

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

ERMI LLC,

Plaintiff,

VS.

TEAM POST OP, INC.,

EDUARDO M. MARTI,

T-REX REHAB, LLC,

T-REX INVESTMENT, INC., and

ONEDIRECT HEALTH NETWORK, INC.

Defendants.

Civil Action No. 19-CV-60851-RNS

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL,
INJUNCTIVE RELIEF SOUGHT

Plaintiff ERMI LLC (hereinafter “ERMI” or “Plaintiff”), in support of this Complaint against Defendants Eduardo M. Marti (hereinafter “Mr. Marti”), Team Post Op, Inc. (hereinafter “Team Post Op”), T-Rex Rehab, LLC (hereinafter “Rehab”), T-Rex Investment, Inc. (hereinafter “T-Rex Investment”), and OneDirect Health Network, Inc. (hereinafter “OneDirect”) (collectively “Defendants”), does hereby allege as follows:

NATURE OF THE ACTION

1. Plaintiff ERMI brings this action for willful patent infringement pursuant to the Patent Act, 35 U.S.C. § 101, *et seq.*, including claims for damages and injunctive relief under §§ 154, 281, 283-285 of that Title, and for false advertising and unfair competition pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*, arising from Defendants' unlawful conduct in knowingly and intentionally making false statements regarding Plaintiff and its devices in their advertising materials.

THE PARTIES

2. Plaintiff ERMI is a Delaware limited liability company with its principal offices located at 441 Armour Place NE, Atlanta, Georgia, 30324. ERMI holds legal ownership of, and has standing to sue for infringement of, United States Patent Number 7,547,289 (hereinafter “the ‘289 Patent”) entitled “Shoulder Extension Control Device” which issued on June 16, 2009.

Exhibit 1.

3. ERMI was formerly incorporated in Georgia as ERMI, Inc. but, effective April 1, 2019, ERMI, Inc. was converted to become ERMI LLC. This conversion has been duly recorded with the United States Patent and Trademark Office with reference to the ‘289 Patent.

4. On information and belief, Defendant Mr. Marti is an individual with a personal residence at 19274 South Hibiscus Street, Weston, Florida, 33332. Mr. Marti is an owner, founder, Vice President, and CEO of Defendant Team Post Op.

5. On information and belief, Defendant Team Post Op is a Florida corporation with principal offices located at 14133 NW 8th Street, Sunrise, Florida, 33325.

6. On information and belief, Defendant Rehab is a Florida limited liability company with principal offices located at 19274 South Hibiscus Street, Weston, Florida, 33332.

7. On information and belief, Defendant T-Rex Investment is a Georgia corporation with principal offices located at 2964 Peachtree Road NW, Suite 400, Atlanta, Georgia, 30305.

8. On information and belief, Defendant OneDirect is a Georgia corporation with principal offices located at 2964 Peachtree Road NW, Suite 400, Atlanta, Georgia, 30305.

9. On information and belief, Defendants have previously and are presently making, using, selling, leasing, offering for lease, offering for sale, and/or importing into the United States, including in this district, products that infringe the ‘289 Patent. These products include

the product known as the T-Rex Orbit for Shoulder (hereinafter the “Accused Device”). **Exhibit 2.**

10. On information and belief, Defendants Rehab, T-Rex Investment, and OneDirect have previously and are presently making false and misleading representations of fact in commercial advertising or promotion that misrepresent the nature, characteristics, and qualities of ERMI’s goods.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 (a) and (b) both because it involves a federal question and also because it involves patents.

12. Because the amount in controversy exceeds \$75,000, and because Plaintiff and Defendants are diverse parties, this Court also has original jurisdiction pursuant to 28 U.S.C. § 1332.

13. This Court has *in personam* jurisdiction over Defendant Mr. Marti because he resides in this district and because he is engaged in patent infringement in this district.

14. This Court has *in personam* jurisdiction over Defendant Team Post Op because Team Post Op is incorporated in this state, conducts business in this district, and is engaged in patent infringement in this district.

15. This Court has *in personam* jurisdiction over Defendant Rehab because Rehab is organized in this state, conducts business in this district, and is engaged in patent infringement in this district. Further, it makes false and misleading statements about ERMI’s goods in its commercial advertising and marketing in this district and division.

16. This Court has *in personam* jurisdiction over Defendant T-Rex Investment because Rehab, which is located in this state, is a company of T-Rex Investment, and T-Rex Investment, Rehab, and OneDirect operate as a single entity, such that T-Rex Investment and OneDirect control Rehab's business in this district and patent infringement in this district. Further, T-Rex Investment makes false and misleading statements about ERMI's goods in its commercial advertising and marketing in this district and division.

17. This Court has *in personam* jurisdiction over Defendant OneDirect because Rehab, which is located in this state, is a company of OneDirect, and OneDirect, T-Rex Investment, and Rehab operate as a single entity, such that OneDirect and T-Rex Investment control Rehab's business in this district and patent infringement in this district. Further, OneDirect makes false and misleading statements about ERMI's goods in its commercial advertising and marketing in this district and division.

18. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over all other claims asserted or that may be asserted that are so related to claims within the original jurisdiction of this action that they form part of the same case or controversy under Article III of the United States Constitution.

19. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400 because Defendants are entities that have their principal places of business in this district and because a substantial part of the events giving rise to ERMI's claims occurred in this district, namely Defendants' making, using, selling, leasing, offering for lease, and/or offering to sell and distribute products that infringe the '289 Patent and Defendants' commercial advertising and promotion containing false and misleading representations about the nature, characteristics, and qualities of ERMI's goods.

20. Venue is also proper in this district because Defendants operate and/or control a physical place in this district, including 1671 Northwest 144th Terrace #111, Sunrise, FL 33323 and/or 14133 NW 8th St. Sunrise, FL 33325. On information and belief, Defendants, including Defendants OneDirect and T-Rex Investment, regularly transact business out of one or both of these locations. Accused Products, owned by OneDirect and/or T-Rex Investment, are stored in either or both of these locations prior to use as well as in between uses by patients.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

The '289 Patent

21. Dr. Thomas P. Branch (hereinafter "Dr. Branch") is a board certified orthopedic surgeon practicing with TREX Orthopedics, P.C., d/b/a University Orthopaedic Clinic in Decatur, Georgia. TREX Orthopedics, P.C., was formed in May 1995. Dr. Branch has continually used the TREX Orthopedics name both internally and on letterhead and business cards since 1996.

22. Dr. Branch invented a new and useful Shoulder Extension Control device and method and filed a United States provisional application directed thereto on December 13, 2001.

23. One year later, on December 13, 2002, Dr. Branch filed a United States non-provisional application having serial number 10/318,988 (hereinafter the "Application"). The Application claimed priority to the provisional patent application.

24. Dr. Branch assigned the Application, and any patents issuing therefrom, to ERMI. The assignment included all rights under the patents including the right to sue for past infringement.

25. The Application published to the public on July 10, 2003.

26. Prosecution commenced in the United States Patent and Trademark Office (“Patent Office”) and the Patent Office issued a first office action on January 13, 2006, in which Claims 1 through 6 of the Application were allowed and declared patentable by the Patent Office.

27. Prosecution continued as to the remaining claims in the Application. The Patent Office never rejected Claims 1 through 6.

28. On March 16, 2009, the Patent Office issued a notice of allowance indicating that Claims 1 through 6 remained allowable and that Claims 31 through 46 were also allowable.

29. The Patent Office issued United States Patent 7,547,289, the ‘289 Patent as shown in **Exhibit 1**, on June 16, 2009 with 22 total claims.

30. Exemplary Independent Claim 1 of the ‘289 Patent is directed to:

An apparatus for manipulating the shoulder joint of the left or right arm of a human user, said apparatus comprising:

a frame including spaced apart first and second mounting locations;

an arm carriage configured to manipulate said shoulder joint of said user, said arm carriage configured to be mounted to one of said first and second mounting locations of said frame;

a power unit configured to provide power upon control by said user, said power unit configured to be mounted to the other of said first and second mounting locations of said frame;

a linkage intermediate said arm carriage and said power unit, said linkage configured to transfer power from said power unit to said arm carriage;

said arm carriage, said power unit, and said linkage configured to allow said arm carriage and said power unit to be switched between said first and second mounting locations and operated in alternating modes, such that in a first operating mode said arm carriage can manipulate the right arm of said user, and such that in a second operating mode said arm carriage can manipulate the left arm of said user.

31. Exemplary Independent Claim 22 of the '289 Patent is directed to:

A method of manipulating the shoulder of a user while seated in a substantially upright position, said user having an upper arm and a forearm, said method comprising the steps of:

A) providing an apparatus itself comprising:

1) a frame;

2) a seat for a user to sit in such that said user can sit in said seat in said substantially upright sitting position while facing a direction substantially along a first axis, said axis being substantially horizontal;

3) an upper arm assembly pivotably mounted relative to said frame about a second axis, said second axis being substantially parallel to said first axis; and

4) a forearm assembly pivotably mounted relative to said upper arm assembly about a third axis and configured to capture the forearm of the user during manipulation of the arm of the user, said third axis being substantially orthogonal to said second axis;

B) securing the forearm of a user to said forearm assembly;

C) selectively discouraging relative movement of said forearm assembly with respect to said upper arm assembly while at the same time allowing said upper arm

assembly and said forearm assembly to both pivot together relative to said frame about said second axis;

D) pivoting said upper arm assembly about said second axis relative to said frame while at the same time said relative movement of said forearm assembly with respect to said upper arm assembly is discouraged such that abduction/adduction of the shoulder is created;

E) selectively discouraging relative movement of said upper arm assembly with respect to said frame while at the same time allowing relative movement of said forearm assembly relative to said upper arm assembly and said frame about said third axis; and

F) pivoting said forearm assembly about said third axis with respect to said upper arm assembly and with respect to said frame while at the same time said relative movement of said upper arm assembly with respect to said frame is discouraged such that external rotation is created at said shoulder.

32. The First Maintenance Fee for the '289 Patent was paid on October 1, 2012.

33. The Second Maintenance Fee for the '289 Patent was paid on December 1, 2016.

34. The '289 Patent is valid and enforceable.

ERMI's Devices

35. ERMI is a company that manufactures and sells medical devices throughout the United States. The name ERMI is an acronym that stands for "End Range Motion Improvement."

36. Many of ERMI's devices are shown and cataloged on ERMI's website, www.getmotion.com.

37. ERMI advertises its products on its website, in videos, and in printed media.

38. One of these products is the ERMI Shoulder Flexionater® device which is designed to increase motion for those with restricted external rotation, abduction, flexion, and internal rotation. **Exhibit 3.**

39. ERMI has made in excess of 1,400 ERMI Shoulder Flexionater® devices.

40. The ERMI Shoulder Flexionater® devices are distributed directly by ERMI through a network of sales representatives across the country.

41. The ERMI Shoulder Flexionater® devices have been tested and the results of the testing have been published.

42. Each ERMI Shoulder Flexionater® device is covered by the claims of the '289 Patent and each ERMI Shoulder Flexionater® device is marked with the '289 Patent number.

Exhibit 4.

43. In addition to showing the images, descriptions, and videos of the ERMI Shoulder Flexionater® device on its website, ERMI exhibits the ERMI Shoulder Flexionater® device at trade shows around the country.

Mr. Eduardo M. Marti Visits ERMI

44. Mr. Marti contacted ERMI on November 7, 2013 via email seeking to sell distribution rights to an unrelated product.

45. Mr. Marti met with ERMI on December 13, 2013 and visited Dr. Branch's office at TREX Orthopedic, P.C., d/b/a University Orthopaedic Clinic.

46. ERMI devices and related literature, including the ERMI Shoulder Flexionater® device and related literature, were on display at the University Orthopaedic Clinic during Mr. Marti's visit on December 13, 2013. Mr. Marti was exposed to both the TREX name and the ERMI Shoulder Flexionater® device during his visit.

T-Rex Rehab and T-Rex Accused Device

47. Following Mr. Marti's meeting with ERMI at the TREX Orthopedic, P.C., d/b/a University Orthopaedic Clinic in December 2013, Mr. Marti founded a company named T-Rex Rehab, LLC in May 2014.

48. Rehab is a Florida limited liability company which has the same address as Mr. Marti, namely 19274 South Hibiscus Street, Weston, Florida 33332.

49. On June 4, 2014, Mr. Marti filed United States provisional patent application 62/007,541 directed to a Powered Knee Exerciser. On August 27, 2014, Mr. Marti filed United States provisional patent application 62/042,399 directed to a 3 Axis Actuator Driven Therapy Shoulder Device. On March 18, 2015, Mr. Marti filed United States provisional patent application 62/134,633 directed to Knee and Shoulder Exercisers. Mr. Marti assigned each of these three provisional applications to Rehab.

50. Based on these provisional patent applications, Mr. Marti also filed several non-provisional patent applications.

51. During the prosecution of Mr. Marti's non-provisional patent applications, Mr. Marti filed Information Disclosure Statements which, *inter alia*, included citations to ERMI's website, www.getmotion.com. **Exhibit 5.**

52. One of the products made and distributed by Rehab is the Accused Device. **Exhibit 2.**

53. On information and belief, Mr. Marti has been and is involved in the advertising activities of Rehab.

54. Rehab advertises the Accused Device on its website at <https://trexrehab.com/trex-orbit-for-shoulder/>.

55. Rehab's website includes citations to the same publications that tested and commented on the ERMI devices.

56. Rehab's advertisements, including those on its website, include videos showing the Accused Device being used by a person.

57. Rehab's advertisements include commercial brochures which have been distributed to consumers identifying Rehab as the source of the Accused Device. *See, e.g., Exhibit 6.*

T-Rex and OneDirect's Partnership with Rehab and Marti

58. In September 2015, T-Rex was formed in Georgia.

59. On information and belief, T-Rex Investment was formed as an acquisition company for the purpose of acquiring Rehab.

60. On information and belief, on March 9, 2016, T-Rex Investment completed the purchase of at least a portion of Rehab's assets, which included certain patents, patent applications, and distribution channels related to the T-Rex products.

61. On information and belief, OneDirect purchased 77% of T-Rex Investment.

62. On information and belief, Mr. Marti maintains ownership of at least a portion of Rehab.

63. OneDirect identifies Rehab as one of its "Companies" on its website, <https://mackenzie-patsey-cepr.squarespace.com/>, stating that it works with Rehab "from inception to distribution." OneDirect's website links to Rehab's website, trexrehab.com, identified above, where Rehab advertises the Accused Device. **Exhibit 7.**

64. On information and belief, Defendants Marti, Rehab, T-Rex, and OneDirect operate as a single entity to manufacture, sell, lease, distribute, and advertise the Accused Device.

Team Post Op's Distribution of the Accused Device

65. Team Post Op is a distributor of the Accused Device.

66. Team Post Op sells, offers for sale, leases, and/or offers for lease Rehab's products, including the Accused Device, in Florida, including in this district, and elsewhere.

67. Mr. Marti is Vice President and CEO of Team Post Op.

68. On information and belief, Mr. Marti is an owner of Team Post Op.

69. On information and belief, Mr. Marti has been and is involved in the advertising activities of Team Post Op.

70. Team Post Op operates the website www.teampostop.net where it advertises, *inter alia*, the Accused Device.

71. Team Post Op's website includes videos demonstrating the operation of the Accused Device. **Exhibit 2**.

72. Team Post Op's website states that "[Team Post Op] agrees to properly instruct the patient and/or caregiver on the proper use and maintenance of product(s)."

73. Team Post Op has advertised the Accused Device at trade shows including at the Workers Compensation Institute.

74. On information and belief, Team Post Op advertises the Accused Device with reference to ERMI's Shoulder Flexionater® device.

75. On information and belief, Team Post Op has demonstrated the Accused Device to customers and potential customers.

76. On information and belief, Team Post Op has distributed the Accused Device to customers.

77. On information and belief, Defendants have knowledge of and/or are willfully blind to the claims of the '289 Patent.

Defendants' False Advertising Statements About ERMI

78. Defendants Rehab, T-Rex Investment, and OneDirect's advertisements for the Accused Device include a commercial brochure that is distributed to customers (hereinafter "Brochure"). **Exhibit 8.**

79. The Brochure contains references to nine studies, none of which were conducted by Defendants or on the Accused Device, and seven of which were either conducted by ERMI and/or on ERMI devices.

80. The Brochure contains a chart of "patient care criteria", comparing the Accused Device to ERMI's device. The following statements about the "ERMI Shoulder" device contained in the Brochure are false misrepresentations about ERMI's device:

- a. Does not "allow[] movement thru multiple planes."
- b. Does not allow "internal and external rotation stretching."
- c. Is not "[anato]mically aligned along the correct 'axis' for horizontal, rotational, ab/add[uction.]"
- d. Does not "allow[] for scapular extension."
- e. Does not "allow[] for retraction motion with int/ext rotation."

81. Defendants know these statements regarding ERMI's device to be false.

82. The Brochure contains a second chart of “patient care criteria”, comparing the T-Rex knee device to ERMI’s device. The following statements about ERMI contained in the Brochure are false misrepresentations about ERMI’s device(s):

- a. Does not “perform flex and extension.”
- b. Does not have “moderate resistance.”
- c. Does not allow “hyperextension.”

83. Defendants know these statements regarding ERMI’s device(s) to be false.

84. The Brochure contains images of three ERMI devices taken from ERMI’s website and identifies the ERMI devices as “CPM Devices.”

85. The devices shown in the brochure are identifiable as ERMI devices to customers and persons in the industry.

86. “CPM Device” is a term of art understood by those in the medical industry and stands for “continuous passive motion device.” CPM Devices have been used for decades to prevent postoperative motion loss immediately after surgery.

87. CPM Devices must contain certain characteristics, including that the device be electrically powered, which ERMI’s devices are not. CPM Devices are classified under two Healthcare Common Procedure Coding System (“HCPCS”) codes: E0935 and E0936.

88. ERMI’s devices are not CPM Devices. ERMI’s devices are “High Intensity Stretch” (“HIS”) devices used as an adjunct to physical therapy for effective non-operative treatment of patients with severe motion loss.

89. ERMI’s devices are classified under HCPCS codes E1399 or in the E1800 – E1841 series of codes.

90. Defendants knew or should have known that ERMI's devices are not CPM devices. The studies on HIS and related devices contained in the Brochure, which Defendants reference, are ERMI studies conducted on ERMI devices.

Procedural History

91. ERMI filed its Original Complaint on April 1, 2019 against Rehab, Marti, and Team Post Op.

92. On the same day, ERMI filed five related litigations against other distributors of the Accused Device for direct and indirect patent infringement in other jurisdictions.

93. ERMI served Rehab, Marti, and Team Post Op on April 2, 2019.

94. On April 4, 2019, OneDirect filed a bare seven-page Complaint for Declaratory Judgment of Non-Infringement and Invalidity of Patent against ERMI in the Northern District of Georgia, which contained insufficient factual allegations to support its claims.

95. On April 8, 2019 by telephone conference, and again by email on April 9, 2019, Richard Randolph "Randy" Edwards, III, Steven Ritcheson, and Jacqueline "Jackie" Knapp Burt ("OneDirect's Counsel") communicated to ERMI's counsel that: (i) they represent and/or expect to represent all of the defendants that were sued by ERMI on April 1, 2019, either by written or verbal engagement, (ii) they requested ERMI's counsel not contact any defendants in this litigation or the other litigations directly, and (iii) OneDirect is the ultimate source of the Accused Device, and not Rehab, as indicated on Defendants' promotional materials; however, OneDirect's Counsel repeatedly refused to identify in writing which defendants were actually represented by OneDirect's Counsel.

COUNT I – WILLFUL DIRECT PATENT INFRINGEMENT

35 U.S.C. §271(a)

96. ERMI hereby incorporates paragraphs 1 - 95 above as if fully set forth herein.

97. Defendants have directly infringed and continue to directly infringe at least Claims 1 and 22 of the '289 Patent through using, selling, distributing and/or offering to sell and distribute the Accused Device.

98. The Accused Device is an apparatus for manipulating the shoulder joint of an arm of a user and embodies at least Claim 1 of the '289 Patent, and its use by Defendants infringes at least method Claim 22 of the '289 Patent.

99. Defendants have literally infringed and continue to literally infringe at least one claim of the '289 Patent.

100. Defendants have infringed and continue to infringe at least one claim of the '289 Patent pursuant to the Doctrine of Equivalents.

101. On information and belief, Defendants use and have used the Accused Device at various trade shows, in demonstration of the device, and/or in testing.

102. Defendants had knowledge of the '289 Patent at least as early as Mr. Marti's visit to ERMI in December 2013.

103. Defendants had knowledge of the '289 Patent at least as early as August 27, 2015, the date Mr. Marti filed an Information Disclosure Statement with the United States Patent Office listing the getmotion.com website during prosecution of the patent applications Mr. Marti assigned to Rehab.

104. Defendants have willfully infringed and continue to willfully infringe the '289 Patent. Despite their knowledge of the '289 Patent, Defendants have sold and continue to sell the Accused Device in complete and reckless disregard of ERMI's patent rights.

105. As a result of Defendants' unlawful activities, ERMI has suffered and will continue to suffer irreparable harm.

106. Defendants' infringement of the '289 Patent has injured and continues to injure ERMI in an amount to be proven at trial, but not less than a reasonable royalty.

COUNT II – INDIRECT PATENT INFRINGEMENT

35 U.S.C. §271(b); 35 U.S.C. §271(c)

107. ERMI hereby incorporates paragraphs 1 - 106 above as if fully set forth herein.

108. Defendants market, advertise, demonstrate, sell, distribute and offer to sell and distribute the Accused Device to third parties including doctors, medical practices, care facilities, and directly to end user patients.

109. Defendants have induced and continue to induce infringement of at least Claim 22 of the '289 Patent under 35 U.S.C. § 271(b).

110. In addition to directly infringing the '289 Patent, Defendants indirectly infringe by instructing, directing and/or requiring others, including doctors, medical practices, care facilities, and end user patients, to perform the steps of method Claim 22, either literally or under the Doctrine of Equivalents, of the '289 Patent, where all of the steps of the method claim are performed by either Defendants or its customers, doctors, medical practices, care facilities, end user patients, or some combination thereof.

111. The patients directly infringe the '289 Patent by using the Accused Device to treat their shoulders.

112. The doctors, care providers, and medical practices also directly infringe the '289 Patent by prescribing the Accused Devices to patients, by providing instructions on use to patients, and by controlling and directing patients' use of the Accused Device. Defendants have

direct knowledge and/or are willfully blind to the fact that they are inducing others, including doctors, medical practices, care facilities, and end user patients, to infringe by practicing, either themselves or in conjunction with Defendants, method Claim 22 of the '289 Patent.

113. By advertising, distributing, leasing and/or selling the Accused Devices to others, Defendants have knowingly and intentionally aided, abetted, and induced others to directly infringe at least one claim of the '289 Patent.

114. The Accused Device has no substantial non-infringing use.

115. By providing the accused products to others, Defendants have contributed and are contributing to the infringement by others of at least Claim 22 of the '289 Patent.

COUNT III – LANHAM ACT FALSE ADVERTISING

15 U.S.C. § 1125(a)

116. ERMI hereby incorporates paragraphs 1 - 115 above as if fully set forth herein.

117. Defendants Rehab, T-Rex Investment, and OneDirect's false statements about ERMI's devices constitute false or misleading representations of fact.

118. Defendants Rehab, T-Rex Investment, and OneDirect's use of false or misleading representations of fact in commercial advertising or promotion misrepresents the nature, characteristics, or qualities of ERMI's goods. Defendants Rehab, T-Rex Investment, and OneDirect's use of false or misleading representations of fact has the tendency to deceive a substantial portion of the target consumer audience, or actually deceives the target consumers and users.

119. Defendants Rehab, T-Rex Investment, and OneDirect's use of false or misleading representations of fact are material because they are likely to influence the purchasing and use decisions of the target consumers and users.

120. Defendants Rehab, T-Rex Investment, and OneDirect's use of false or misleading representations of fact is in connection with the sale of products that are advertised, promoted, sold and distributed in interstate commerce.

121. ERMI has been and continues to be injured by Defendants Rehab, T-Rex Investment, and OneDirect's false or misleading representations of fact through the diversion of sales or loss of goodwill.

122. Defendants Rehab, T-Rex Investment, and OneDirect know that their representations of fact are false or misleading.

123. Defendants Rehab, T-Rex Investment, and OneDirect's false or misleading representations of fact were done with bad faith and malice or reckless indifference to ERMI's and consumers' interests.

124. Defendants Rehab, T-Rex Investment, and OneDirect's bad faith false or misleading representations of fact regarding ERMI's devices makes this an exceptional case within the meaning of 15 U.S.C. § 1117.

125. Defendants Rehab, T-Rex Investment, and OneDirect continue to make false or misleading representations of fact regarding ERMI's devices and will continue to do so unless enjoined by this Court as provided by 15 U.S.C. § 1116.

126. ERMI is entitled to an award of Defendants Rehab, T-Rex Investment, and OneDirect's profits due to sales of the falsely or misleadingly represented products, any damages sustained by ERMI, and the costs of the action pursuant to 15 U.S.C. § 1117.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ERMI LLC, by and through the undersigned, hereby respectfully asks the court to enter judgment against Defendants Mr. Marti, Rehab, Team Post Op, T-Rex Investment, and OneDirect, and their respective subsidiaries, affiliates, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

A. An entry of judgment holding that Defendants have infringed and are infringing the '289 Patent and have induced infringement and are inducing infringement of the '289 Patent;

B. An entry of judgment holding that Defendants Rehab, T-Rex Investment, and OneDirect have made false and misleading statements in advertisements in violation of 15 U.S.C. § 1125(a);

C. An injunction against Defendants and all those acting in concert with them, from using, making, leasing, offering to lease, selling, or offering to sell the Accused Device and all colorable imitations thereof;

D. An injunction against Defendants Rehab, T-Rex Investment, and OneDirect and all those acting in concert with them from making any further false or misleading statements regarding ERMI devices;

E. An award to ERMI for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the patent laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, and the Lanham Act, 15 U.S.C. § 1051, *et seq.*, which include, but are not limited to, lost profits, a reasonable royalty award, and monetary compensation for past and/or future corrective advertising;

F. A determination that Defendants' infringement has been willful, wanton, and deliberate and that the damages against it be increased up to treble on this basis or for any other basis in accordance with the law;

G. A determination that Defendants Rehab, T-Rex Investment, and OneDirect's false misrepresentations of fact were with bad faith and malice or reckless indifference to ERMI's and consumers' interests and that the damages against them be increased up to treble on this basis or for any other basis in accordance with the law;

H. A finding that this case is exceptional and an award to ERMI of its costs and reasonable attorneys' fees, as provided by 35 U.S.C. § 285 and 15 U.S.C. § 1117;

I. An accounting of all infringing sales and revenue together with all pre-judgment and post-judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to ERMI, from the first date of infringement of the '289 Patent;

J. An accounting of all sales earned as a result of Defendants Rehab, T-Rex Investment, and OneDirect's false and misleading advertisements; and

K. Such further and additional relief this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, ERMI LLC hereby demands trial by jury of all issues so triable.

This the 11th day of April, 2019.

Respectfully Submitted,

/s/ Ronald D.P. Bruckmann
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