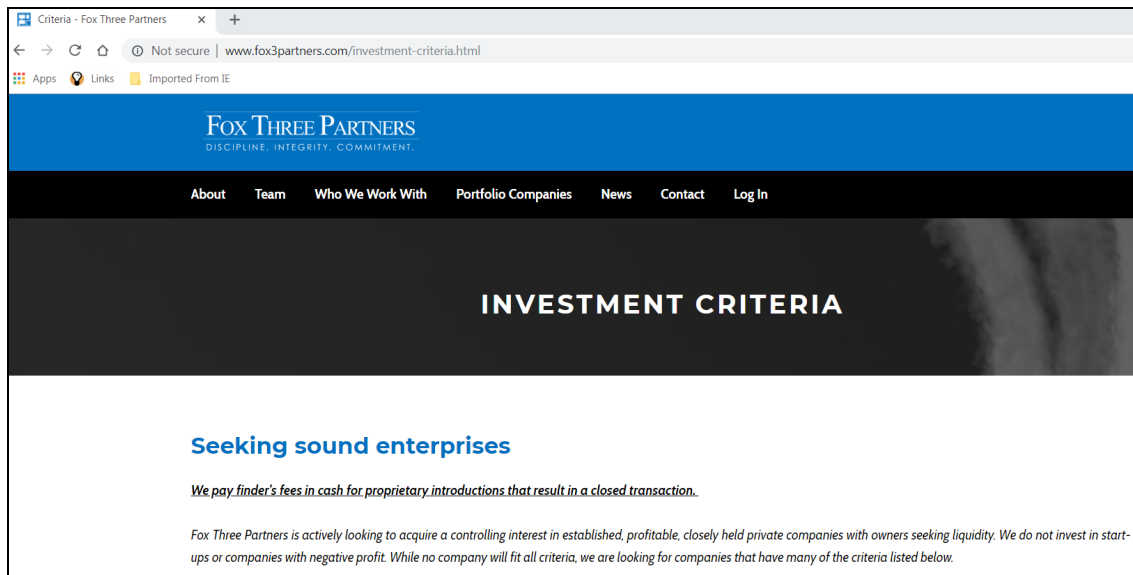
3 Elmhurst Street • Newport News, VA 23603
1-800-221-3446 • info@burmed.com • www.burmed.com



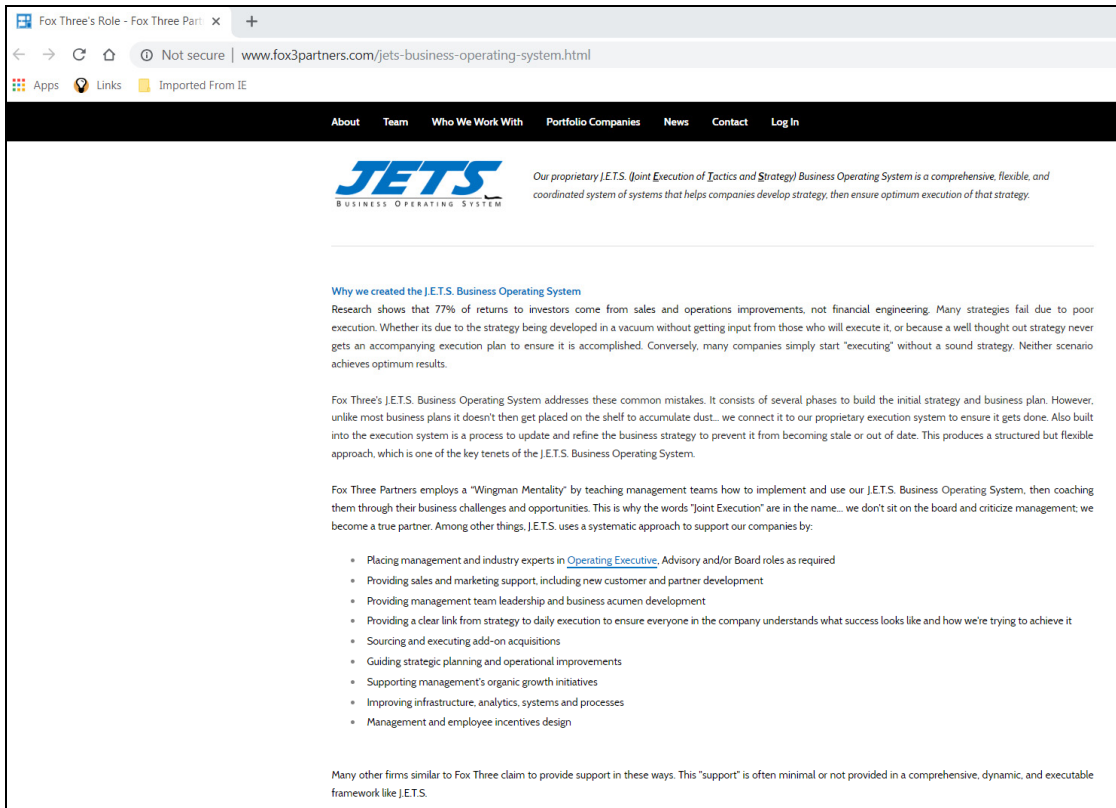
01/2013

34. From the start of 2015 until the summer of 2018, TRS presented its products to Burlington employees, representatives and officers, including Williams. By virtue of his position with Burlington, and in turn Burlington's relationship with TRS, Williams and those he designated were permitted access to TRS's design development information, which included TRS's confidential information, trade secret information, and other proprietary material relating to the TRS products. Such access, however, was granted with the understanding that all such information belonged to TRS, and that Burlington, Williams and Fox Three would only use this information for the purpose of their venture together, namely to market and sell TRS products on behalf of TRS.

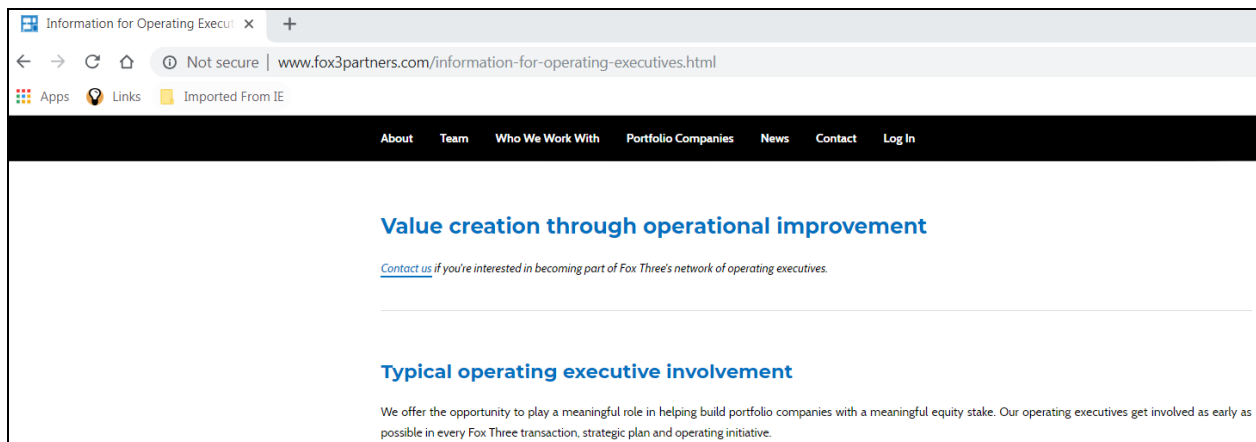
35. Fox Three acquires *controlling* interests in companies. See screenshot below from <http://www.fox3partners.com/investment-criteria.html>:



36. Fox Three employs its J.E.T.S. (Joint Execution of Tactics and Strategy) Business Operating System to become a *true partner* in acquired companies like Burlington. See screenshot below from <http://www.fox3partners.com/jets-business-operating-system.html>:



37. Fox Three’s “operating executives get involved...in every Fox Three transaction, strategic plan and operating initiative.” See screenshot below from <http://www.fox3partners.com/information-for-operating-executives.html>:



38. As introduced above, in or around May 2015, Fox Three acquired Burlington and issued a press release stating, “John Williams, the CEO of BMS...*will continue in this role* with Burlington Medical, LLC, the *new name* for the company.” (emphasis added). A copy of the

press release is attached as **Exhibit C**. Thus, *Burlington Medical* Supplies, Inc. became *Burlington Medical*, LLC and is the same enterprise operating out of the same location using essentially the same name, the same CEO, and the same website www.burmed.com to market and distribute the same products and services.

39. While Burlington Medical Supplies, Inc. was changing its name to Burlington Medical, LLC and Williams went to work for Fox Three as CEO of its new acquisition, Burlington was still serving as a sales representative and distributor for TRS's products, which included the Rad-Guard™ brand product line; while employed by Fox Three at Burlington, Williams worked with TRS and its employees to sell TRS products to customers; by virtue of his position and his interaction with TRS and its customers, Williams had access to TRS customer contacts, testing results, and technical information relating to the TRS products with the express understanding that all such information belonged to TRS, that Burlington, Fox Three, and Williams were granted access to such information so that Burlington, Fox Three, and Williams in particular, could perform their duties as the TRS sales representatives, and that TRS's information was confidential and proprietary.

40. Shortly after Burlington's superficial name change under the control of Fox Three, Mr. Robert Shealy, the TRS Chief Financial Officer, met with Williams to confirm that the business relationship between TRS and Burlington would continue. Williams expressed to Mr. Shealy that not only would the business relationship continue but that Burlington would accelerate efforts to market TRS products as he believed that the Rad-Guard™ Radiation Barriers would be the "most demanded" TRS product.

41. Burlington adopted and ratified the Distribution Agreement as a result of Williams' representations to Mr. Shealy and by continuing to distribute TRS products after Fox

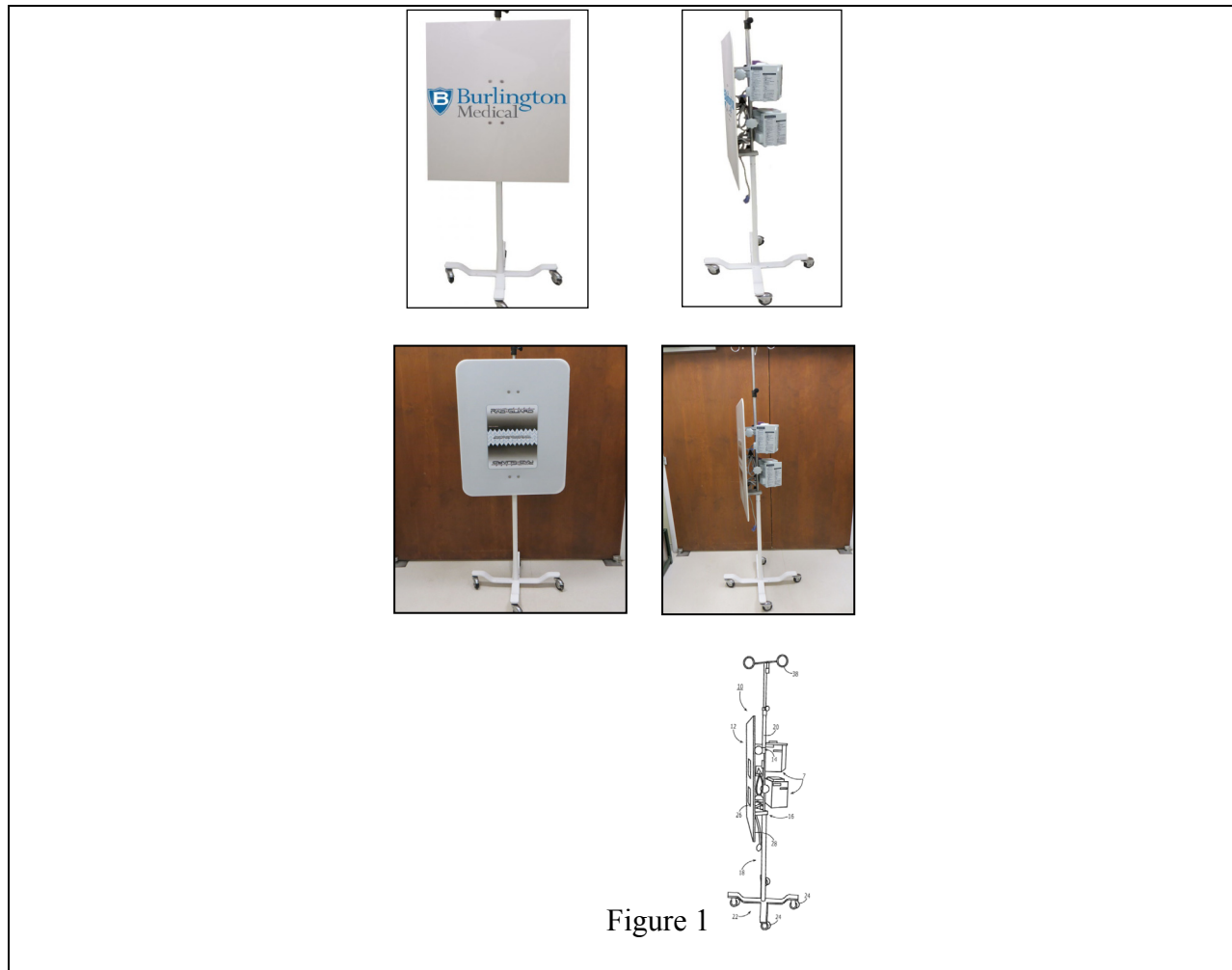
Three purchased a controlling interest in Burlington.² Additionally, or alternatively, a new contract was formed between Burlington/Fox Three and TRS as a result of Burlington's continued distribution of TRS products following Burlington's acquisition by Fox Three. Indeed, as late as the first quarter of 2018, Burlington increased its orders for TRS's Cardio-TRAP[®] radial access catherization systems.

42. Notwithstanding the contract between TRS and Burlington, and rather than developing their own technologies, the Defendants copied TRS's patented technology and copyrighted materials and have incorporated TRS's intellectual property into their "IV Mounted Barriers" in an improper attempt to capture the radiation shield market. The Defendants unfairly compete with TRS in the marketplace by offering for sale and selling their infringing products throughout the United States, including Virginia.

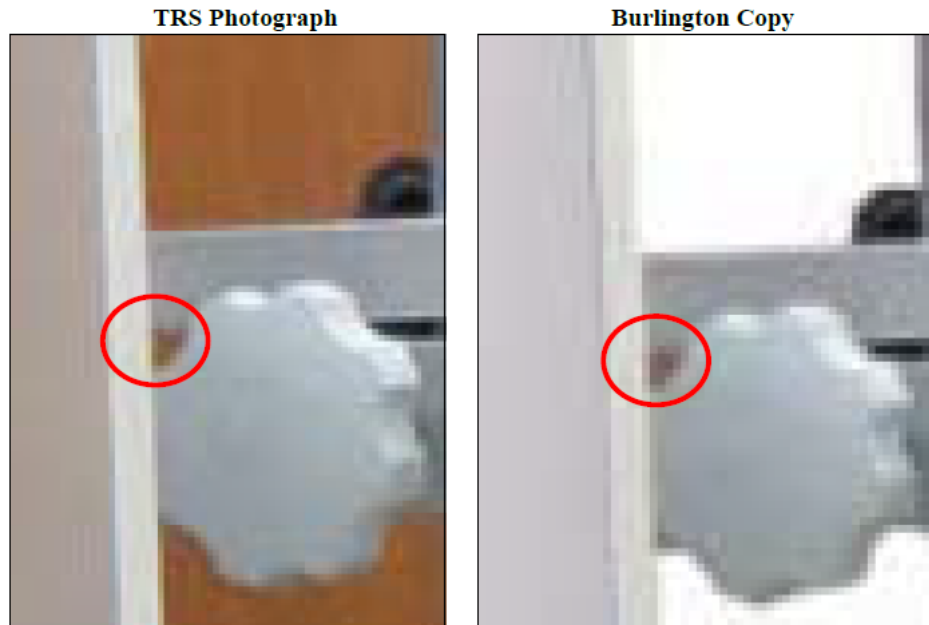
43. Fox Three and Williams formed Burlington in part to manufacture, market, and sell competing products to compete with TRS. Williams quickly began selling the Burlington IV Mounted Barrier to compete with TRS's Rad-Guard[™] brand Radiation Shields; thus, TRS and Defendants are now direct competitors in the market for radiation shields. Specifically, TRS and Defendants compete in the same industry for the same customers, and in many cases, they service the same customers.

44. TRS discovered in 2016 that Burlington was producing, marketing and selling a copy of TRS's Rad-Guard[™] Radiation Shield, which Burlington advertised as its IV Mounted Barrier as shown in these photographs from the Burlington website beneath which, for comparison, are photographs from the '031 registration and Figure 1 of the '346 Patent:

² See note 1, *supra*.



45. The screenshots from the Burlington website show that Burlington’s photographs of its IV Mounted Barriers are willfully copied from TRS’s registered photographs. Note, for instance, that the positions of the wheels and cords are the same. Still further, the infringing Burlington images use file names “lrg1w” and “lrg3-new” that are essentially the same as the file names of the TRS images (“lrg1” and “lrg3”). Moreover, a close-up inspection of the infringing images above reveals that Burlington neglected to recolor a portion of its doctored images as shown the following comparison:



46. Through the publication of its infringing images, Burlington has engaged in various forms of “Passing Off” under Trademark and Unfair Competition laws. For example, the infringing image in paragraph 44 above purporting to show a side view of the Burlington IV Mounted Barrier in fact shows properly positioned TRS mounting assemblies (only the front shield portions of the photographs were altered by Burlington). Thus, when Burlington sold its IV Mounted Barriers based on its doctored photographs, rather than selling genuine mounting assemblies that are part of Rad-Guard™ Radiation Shields, Burlington delivered to actual and potential TRS customers inferior Burlington mounting assemblies, which do not permit proper pump mounting placement. Accordingly, by removing the TRS Rad-Guard™ mark and replacing it with the Burlington mark and by further doctoring the side-view TRS photograph shown above – which shows genuine TRS mounting assemblies and proper placement – Burlington has deceived TRS’s customers and potential customers, defeated the designation of origin purpose of TRS’s marks and trade dress, thwarted the further development of goodwill in the TRS marks, and usurped a stream of advertising rightfully belonging to TRS.

47. TRS, through its attorney, sent a letter on September 20, 2016 to Williams objecting to the “IV Mounted Barrier” as being a breach of their agreement, a reminder of TRS’s pending patent application, and an infringement of the ’031 Registration.³ Despite the clear evidence of being a single business enterprise, Burlington responded that TRS’s agreement with ***Burlington Medical*** Supplies, Inc. had not been assumed by ***Burlington Medical***, LLC and did not obligate Burlington when the company was sold to Fox Three. Nevertheless, Williams agreed to cease marketing the IV Mounted Barrier, and Burlington continued to distribute other TRS products.

48. In accordance with their Distribution Agreement and subsequent affirmations by Williams, from late 2014 until approximately the first quarter of 2017, TRS provided Burlington with its confidential femoral approach and other know-how, confidential training plans, confidential customer contacts, *et cetera* (“Trade Secrets”) in order for Burlington to market and sell TRS products to TRS customers. Indeed, well into 2018, Burlington made sporadic sales of TRS’s products in parallel to sales of its infringing IV Mounted Barrier.

49. In spite of Williams’ pledge to stop marketing the IV Mounted Barriers, Williams and Burlington used TRS’s Trade Secrets and continued to market and sell the infringing product for at least two more years, as evidenced by no change in Burlington’s website offerings for the IV Mounted Barrier and multiple subsequent sales of the IV Mounted Barriers to actual and potential customers of TRS. For example, on March 27, 2017, Supply Chain Manager Ms. Marlene Miller of the McLaren Bay Region hospital, Bay City, Michigan, contacted TRS for additional Rad-Guard™ Radiation Barriers. Ms. Miller stated in an email, “*We currently own one of the RadGuards in our Hybrid room and looking at purchasing at least 3 additional and need to get pricing on these. Do you only sell this unit direct or do you sell thru distribution:*

³ See note 1, *supra*.

Cardinal Health, Spartan Xray or Rad Tech? If it is direct, is the PO made out to Trans-Radial Solution?” Following an exchange of emails to resolve Ms. Miller’s confusion about the product source, on May 4, 2017, TRS inquired, “*Were you able to purchase the three Rad-Guards you needed from Burlington Medical?”* Ms. Miller responded affirmatively to which TRS replied, “*Burlington didn’t order any from us so what you’ll get may be different than what you’ve had.*” Thus, Burlington had shipped three of its infringing IV Mounted Barriers to TRS’s customer McLaren Bay Region hospital.

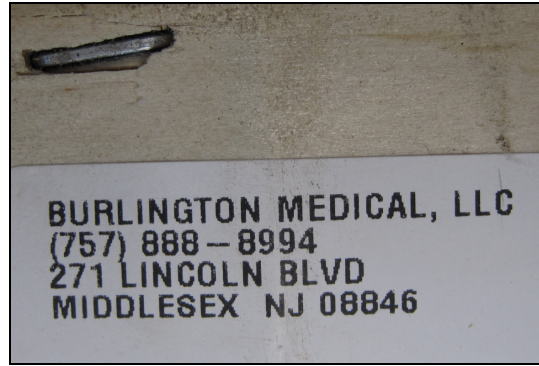
50. Due to the refusal of Burlington and Williams to stop infringing TRS’s intellectual properties, *ca.* August 2018 TRS sent a *pro se* letter to Burlington’s parent company Fox Three based on Fox Three’s representations that its executives are involved in every Fox Three transaction, strategic plan and operating initiative. In the letter, TRS CFO Mr. Shealy reviewed the history of TRS and Burlington and requested a meeting to present documentation.

51. Soon after the August 2018 letter from TRS to Fox Three, Burlington, Williams and Fox Three ceased communications with TRS as to all TRS products then being distributed by Burlington, except for the completion of a few outstanding purchase orders.

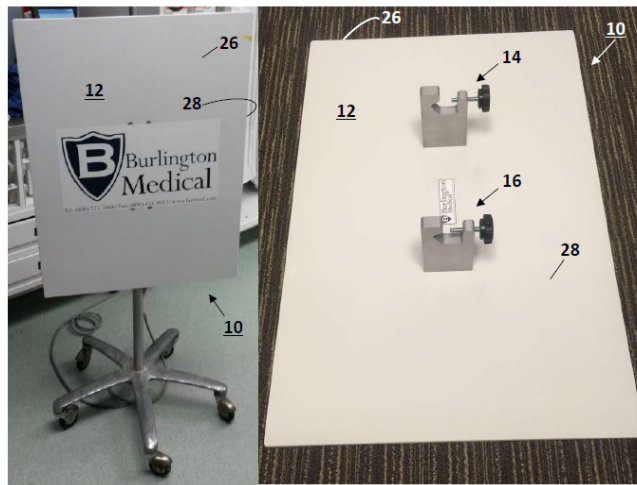
52. Burlington, Williams, and Fox Three copied or caused to be copied the TRS Web Images under the ’031 Registration belonging to TRS and/or created or caused to be created a derivative work therefrom.

53. Burlington, Williams, and Fox Three were not authorized to copy, modify, or create any derivative work based on the ’031 Registration.

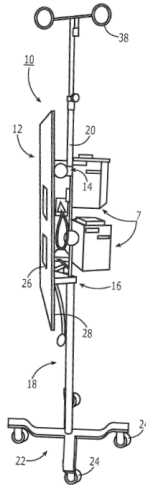
54. A Burlington-marked IV Mounted Barrier being made and sold by the Defendants within the United States was received from the same street, Lincoln Blvd. in New Jersey, where Phillips is located, as shown in the following photograph from an infringing IV Mounted Barrier:



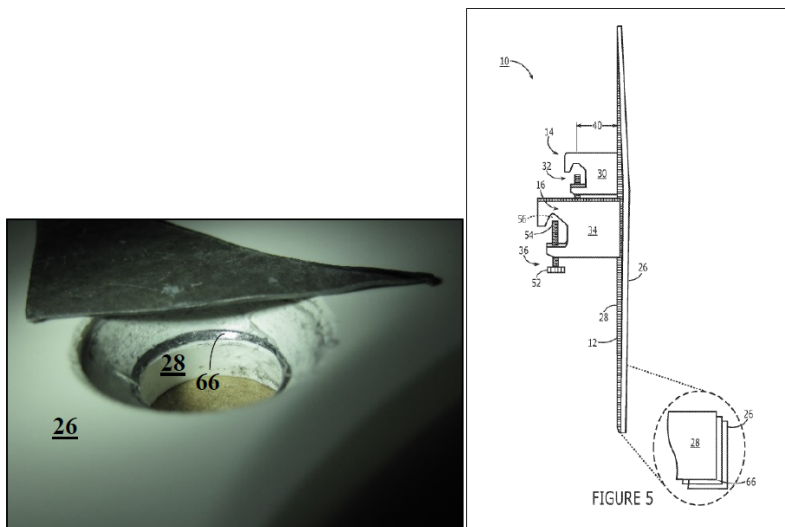
55. The following front and rear photographs of the Burlington IV Mounted Barrier, which is being made and sold by Burlington within the United States, are marked for convenience with element numbers and show a radiation shield assembly **10** that includes a shield **12** having two sides **26**, **28**. A mounting assembly **14** is spaced apart from another mounting assembly **16** and set off from the perimeter of the shield **12**.



56. The '346 Patent discloses a radiation shield assembly **10** that includes a shield **12** having two sides **26**, **28** with a mounting assembly **14** spaced apart from another mounting assembly **16** and set off from the perimeter of the shield **12** as shown in Figure 1, for instance, which when compared to the Burlington IV Mounted Barrier above evidences Burlington's willful copying and infringement:



57. In the following photograph also taken of the Burlington IV Mounted Barrier shown above, a radiodense material **66** is interposed between the two sides **26**, **28** of the shield **12**, which, when compared to Figure 5 of the '346 Patent below, further shows Burlington's willful copying and infringement:



58. Phillips manufactures occupational safety products.

59. Burlington, Williams, and Fox Three hired and directed Phillips to build or cause to be built Burlington's IV Mounted Barriers.

60. In addition to manufacturing infringing IV Mounted Barriers for Burlington and Fox Three, Phillips makes its own unauthorized copies that infringe both the '346 Patent and the

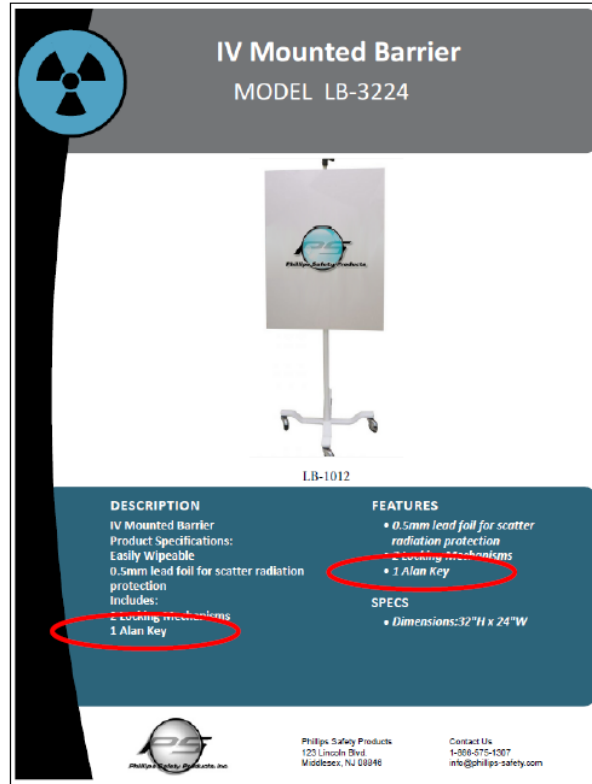
'031 Registration, which Phillips markets and sells as “IV Mounted Barrier, #LB-IVS24325” (“IV Mounted Barrier”) as shown at <http://www.phillips-safety.com/radiation-protection/radiation-mobile-barriers.html?p=2>.

61. A photograph of Phillips’ IV Mounted Barrier from its website is reproduced here alongside TRS’s copyrighted photograph to the right:



62. The screenshot above and to the left taken from Phillips’ website shows that Phillips’ IV Mounted Barrier is willfully copied from TRS’s registered photograph as indicated, for instance, by the same wheel positions and the identical cropping of the top and bottom of the photographs.

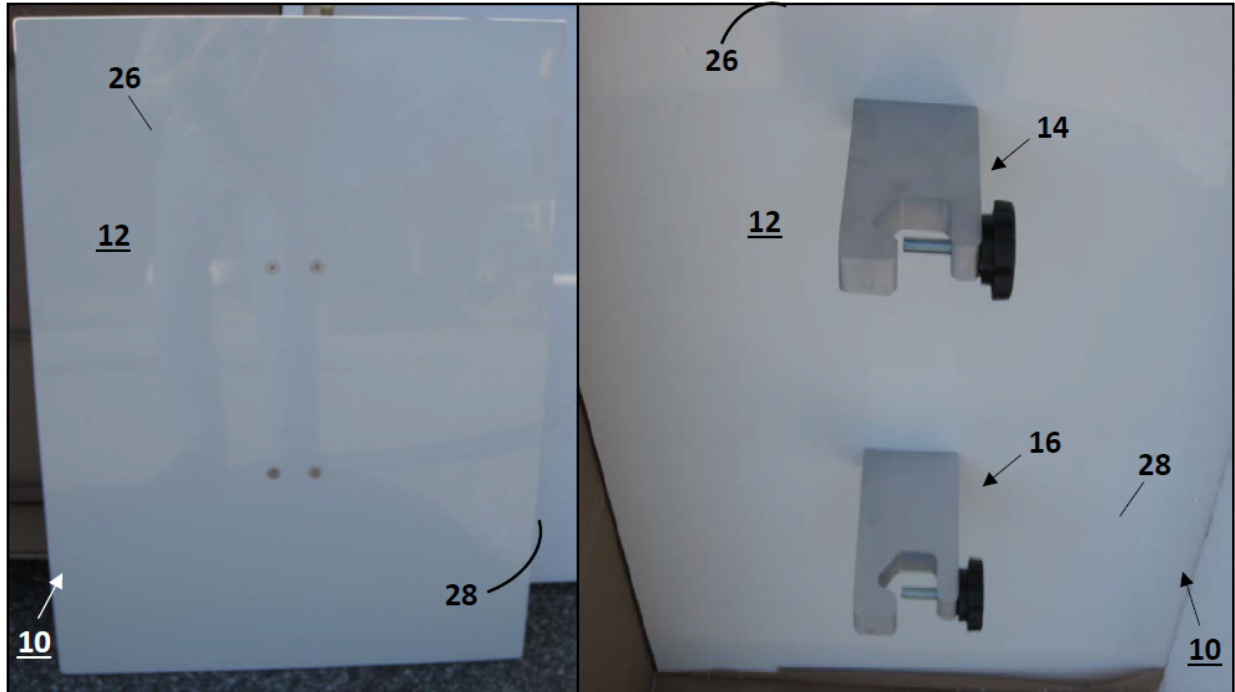
63. Phillips also created a sales brochure for its infringing IV Mounted Barrier using the copyrighted photographs that TRS supplied to Burlington, which Burlington supplied to Phillips (note “Allen Key” is misspelled in Phillips’ brochure as it was in Burlington’s brochure introduced in paragraph 33 above):



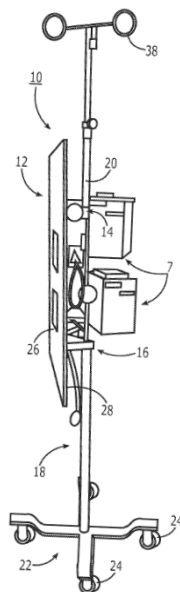
64. Still further, by removing and replacing the TRS trademark Rad-Guard™ with the Phillips mark, Phillips has engaged in various forms of Passing Off under Trademark and Unfair Competition laws.

65. Phillips was not authorized to copy, modify, or create any derivative work based on the '031 Registration.

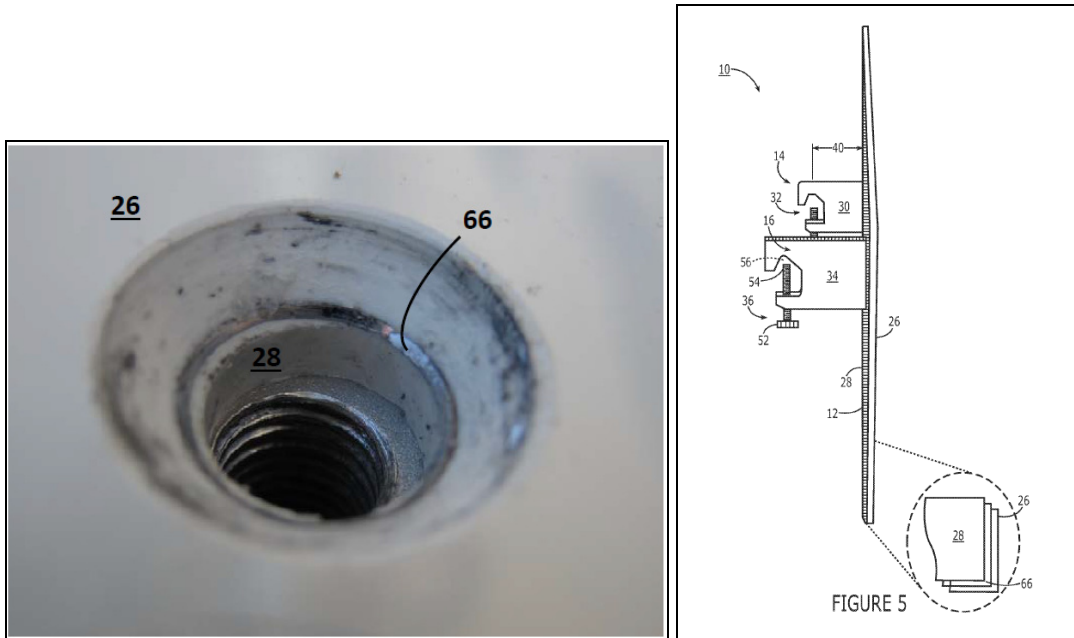
66. The following front and rear photographs of a Phillips IV Mounted Barrier, which is being made and sold by Phillips within the United States, are marked for convenience with element numbers and show a radiation shield assembly **10** that includes a shield **12** having two sides **26, 28**. A mounting assembly **14** is spaced apart from another mounting assembly **16** and set off from the perimeter of the shield **12**.



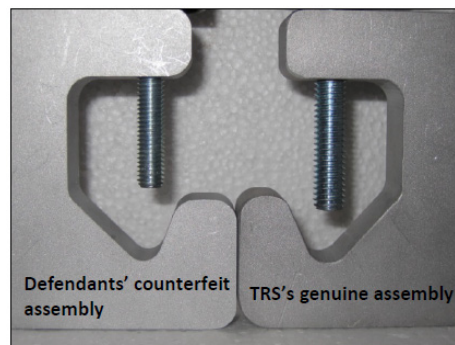
67. The '346 Patent discloses a radiation shield assembly **10** that includes a shield **12** having two sides **26**, **28** with a mounting assembly **14** spaced apart from another mounting assembly **16** and set off from the perimeter of the shield **12** as shown in Figure 1, for instance, which when compared to the Phillips IV Mounted Barrier above evidences Phillips' willful copying and infringement:



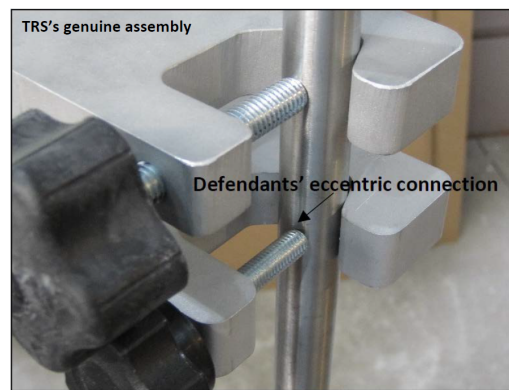
68. In the following photograph also taken of the Phillips IV Mounted Barrier above, a radiodense material **66** is shown interposed between the two sides **26**, **28** of the shield **12**, which, when compared to Figure 5 of the '346 Patent below, further shows Phillips' willful copying and infringement.



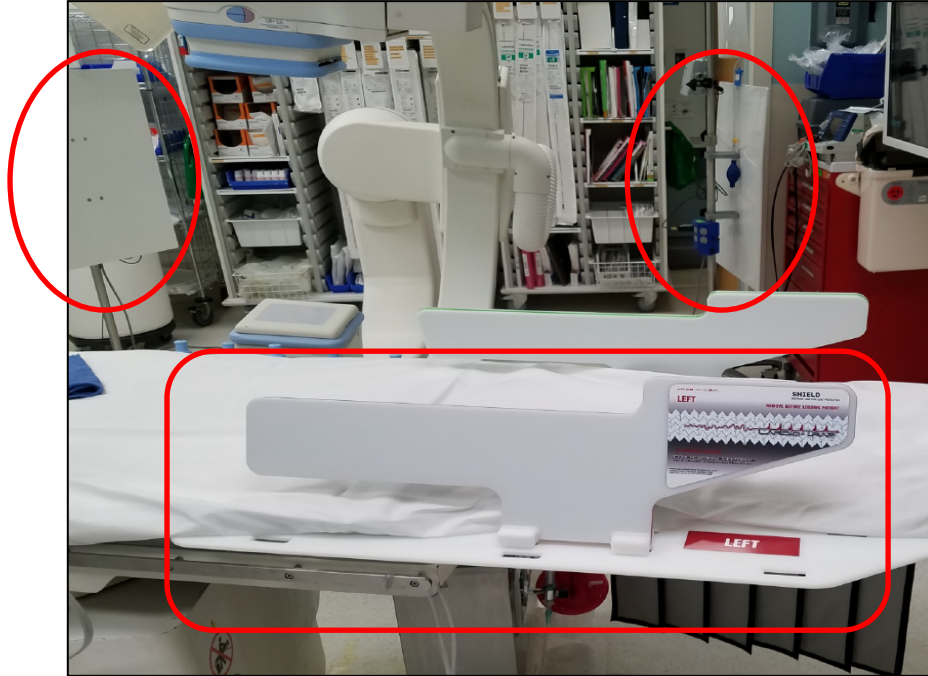
69. Defendants' infringing IV Mounted Barriers also copy TRS's mounting assemblies. In the following photograph, a mounting assembly **14** from the infringing IV Mounted Barriers shown above is positioned to the left in the photograph, and a mounting assembly **14** from the patented Rad-Guard™ Radiation Shield is shown on the right side.



70. Due to the inferior quality of the infringing IV Mounted Barriers, their mounting assemblies – as shown on the left-hand side above and at bottom in the photograph below – do not connect properly and can damage IV poles or equipment hangars to which the infringing mounting assemblies are attached. Moreover, an inferior IV Mounted Barrier is 31% heavier than a genuine Rad-Guard™ Radiation Barrier. The heavier, poorly connected IV Mounted Barrier can compromise pole stability and tip over, which could damage instruments, injure medical personnel or patients, and possibly fatally delay a medical procedure. In contrast, a genuine mounting assembly from a patented Rad-Guard™ Radiation Shield, as shown in the top position, connects squarely and properly to a pole:



71. Defendants unfairly compete with TRS in the marketplace by having Phillips manufacture the infringing IV Mounted Barriers. The Defendants sell their infringing products to TRS's customers or prospective customers throughout the United States and in this judicial district. For example, Burlington has sold its infringing IV Mounted Barriers to healthcare facilities that are TRS's customers such as McLaren Bay Region hospital discussed above. *See also* photograph below of a TRS customer's catherization room in which two infringing IV Mounted Barriers are shown circled in the background near TRS's Cardio-TRAP® radial access system outlined in the foreground:



72. Through their infringing activities and other unlawful activities, the Defendants have caused injury to TRS throughout the United States and in Virginia.

73. Pursuant to Rule 8 of the *Federal Rules of Civil Procedure*, the following allegations incorporate all elements and conditions precedent as stated herein as if repeated verbatim in each count and are expressed cumulatively and in the alternative rather than in contradiction of any other count.

COUNT I

INFRINGEMENT OF THE '346 PATENT (BURLINGTON AND PHILLIPS)

74. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

75. Claim 16 of the '346 Patent is directed to a radiation shield assembly for use with medical equipment.

76. Claim 16 recites:

- a. a radiation guard having a first face and a second face and a radiopaque material interposed therebetween, the radiopaque material being between about 0.2 mm to about 2 mm in thickness;
- b. at least two connection assemblies operably disposed on the radiation guard, the connection assemblies being configured to adjustably connect the radiation guard to a medical device hangar, the radiation guard and the medical device hangar being spaced apart from each other; and
- c. wherein at least one of the connection assemblies is adapted to be coupled to a connection member of the medical device hangar such that the radiation guard is in a configuration selected from the group consisting of a substantially vertical alignment on the medical device hangar, a substantially horizontal alignment on the medical device hangar, and an inverted position on the medical device hangar.

77. As shown and described in detail above, each of the Burlington and Phillips IV Mounted Barriers include radiation guards with radiopaque material disposed therein. The radiopaque material in each of the infringing IV Mounted Barriers has a thickness ranging between about 0.2 mm to about 2 mm interposed between a first face and a second face. Indeed, Burlington and Phillips both advertise “0.5mm lead foil for scatter radiation protection,” which the photographs above of the IV Mounted Barriers clearly show. Additionally, connection assemblies are attached to the IV Mounted Barriers to connect them to medical device hangers.

78. Burlington has been aware of the '346 Patent and its pending patent application, since at least January 2015 when Burlington began selling the patent-pending Rad-Guard™ Radiation Shields for TRS.

79. On information and belief, Phillips – as manufacturer and supplier of IV Mounted Barriers for itself and Burlington – has been aware of the pending patent application and/or the resultant '346 Patent for at least as long as Phillips has been manufacturing IV Mounted Barriers for Burlington.

80. Additionally, TRS marked its Rad-Guard™ Radiation Shields and its website and other marketing materials with “patent pending” and, since on or about October 24, 2017, the TRS website, the Rad-Guard™ Radiation Shields, and associated marketing materials have been marked with “US Patent #9,795,346” (*see* <https://www.cardiotrap.com/rad-guard>).

81. Burlington and Phillips are now and/or have been directly and/or indirectly infringing the '346 Patent, literally and/or under the doctrine of equivalents, as proscribed by 35 U.S.C. § 271 by, without permission or authority from TRS, selling, offering to sell, making, using, importing and/or inducing others to use and sell within the United States, including this district, products and/or components of products and/or services that infringe at least Claim 16 of the '346 Patent.

82. Burlington and Phillips have each directly infringed and continue to directly infringe at least Claim 16 of the '346 Patent under 35 U.S.C. § 271(a) by making, using, offering for sale, selling and/or importing their respective IV Mounted Barriers, each of which has every claimed element, or substantial equivalent thereof, of the patented invention, without authority in or into the United States, and will continue to do so unless enjoined by this Court or the '346 Patent expires, whichever is sooner. As a direct and proximate result of their direct infringements of the '346 Patent, TRS has been and continues to be damaged by Burlington and Phillips.

83. Burlington and Phillips have each indirectly infringed and continue to indirectly infringe at least Claim 16 of the '346 Patent by actively inducing their respective customers and users of the infringing IV Mounted Barrier to directly infringe at least Claim 16 of the '346 Patent by, among other things, providing IV Mounted Barriers to users thereof with instructions on how to use the IV Mounted Barriers in violation of 35 U.S.C. § 271(b). Burlington and Phillips each have engaged and hence forward will continue to engage in such inducement having knowledge of the '346 Patent. Furthermore, Burlington and Phillips each knew or should have known that their actions would and will continue to induce direct infringement by the users of the IV Mounted Barriers and intended and will continue to intend that their actions would induce direct infringement by such users. As a direct and proximate result of Burlington's and Phillips' indirect infringement by inducement of the '346 Patent, TRS has been and continues to be damaged.

84. Burlington and Phillips each have and are each now indirectly infringing as contributory infringers under 35 U.S.C. § 271(c) at least Claim 16 of the '346 Patent by making, having had made, using, offering for sale, and selling IV Mounted Barriers that include each and every element, or substantial equivalent thereof, which are components of the patented invention, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of the '346 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

85. By engaging in the conduct described herein, Burlington and Phillips have injured TRS and are thus each liable for infringement of the '346 Patent, pursuant to 35 U.S.C. § 271.

86. Burlington and Phillips each have committed their acts of infringement with knowledge of the '346 Patent and have thus acted recklessly and willfully with regard to TRS's rights in the '346 Patent.

87. As a result of their willful infringement of the '346 Patent, TRS has suffered monetary damages and is entitled to a monetary judgment in an amount at least adequate to compensate for the infringements by Burlington and Phillips.

88. TRS will continue to suffer damages in the future unless the infringing activities of Burlington and Phillips are enjoined by this Court or the '346 Patent expires, whichever is sooner. As such, TRS is entitled to injunctive relief, damages, and enhanced damages for any continuing and/or future infringement up until the date that Burlington and Phillips are finally and permanently enjoined from further infringement or the '346 Patent expires, whichever is sooner.

COUNT II

COPYRIGHT INFRINGEMENT REPRODUCTION (BURLINGTON AND PHILLIPS)

89. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

90. TRS is the beneficial owner of all right, title, and interest in and to the '031 Registration as set forth above. TRS owns the exclusive right to use the photographs entitled "TRS Web Images" in the '031 Registration for marketing, advertising or the like and has the right to enforce the '031 Registration set forth above.

91. Burlington and Phillips had knowledge of TRS's photographs in the '031 Registration.

92. Burlington and Phillips had access to the TRS photographs in the '031 Registration.

93. Burlington and Phillips have copied or caused to be copied the TRS photographs in creating derivative works in which TRS's marks also have been intentionally replaced with Burlington and Phillips marks.

94. Burlington's and Phillips's unauthorized derivative copies of the TRS photographs include those on their websites and in brochures and other marketing materials.

95. TRS did not authorize Burlington and Phillips to alter the TRS photographs or to copy any portion of the photographs from the '031 Registration to create, among other things, derivative works that replace the TRS marks with Burlington and Phillips marks.

96. The unauthorized Burlington-marked photographs used, e.g., in its website and in its IV Mounted Barrier brochures are copies of, or are substantially similar to, the photographs created and owned by TRS.

97. The unauthorized Phillips-marked photographs used, e.g., in its website and in its IV Mounted Barrier brochures are copies of, or are substantially similar to, the photographs created and owned by TRS.

98. By making and using unauthorized copies of TRS's copyrighted photographs, Burlington and Phillips have infringed TRS's exclusive right to reproduce TRS's copyrighted photographs.

99. Burlington's and Phillips' acts of copyright infringement were done intentionally and in willful disregard of TRS's copyrights as shown by the digitally altered Burlington and Phillips copies, *supra*, using image-editing software.

100. Burlington's willfulness is further evidenced by its refusal to remove its infringing copies even after TRS objected in writing in 2016 and Williams promised to stop marketing the infringing IV Mounted Barriers; nevertheless, its infringing images were still being published on Burlington's website as recently as August 21, 2018.

101. TRS has been damaged by the conduct of Burlington and Phillips as described herein and will continue to be so damaged in the absence of relief granted by this Court.

102. TRS is entitled to recover its actual damages together with all profits of Burlington and Phillips attributable to their infringements. In the alternative, and at its election, TRS is entitled to recover statutory damages for willful infringement in the amount of \$150,000.00 per infringement, the number of infringements to be determined according to proof at trial, together with TRS's attorney's fees under 17 U.S.C. §§ 504 and 505.

103. Burlington and/or Phillips continue to infringe TRS's copyright by advertising and selling or otherwise exploiting their IV Mounted Barriers using unauthorized derivative photographs on their websites, third party websites, and in their brochures and marketing materials. Accordingly, TRS is entitled to injunctive relief, preventing Burlington and/or Phillips from continuing to exploit TRS's '031 Registration.

COUNT III

COPYRIGHT INFRINGEMENT MARKETING AND SALE (BURLINGTON AND PHILLIPS)

104. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

105. Copyright infringement depends not upon identity but upon whether a substantial similarity exists between the copyrighted work and the alleged copy. 17 U.S.C. § 1, *et seq.* See, e.g., *Ideal Toy Corp. v. Fab-Lu Ltd.*, 360 F.2d 1021, 1022 (2d Cir. 1966)(stating that the

appropriate test for determining whether substantial similarity is present is whether an average observer would recognize the alleged copy as having been appropriated from the copyrighted work.).

106. Burlington had knowledge of and access to TRS's photographs in the '031 Registration.

107. Phillips had knowledge of and access to TRS's photographs in the '031 Registration.

108. Burlington and Phillips, without the authorization or consent of TRS, constructed and sold IV Mounted Barriers based on TRS's photographs under the '031 Registration.

109. The unauthorized actions by Burlington and Phillips based on TRS's copyrighted photographs resulted in unauthorized derivative works embodied in the IV Mounted Barriers that infringe TRS's exclusive rights in its copyrighted photographs.

110. TRS has been damaged by the conduct of Burlington and Phillips as described herein and will continue to be so damaged in the absence of relief granted by this Court.

111. TRS is entitled to recover its actual damages together with all profits of Burlington and Phillips attributable to their infringements. In the alternative, and at its election, TRS is entitled to recover statutory damages for willful infringement in the amount of \$150,000.00 per infringement, the number of infringements to be determined according to proof at trial, together with its attorney's fees under 17 U.S.C. §§ 504 and 505.

112. Burlington and/or Phillips continues to infringe TRS's copyright by making, selling and otherwise exploiting their derivative IV Mounted Barriers. Accordingly, TRS is entitled to injunctive relief, preventing Burlington and/or Phillips from continuing to exploit TRS's '031 Registration.

COUNT IV

**UNFAIR COMPETITION, FALSE ADVERTISING AND FALSE DESIGNATION OF
ORIGIN PURSUANT TO 15 U.S.C. § 1125(a)
(ALL DEFENDANTS)**

113. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

114. Defendants' acts as alleged herein constitute unfair competition and false designation of origin, and false advertising in violation of the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a), all to the substantial and irreparable injury of the public and of TRS's business reputation and goodwill.

115. Defendants advertise through trade channels that are substantially similar, if not identical, to those used by TRS. Defendants offer their IV Mounted Barriers to the same consumers and/or class of consumers as TRS throughout Virginia and elsewhere in the United States.

116. Beginning in 2015, and continuously since that time, Defendants have been publishing, selling, and otherwise marketing their IV Mounted Barriers, including removing or obliterating TRS's trademark from TRS's copyrighted photographs to create Defendants' derivative marketing materials, and using inferior, look-alike connection assemblies to convince the consuming public that Defendants' goods are genuine TRS products or that Defendants' goods are endorsed by TRS or to compete unfairly for customers.

117. TRS has no control over the nature and quality of the infringing IV Mounted Barriers sold by the Defendants. Any failure, neglect, or default by Defendants in providing such products has and will continue to reflect adversely on TRS as being the source of origin of the inferior infringing goods thereby hampering efforts by TRS to continue to protect its

outstanding reputation for high quality goods/services, resulting in loss of clients, all to the irreparable harm of TRS.

118. Defendants are intentionally trading off the valuable goodwill TRS has established and causing continued and irreparable harm to TRS and the valuable goodwill associated with TRS.

119. Defendants' unlawful use of their marks and goods in this manner has caused actual confusion and is likely to cause continued confusion as to the source, sponsorship, or affiliation of services offered by Defendants under their infringing mark.

120. The actions of Defendants have and are likely to continue to deceive customers and prospective customers and likely to divert actual or potential business from TRS customers away from TRS.

121. As a direct and proximate result of Defendants' wrongful acts, TRS has suffered and continues to suffer and/or is likely to suffer damage to its business reputation and goodwill. Defendants will continue, unless restrained, to obliterate TRS marks and to compete unfairly in the marketplace and will cause irreparable damage to TRS. TRS has no adequate remedy at law. TRS is entitled to an injunction restraining Defendants, their officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in further acts of false designation of origin.

122. Defendants' acts of unfair competition and false advertising in violation of the Lanham Act Section 43(a) as alleged herein have caused, and will continue to cause, TRS to suffer damages in an amount unknown at this time and have caused and will continue to cause Defendants to gain revenues and profit in an amount unknown at this time. Pursuant to 15

U.S.C. §1117(a), TRS is entitled to an award of monetary damages in an amount equal to the losses suffered by TRS.

123. TRS is further entitled to recover from Defendants the gains, profits, and advantages that Defendants have obtained as a result of their wrongful acts. TRS is presently unable to ascertain the extent of the gains, profits, and advantages that Defendants have realized by reason of their wrongful acts.

124. Defendants' actions have been intentional, willful, and in bad faith. Because of the willful nature of Defendants' wrongful acts, TRS is entitled to an award of treble damages and its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117.

COUNT V

UNFAIR COMPETITION UNDER STATE LAW & COMMON LAW (ALL DEFENDANTS)

125. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

126. Defendants' actions as alleged herein constitute unfair competition in violation of Va. Code §§ 59.1-196 through 59.1-207, and the common law.

127. TRS has established numerous rights in its Rad-Guard™ Radiation Barriers and other intellectual properties. TRS engaged Burlington as its distributor for the Rad-Guard™ Radiation Barriers and other TRS products.

128. After Burlington was engaged by TRS, Burlington directed by Williams and Fox Three hired Phillips to produce the IV Mounted Barrier that is confusingly similar to the TRS Rad-Guard™ Radiation Shield, and the Defendants sold and continue to sell their IV Mounted Barriers in competition with TRS.

129. Defendants advertise through trade channels that are substantially similar, if not identical, to those used by TRS, including via placing the Burlington and Phillips marks over photographs of the Rad-Guard™ Radiation Shield on the Burlington and Phillips websites, which are seen throughout Virginia and elsewhere.

130. Defendants offer their IV Mounted Barriers to the same consumers and/or class of consumers as TRS.

131. The improper modification and use of the Rad-Guard™ Radiation Shield by the Defendants to sell their IV Mounted Barriers have caused actual consumer confusion and are likely to cause continued consumer confusion as to the source, sponsorship, or affiliation of services/goods offered under the Burlington and Phillips marks. Defendants' improper use is unauthorized and without TRS's permission.

132. Defendants are intentionally misrepresenting the source of their goods and services, and/or misrepresenting that the Defendants and/or their goods and services are sponsored by, or affiliated, connected, or associated with TRS in order to intentionally trade off the valuable goodwill that TRS has established in its Rad-Guard™ Radiation Shield, and in an attempt to divert actual or potential business from TRS. Such unauthorized and infringing use is causing continued and irreparable harm to TRS and the valuable goodwill associated with its brand, goods and services.

133. Defendants' actions therefore constitute a violation of the Virginia Consumer Protection Act, Va. Code § 59.1-200(A).

134. Defendants have acted with knowledge and in willful disregard of TRS's prior rights and the actual confusion that has resulted from the Defendants' actions. Defendants' use has therefore been intentional, willful, and in bad faith.

135. TRS is entitled to damages and injunctive relief as a result of the willful and unlawful acts of the Defendants.

COUNT VI

**COMMON LAW PASSING OFF
(ALL DEFENDANTS)**

136. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

137. TRS has established rights in its Rad-Guard™ Radiation Shield. TRS engaged Burlington as its distributor for the Rad-Guard™ Radiation Barriers and other TRS products.

138. Defendants have used and are using an infringing product, the IV Mounted Barrier, that is confusingly similar to the Rad-Guard™ Radiation Barrier.

139. Defendants advertise through trade channels that are substantially similar, if not identical, to those used by TRS for its Rad-Guard™ Radiation Shield and other products, including via placement of Defendants' marks on photographs of the Rad-Guard™ Radiation Shield on the Burlington and Phillips websites, which are seen throughout Virginia and elsewhere.

140. Defendants offer their IV Mounted Barriers to the same consumers and/or class of consumers as TRS.

141. Defendants' marketing and sales of their IV Mounted Barriers have caused actual confusion and is likely to cause continued confusion as to the source, sponsorship, or affiliation of goods offered by Defendants. The Defendants' use is unauthorized and without TRS's permission.

142. Defendants are intentionally misrepresenting the source of their goods and services, and/or misrepresenting that their goods and services are affiliated, connected, or

associated with TRS in order to intentionally trade off the valuable goodwill that TRS has established in its brand, and in an attempt to divert actual or potential business from TRS by passing off the Defendants' goods and services as those of TRS. The Defendants' unauthorized and infringing use is causing continued and irreparable harm to TRS and the valuable goodwill associated with TRS goods and services.

143. Defendants' actions therefore constitute unfair competition in violation of Virginia common law.

144. Defendants have acted with knowledge and in willful disregard of TRS's prior rights and the actual confusion that has resulted from the Defendants' actions. The Defendants' use has therefore been intentional, willful, and in bad faith.

145. TRS is entitled to damages and injunctive relief as a result of the Defendants' willful and unlawful acts.

COUNT VII

TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS (ALL DEFENDANTS)

146. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

147. The actions of the Defendants as alleged herein constitute Tortious Interference with TRS's Prospective Contractual Relations.

148. Defendants were aware of the existence of a contract expectancy, prospective business relationship or economic advantage by and due to TRS; there is a reasonable certainty that absent Defendants' intentional misconduct as detailed herein, TRS would have continued in certain customer relationships or realized the expectancy with new customers; and but for the Defendants' use of improper means and methods to intentionally interfere with the contract

expectancy, prospective business relationships and economic advantage, TRS has suffered damages.

149. TRS's customers historically purchase consistent quantities of TRS's products, including its Rad-Guard™ brand Radiation Shield, at regular intervals.

150. As a result of Defendants' improper communications with TRS's customers, TRS's customers have reduced or ceased recurring purchases of TRS's products, including its Rad-Guard™ Radiation Shields.

151. TRS has suffered and will continue to suffer lost sales, lost revenues, and other financial damages as a direct, foreseeable, and proximate result of Defendants' usurpation of TRS's current and/or prospective customers.

COUNT VIII

CONVERSION (WILLIAMS AND BURLINGTON)

152. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

153. As detailed above, TRS loaned thousands of dollars of demonstration units to Williams and Burlington for the purpose of having Williams and Burlington make sales for TRS in accordance with the contractual obligations of Williams and Burlington.

154. Williams and Burlington have exercised dominion over TRS's personal property, including TRS's confidential information and proprietary material, without the consent of TRS and to the exclusion of TRS's right of possession and use.

155. TRS has legal ownership of its demonstration units, which are personal property of TRS.

156. Williams and Burlington have not returned the personal property to TRS, accounted for the personal property, or remunerated TRS for its personal property.

157. TRS has suffered financial damages as a direct and proximate result of Defendants' unlawful appropriation of TRS's personal property.

COUNT IX

**BREACH OF FIDUCIARY DUTY AND DUTY OF LOYALTY
(WILLIAMS)**

158. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

159. Williams owed to TRS duties of a fiduciary and loyalty. Williams knowingly and actively breached his fiduciary duty and duty of loyalty to TRS by, among other things:

- a. taking and using TRS's trade secrets and confidential, proprietary, and business sensitive information;
- b. siphoning away TRS's trade secrets and confidential, proprietary, and business sensitive information to Burlington; and
- c. misusing TRS's trade secrets and confidential, proprietary, and business sensitive information to give himself and Burlington an unlawful competitive advantage in the market.

160. The wrongful taking or misappropriation of TRS's confidential and proprietary information, trade secrets, and personal property appears to have taken place as early as January 2015 and has continued to the present.

161. Williams' breaches of fiduciary duty and duty of loyalty have proximately caused harm to TRS, including, among other things:

- a. the loss of customers and damage to TRS's goodwill and business reputation;

- b. the deprivation and diminishment of the value of TRS's intellectual property;
- c. damage to the confidential nature of TRS's confidential information, trade secret information, and/or other proprietary material; and
- d. aiding a direct competitor to unlawfully compete against TRS.

162. As a direct and proximate result of Williams' breaches, TRS has suffered financial damages, including but not limited to lost customers, lost sales, and/or lost profits.

COUNT X

BREACH OF CONTRACT (WILLIAMS AND BURLINGTON)

163. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

164. On or about October 15, 2014, TRS and Williams and his alter ego Burlington executed a written contract, the Distribution Agreement.⁴ The contract or Distribution Agreement provided that Burlington would promote, market and sell TRS's products and TRS would provide training to Burlington sales staff and provide TRS products to Burlington to market and sell. Under the Distribution Agreement, Burlington agreed "not to engage in the distribution[,] promotion, marketing or sale of any goods or products that compete or conflict with [TRS's] Products." The contract required written notice to terminate without which it would automatically continue at the end of the first year. Neither TRS nor Burlington terminated the contract, and it remained in force. TRS performed its obligations under the contract and continued to do so after Burlington's minor name change. Williams and Burlington did not perform their contractual obligations.

⁴ See note 1, *supra*.

165. Without legal justification or excuse, Williams and Burlington materially breached the contract with TRS by failing to perform their obligations thereunder and expressly engaging in the distribution, promotion, marketing and sale of Burlington's goods and products that directly compete and conflict with TRS's products.

166. Due in part to the breach by Williams and Burlington and their subsequent refusal to remedy their breach, TRS terminated the contract on April 13, 2017.

167. In the alternative to the foregoing express contract breach, TRS asserts *Breach of Contract Implied in Fact* in which the allegations of the preceding paragraphs are incorporated as if repeated verbatim, not inconsistent herewith.

168. In or around May 2015, TRS and Williams and Burlington entered into an oral contract. The contract provided that TRS would continue to provide products in accordance with the terms of the contract dated October 15, 2014, and Williams and Burlington would continue to market and sell TRS products; indeed, Williams stated to TRS that Burlington would "accelerate" those efforts. TRS has performed its obligations under the contract. Williams and Burlington, however, have not performed their contractual obligations. Specifically, Williams and Burlington distributed, promoted, marketed and sold their own goods and products that directly compete and conflict with TRS's products.

169. Williams' and Burlington's nonperformance and competing sales are breaches of the parties' contract, express and/or implied.

170. As a direct and proximate result of the breach of the contract, express and/or implied, TRS has suffered damages including: reasonable expenses in reliance on Williams' and Burlington' performance, loss of net profits, and attorney fees.

COUNT XI

**CONSPIRACY
(ALL DEFENDANTS)**

171. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

172. Under Va. Code § 18.2-499(B) “two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully and maliciously injuring another in his...trade [or] business...by any means whatever” shall be civilly liable for conspiracy. In addition to this statutory basis for liability, “[a] common law conspiracy consists of two or more persons combined to accomplish, by some concerted action, some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means.” *Gelber v. Glock*, 293 Va. 497, 533, 800 S.E.2d 800 (2017).

173. As set forth above, Defendants engaged in a concerted action with the intent to accomplish the unlawful acts of infringing, misappropriating, retaining, and/or reproducing TRS’s confidential information, trade secrets, and/or other proprietary material despite knowledge of Williams’ and Burlington’s obligations to TRS.

174. Defendants engaged in an agreement and in concerted action to accomplish the unlawful acts of taking of TRS’s patented and copyrighted materials, confidential information, trade secrets, and/or other proprietary material for their own personal benefit and thereby willfully and maliciously injured TRS’s business.

175. Because of Defendants’ unlawful acts, TRS suffered and continues to be threatened with irreparable harm, as well as economic and non-economic damages including, but not limited to, lost profits, sales, market position, business reputation, and goodwill, as well as other pecuniary and consequential losses, in an amount to be proven at trial.

176. Defendants' conduct was willful, wanton, and malicious, thereby entitling to exemplary damages.

COUNT XII

**MISAPPROPRIATION OF TRADE SECRETS PURSUANT TO 18 U.S.C. § 1836
(WILLIAMS, BURLINGTON AND FOX THREE)**

177. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

178. Since early 2015, TRS developed relationships with a wide variety of potential customers and actual customers in several states having interests in various TRS products, including the Rad-Guard™ Radiation Shield and Cardio-TRAP® catheterization systems. As such, TRS had a variety of confidential deals with those customers or potential customers (Trade Secrets).

179. TRS's Trade Secrets (namely, confidential information regarding potential or actual TRS customers, including ship-to and bill-to addresses, order history, contact names, and telephone numbers, and confidential deal terms) represent technical, business, and financial information including formulas, methods, techniques, processes, and procedures.

180. The Trade Secrets derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, the public or another person who can obtain economic value from the disclosure or use of the Trade Secrets.

181. Williams, Burlington and Fox Three derive economic value from the Trade Secrets not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the Trade Secrets. For example, in 2017 TRS customer McLaren Bay Region hospital ordered from and

paid to Williams, Burlington and Fox Three approximately \$3,000.00 for infringing IV Mounted Barriers.

182. TRS took reasonable measures to keep its Trade Secrets secret according to reasonable measures under the circumstances, including telling only those Defendants who needed to know limited aspects of the Trade Secrets; and providing those Defendants with promotional Rad-Guard™ Radiation Shields and miniature Cardio-TRAP® catheterization systems to promote, sell and distribute TRS products.

183. The use of TRS's Trade Secrets was authorized by its contractual relationship and mutual trust with Williams, Burlington and Fox Three from October 15, 2014 until April 13, 2017 when TRS terminated the Distribution Agreement.⁵

184. From late 2014 until approximately the first quarter of 2017, TRS shared its Trade Secrets with Williams, Burlington and Fox Three based on mutual trust established in late 2014 and subsequently affirmed by Williams.

185. The Distribution Agreement provides that Burlington will not engage in the distribution, promotion, marketing or sale of any goods or products that compete or conflict with TRS's products. Moreover, Burlington states in its Code of Ethics, "We will emphasize fair competition, cooperative relationships, and a sense of responsibility that will enable us to be a good customer. *We will protect all proprietary information belonging to any organization that has entrusted it to us.*" <https://burmed.com/company-overview/code-of-ethics/> (emphasis added).

186. Williams, Burlington and Fox Three learned how to make their infringing IV Mounted Barrier and sell it to TRS's customers due to the confidential, contractual relationship with TRS and knowledge of TRS's products.

⁵ See note 1, *supra*.

187. Williams, Burlington and Fox Three used TRS's products in combination with TRS's Trade Secrets, namely, confidential TRS customer lists, to develop, manufacture, market, promote, offer for sale, and sell the infringing IV Mounted Barrier to customers and distributors of TRS on terms favorable to Williams, Burlington and Fox Three.

188. The misuse of TRS's Trade Secrets by Williams, Burlington and Fox Three was without express or implied consent of TRS.

189. The use of TRS's Trade Secrets by Williams, Burlington and Fox Three was without express or implied consent of TRS since at least April 13, 2017.

190. Williams, Burlington and Fox Three knew and had reason to know that, as of October 15, 2014, the TRS Trade Secrets were acquired under circumstances giving rise to a duty to maintain the secrecy of the Trade Secrets and to limit the use of the Trade Secrets inuring to the benefit of TRS.

191. The misappropriation of TRS's Trade Secrets by Williams, Burlington and Fox Three was willful and malicious, and sought to deprive TRS of their value while usurping such value to Williams, Burlington and Fox Three, at least by displacing TRS's Rad-Guard™ Radiation Shields in the marketplace with the infringing IV Mounted Barrier.

192. The unlawful conduct of Williams, Burlington and Fox Three is causing immediate and irreparable harm and injury to TRS, and to TRS's market for its products, and will continue to damage TRS and the public unless enjoined by this Court. Defendants have no adequate remedy at law.

193. TRS is entitled to, among other relief, injunctive relief and an award of damages for actual loss, the unjust enrichment of Williams, Burlington and Fox Three, a reasonable

royalty, exemplary damages and reasonable attorneys' fees under 18 U.S.C. § 1836(b)(3), together with prejudgment and post-judgment interest.

COUNT XIII

**NEGLIGENCE
(WILLIAMS AND BURLINGTON)**

194. TRS repeats and re-alleges each and every allegation of the preceding paragraphs as though fully set forth herein, not inconsistent herewith.

195. A claim of negligence in Virginia and elsewhere is based on (a) a legal duty of a defendant to a plaintiff; (b) a breach of that duty by the defendant; and (c) an injury and damages to the plaintiff proximately caused by defendant's breach.

196. Williams and Burlington owed TRS duties of care and loyalty to employ Burlington sales staff to market and sell TRS product, to not misappropriate and misuse TRS's confidential customer lists, and to not market and sell a competing infringing IV Mounted Barrier.

197. Williams and Burlington breached these duties by producing infringing IV Mounted Barriers; by diverting their sales staff to market, advertise, offer for sale, sell, and distribute their competing infringing IV Mounted Barriers; and by misusing TRS's confidential customer contacts in furtherance of their own self-dealing interests rather than the interests of TRS.

198. The breaches by Williams and Burlington have proximately caused actual economic losses and other damages to TRS, including damages to its reputation and goodwill.

199. The breaches by Williams and Burlington were willful, intentional, and reckless.

200. TRS is entitled to damages sufficient to restore it to its position prior to the wrongful actions of Williams and Burlington, and for punitive damages due to the intentional, willful, and reckless nature of the actions by Williams and Burlington.

WHEREFORE, TRS prays for judgment and relief as follows:

- (1) That Burlington and Phillips be adjudged to have infringed the '346 Patent directly and/or indirectly, either literally or under the doctrine of equivalents;
- (2) That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '346 Patent;
- (3) That damages be awarded to TRS pursuant to 35 U.S.C. § 284 sufficient to compensate TRS for Burlington's and Phillips' past infringement and any continuing or future infringement up until the date that Burlington and Phillips are finally and permanently enjoined from further infringement or the '346 Patent expires, whichever is sooner, including compensatory damages;
- (4) That an assessment of pre-judgment and post-judgment interest and costs be made against Burlington and Phillips, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;
- (5) That Burlington and Phillips be directed to pay enhanced damages under 35 U.S.C. § 284 and TRS's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285;
- (6) That Defendants, their agents, servants, employees and attorneys and all those in active concert or participation with them, be permanently and forever enjoined

from infringing any United States Copyright Registration owned by TRS including, but not limited to, the '031 Registration and its associated materials.

- (7) That the Court order the impounding and destruction of any and all copies of Defendants' infringing works and any other works of Defendants infringing the '031 Registration and any articles or means by which copies of the accused or infringing work may be reproduced;
- (8) That TRS be awarded judgment for damages and profits pursuant to 17 U.S.C. §504(b) against each of the Defendants in an amount to be determined at trial;
- (9) That, in the alternative and at its election, TRS be awarded statutory damages pursuant to 17 U.S.C. §504(c) as to each Defendant and that same damages are increased due to the willful conduct of Defendants;
- (10) That Defendants be adjudged to have violated 15 U.S.C. § 1125(a) and committed acts of unfair competition under the common law and state statutes, and as a result of such unlawful acts, ordering that: Defendants and their subsidiaries, officers, agents, directors, servants, employees, partners, representatives, licensees, related companies, assigns, and attorneys, and all persons in active concert or participation with Defendants or with any of the foregoing be enjoined, on a worldwide basis, preliminarily during the pendency of this action and permanently thereafter from:
 - a) using TRS's goods, trademarks, trade dress, counterfeit copies or colorable imitations thereof, in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine TRS product, including passing off, reverse

passing off, or inducing or enabling others to sell or pass off products that are not genuine TRS goods;

- b) Engaging in any act or series of acts which, either alone or in combination, constitutes unfair methods of competition with TRS and from otherwise interfering with, or injuring, TRS's marks or the goodwill associated therewith;
- c) Committing any acts calculated to cause consumers to believe that Defendants' counterfeit or infringing products are those sold under the authorization, control or supervision of TRS, or are sponsored by, affiliated with, endorsed or licensed, approved by, or otherwise connected with TRS;
- d) Knowingly assisting, inducing, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in the preceding paragraphs of this section.

- (11) That Defendants be ordered to deliver to TRS for destruction all advertisements, promotional materials, and the like that contain or feature TRS's materials with TRS marks obliterated or replaced with Defendants' marks, or any other unlawful uses of the TRS materials, or any other trademarks, names, or logos, that are confusingly similar to, TRS's marks or trade dress.
- (12) That Defendants be ordered to account and disgorge to TRS any and all profits earned as a result of Defendants' aforesaid acts of infringement in violation of TRS's rights under the Lanham Act.

- (13) That an award of punitive damages be granted to TRS for the willful and wanton nature of Defendants' unfair practices under 15 U.S.C. § 1117, including its costs, expenses, reasonable attorneys' fees, and pre-judgment interest.
- (14) That Defendants be enjoined from using, disclosing, or otherwise misappropriating TRS's Trade Secrets;
- (15) That TRS be awarded, due to Defendants' misappropriation of TRS's Trade Secrets, damages for actual loss, Defendants' unjust enrichment, a reasonable royalty, exemplary damages and reasonable attorneys' fees, together with prejudgment and post-judgment interest;
- (16) That TRS be awarded economic and non-economic damages under Va. Code §§ 18.2-500 and 59.1-196, *et seq.*, and damages for negligence, breach of contract, conversion, and tortious interference with contractual relationships, and other unlawful acts under common law as indicated herein.
- (17) That TRS have such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff TRS demands a trial by jury of any and all causes of action so triable by right.

Respectfully submitted,

December 12, 2018

s/ Jeremy M. Stipkala
Jeremy M. Stipkala (Fed. Id. No. 10479)
Virginia Bar No. 83345
Bernard S. Klosowski, Jr. (Fed. Id. No. 9251)
Pro Hac Vice pending

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