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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

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MIDDLETON HOLDINGS, LLC,	:	CIVIL ACTION NO. 06-
dba CHO-PAT	:	
	:	
Plaintiff,	:	
v.	:	COMPLAINT
	:	
MCDAVID KNEE-GUARD, INC.,	:	
	:	
Defendant.	:	
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Plaintiff, for its complaint against Defendant, states that:

THE PARTIES AND JURISDICTION

1. Plaintiff, Middleton Holdings, LLC doing business as Cho-Pat (hereinafter “Cho-Pat ”), is a New Jersey limited liability company having an address of P. O. Box 293, Hainesport, New Jersey 08036.

2. Defendant, McDavid Knee-Guard, Inc. (hereinafter “McDavid”) is an Illinois corporation having its principal place of business at 10305 Argonne Drive, Woodbridge, Illinois 60517.

3. This Court has jurisdiction over Count I of this complaint under 28 U.S.C. §§1331 and 1338(a) in that the cause of action arises under the Patent Laws of the United States, and particularly, 35 U.S.C. §271. Jurisdiction is proper over Count II under 28 U.S.C. §1338(a) and 15 U.S.C. §1121 in that the cause of action stated therein arises under the Trademark Laws of the United States and, particularly, 15 U.S.C. §1125(a). This Court has jurisdiction over the remaining counts under the provisions of 28 U.S.C. §1338(b) in that the claims set forth therein are joined with substantial and related claims under the Patent and Trademark Laws of the United States. Jurisdiction over the remaining counts is also proper under 28 U.S.C. §1367. Venue is proper in this judicial district under 28 U.S.C. §§1391 and 1400(b).

#### COUNT I - PATENT INFRINGEMENT

4. On June 11, 2002, U.S. Patent No. 6,402,712 duly and legally issued to Cho-Pat for an invention entitled "Dual Action Knee Strap" (the "Patent"). The Patent is in full force and effect and a copy is attached hereto as Exhibit A.

5. In contravention to 35 U.S.C. §§271(a) and (b), McDavid has willfully and deliberately infringed the Patent by making, using, selling, and/or offering to sell, or inducing others to make, use sell, and/or offer to sell products embodying the invention claimed in the Patent. Such acts of infringement have occurred and continue to occur without the authority or license of Cho-Pat.

6. Cho-Pat has enjoyed commercial success throughout the United States for its patented invention and this enjoyment is being damaged and will continue to be damaged by the infringing activities of McDavid complained of herein.

COUNT II - PRODUCT CONFIGURATION AND TRADE DRESS INFRINGEMENT

7. Cho-Pat incorporates by reference the allegations of paragraphs 1-6.

8. Cho-Pat sells a knee strap in accordance with its Patent which knee strap has a unique design and appearance unlike any similar product in the market.

9. The uniqueness of the Cho-Pat knee strap is attributable to the unique and distinctive shape and appearance of the product.

10. Cho-Pat chose the distinctive shape of its knee strap in order to distinguish its product from products of others and to identify itself as the source of its products.

11. Cho-Pat has utilized the same shape and appearance for its knee strap for more than six years and clearly shows the shape and appearance of its product in many of its advertisements and promotional materials.

12. As a result of the many years of advertising, promotion and extensive sales of its knee straps, the appearance of Cho-Pat's knee strap has become distinctive and has acquired secondary meaning.

13. McDavid's knee strap is substantially identical to Cho-Pat's in configuration and appearance.

14. The advertising and sale by McDavid of knee straps that are substantially identical in appearance to Cho-Pat's knee strap is likely to cause confusion or to cause mistake or to deceive and is, therefore, a false representation in violation of 15 U.S.C. §1125(a).

15. On information and belief all acts done by McDavid were done willfully with the intent to infringe upon Cho-Pat's rights.

COUNT III - STATE AND COMMON LAW UNFAIR COMPETITION

16. Cho-Pat incorporates by reference the allegations of paragraphs 1-15.

17. The acts complained of in paragraphs 1-15 also constitute state and common law unfair competition.

WHEREFORE, Cho-Pat prays for judgment against McDavid, as follows:

A. That, pursuant to 35 U.S.C. §283, preliminary and final injunctions be issued enjoining McDavid, its officers, agents, servants, employees and all those persons in active concert or participation with them from further infringement of the Patent;

B. That, pursuant to 35 U.S.C. §284, McDavid account to Cho-Pat for damages for all past infringement, including treble damages because of the willful nature of such infringement;

C. That, pursuant to 35 U.S.C. §285, Cho-Pat be awarded costs and attorney's fees incurred in connection with this action; and

D. That McDavid, its agents, servants, employees and attorneys and those person in active concert or participation with them who receive actual notice hereof be enjoined pendent lite and permanently from offering a product for sale having substantially the same appearance as Cho-Pat's knee strap.

E. That McDavid be required to account for and pay over to Cho-Pat all gains, profits and advantages derived by McDavid and, in addition, the damages sustained by Cho-Pat as a result of McDavid's infringement together with legal interest from the date of accrual thereof and that, because of the willful nature of such infringement, and pursuant to 15

U.S.C. §1117 and state law, the Court enter judgment for three times the amount of said damages.

F. That, pursuant to 15 U.S.C. §1117 and state law, McDavid be required to pay Cho-Pat the costs of this action and reasonable attorneys' fees.

G. That Cho-Pat have such other and further relief as this Court deems to be just and proper.

NORMAN E. LEHRER, P.C.

By: /s/ Norman E. Lehrer  
Norman E. Lehrer  
Attorneys for Plaintiff

Dated: April 12, 2006