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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. _____

C.A.

02-30200 - MAP

210 INNOVATIONS, LLC,

Plaintiff,

vs.

CREATIVE MEDICAL CONCEPTS, INC.,

Defendant.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR PATENT
INFRINGEMENT, FEDERAL
TRADEMARK INFRINGEMENT,
FEDERAL TRADEMARK DILUTION,
FEDERAL UNFAIR COMPETITION,
MASSACHUSETTS UNFAIR
COMPETITION, MASSACHUSETTS
TRADEMARK DILUTION, AND
MASSACHUSETTS UNFAIR BUSINESS
PRACTICES

DEMAND FOR JURY TRIAL

For its Complaint, plaintiff 210 Innovations, LLC ("210 Innovations") alleges against defendant Creative Medical Concepts, Inc. ("Creative Medical Concepts") as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under 35 U.S.C §§ 1 et seq.; federal trademark infringement arising under section 32 of the Lanham Act, 15 U.S.C. § 1114; federal trademark dilution arising under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); federal unfair competition under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); state unfair competition arising under Massachusetts common law; state trademark dilution arising under Mass. Gen. Laws ch. 110B, § 12, and unfair business practices arising under Mass. Gen. Laws ch. 93A §§ 2, 11.

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2. This court has proper subject matter jurisdiction over the present action because it arises under the federal patent and trademark laws of the United States, Titles 35 and 15 U.S.C., respectively. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367.

3. Venue is proper in this district under 28 U.S.C. § 1391(b) because Creative Medical Concepts resides and is incorporated within this judicial district and a substantial part of the events giving rise to the claim occurred in this judicial district. Venue is also proper in this judicial district under 28 U.S.C. § 1400(b) because an act of patent infringement by Creative Medical Concepts occurred within this jurisdiction and Creative Medical Concepts has a regular and established place of business within the Commonwealth of Massachusetts.

THE PARTIES

4. Plaintiff, 210 Innovations, is a limited liability company organized and existing under the laws of the State of Connecticut having an address of 4 Donna Street, Waterford, Connecticut 06385-2512.

5. Defendant, Creative Medical Concepts, is, on information and belief, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having a principal place of business at 11 Walnut Street, Palmer, Massachusetts, 01069.

COUNT I

PATENT INFRINGEMENT

6. United States Patent No. 6,371,503 (“the ‘503 patent”) relates to an anti-rollback brake device for a wheelchair and a wheelchair including the same. The ‘503 was duly and legally issued to James K. Ritchie and James A. Marquis on April 16, 2002. The ‘503 patent

was duly and legally assigned to 210 Innovations. A true and correct copy of the '503 patent is attached hereto as Exhibit A.

7. 210 Innovations remains the owners by assignment of the entire right, title, and interest in the '503 patent, including, *inter alia*, the right to sue for past and present infringement of the '503 patent.

8. All claims of the '503 patent are presumed valid as a matter of law under 35 U.S.C. § 282.

9. Since the '503 patent was granted, Creative Medical Concepts has infringed the '503 patent, either directly, contributorily, or by inducement, and continues to infringe the '503 patent by making, using, offering to sell and/or selling an anti-rollback brake device for wheelchairs, that is covered by the claims of the '503 patent, without authority from 210 Innovations.

10. Creative Medical Concepts has known of the '503 patent at least since being put on notice by a letter from 210 Innovations' counsel dated July 18, 2002, advising Creative Medical Concepts of its infringement of the '503 patent.

11. Based upon information and belief, Creative Medical Concept's infringement of claims of the '503 patent has been and continues to be willful and deliberate.

12. As a direct result of Creative Medical Concepts' infringement of the '503 patent, 210 Innovations has been and will continue to be irreparably and substantially harmed and injured. If Creative Medical Concepts' infringement of the '503 patent is allowed to continue, 210 Innovations will sustain further loss, damage and irreparable injury.

COUNT II

FEDERAL TRADEMARK INFRINGEMENT

13. 210 Innovations realleges and incorporates by reference paragraphs 1 through 12 above, as if set forth in full herein.

14. 210 Innovations is the owner of a federal registration for the Safe•t mate® trademark for wheelchair equipment, namely wheelchair brakes and brake actuators. 210 Innovations has been making and selling wheelchair equipment, including the anti-rollback brake device covered by its '503 patent, in interstate commerce, and particularly into the long-term care industry, which includes nursing homes and other health care facilities, at least as early as June 1998.

15. On June 4, 2002, the U.S. Patent & Trademark Office duly and legally issued to 210 Innovations United States Trademark Registration Number 2,575,487 for its Safe•t mate® trademark. A true and accurate copy of this registration is attached as Exhibit B.

16. Upon information and belief, Creative Medical Concepts advertises and/or sells its anti-rollback wheelchair brake devices, alleged above as infringing the '503 patent, under the name Steddy-Mate.

17. The Steddy-Mate name is confusingly similar to 210 Innovations' Safe•t mate® trademark.

18. Upon information and belief, Creative Medical Concepts advertises and/or sells its anti-rollback wheelchair devices to the same consumers as 210 Innovations, including, but not limited to, nursing homes and other health care professionals in the long-term care industry.

19. Creative Medical Concepts has thus created a situation within the market that has and is likely to continue to cause confusion, to cause mistake or to deceive and has, upon information and belief, in fact, caused confusion and mistake and deceived consumers and potential consumers of such goods in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

20. Creative Medical Concepts has known of the Safe•t mate® trademark at least since being put on notice by the letter from 210 Innovations' counsel dated July 18, 2002, mentioned in paragraph 10, which also advised Creative Medical Concepts of its infringement of the Safe•t mate® trademark.

21. Upon information and belief, Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1114 is willful, intentional and in conscious disregard of the rights of 210 Innovations.

22. As a direct result of Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1114, 210 Innovations has been and will continue to be irreparably and substantially harmed and injured. If Creative Medical Concepts' trademark infringement is allowed to continue, 210 Innovations will sustain further loss, damage and irreparable injury.

COUNT III

FEDERAL TRADEMARK TRADEMARK DILUTION

23. 210 Innovations hereby incorporates and realleges paragraphs 1 through 22 above, as if fully set forth herein.

24. In addition to its patented anti-rollback brake device, 210 Innovations has also been making, selling and advertising other products, including, but not limited, to a wheelchair alarm seatbelt, a wheelchair fall monitor, a wheelchair identification system, a fall prevention monitor for wheelchairs or beds, a warning banner, and an adjustable drop seat with integrated alarm, under the Safe•t mate® trademark. As a result, consumers of these goods have come to identify the Safe•t mate® trademark as a distinctive mark for a variety of such health care goods, particularly in the long-term care industry.

25. Creative Medical Concepts' advertising and/or sales of its anti-rollback brake devices, under the name Steddy-Mate have diluted and will continue to dilute the reputation and goodwill of 210 Innovations' distinctive Safe•t mate® trademark in violation of the federal anti-dilution statute, section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), by eroding the public's exclusive identification of the mark with 210 Innovations, thus diminishing its distinctiveness and effectiveness.

26. Upon information and belief, Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1125(c) is willful, intentional and in conscious disregard of the rights of 210 Innovations.

27. As a direct result of Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1125(c), 210 Innovations has been and will continue to be irreparably and substantially harmed and injured. If Creative Medical Concepts' trademark dilution is allowed to continue, 210 Innovations will sustain further loss, damage and irreparable injury.

COUNT IV

FEDERAL UNFAIR COMPETITION

28. 210 Innovations hereby incorporates and realleges paragraphs 1 through 27 above, as if set forth in full herein.

29. Creative Medical Concepts' advertising and sales of its anti-rollback brake devices under the name Steddy-Mate has caused and will continue to cause confusion, deception, and mistake by creating the false and misleading impression that Creative Medical Concepts' products are affiliated, connected, or associated with 210 Innovations, or have the sponsorship, endorsement, or approval of 210 Innovations, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

30. Upon information and belief, Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1125(a) is willful, intentional and in conscious disregard of the rights of 210 Innovations.

31. As a direct result of Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1125(a), 210 Innovations has been and will continue to be irreparably and substantially harmed and injured. If Creative Medical Concepts' unlawful conduct in violation of 15 U.S.C. § 1125(a) is allowed to continue, 210 Innovations will sustain further loss, damage and irreparable injury.

COUNT V

MASSACHUSETTS UNFAIR COMPETITION

32. 210 Innovations realleges and incorporates by reference paragraphs 1 through 31 above, as if set forth in full herein.

33. Creative Medical Concepts advertising and sales of its anti-rollback brake devices under the name Steddy-Mate has created a situation within the market that has and is likely to continue to cause confusion, to cause mistake or to deceive and has, upon information and belief, in fact, caused confusion and mistake and deceived consumers and potential consumers of such goods, thus giving rise to unfair competition under Massachusetts common law.

34. Upon information and belief, Creative Medical Concepts' unlawful conduct giving rise to unfair competition under Massachusetts common law is willful, intentional and in conscious disregard of the rights of 210 Innovations.

35. As a direct result of Creative Medical Concepts' unlawful conduct giving rise to unfair competition under Massachusetts common law, 210 Innovations has been and will continue to be irreparably and substantially harmed and injured. If Creative Medical Concepts' unlawful conduct giving rise to unfair competition under Massachusetts common law is allowed to continue, 210 Innovations will sustain further loss, damage and irreparable injury.

COUNT VI

MASSACHUSETTS TRADEMARK DILUTION

36. 210 Innovations hereby incorporates and realleges paragraphs 1 through 35 above, as if fully set forth herein.

37. Creative Medical Concepts' advertising and sales of its anti-rollback brake devices, under the name Steddy-Mate have diluted and will continue to dilute the reputation and goodwill of 210 Innovations' distinctive Safe•t mate® trademark in violation of the Massachusetts antidilution statute, Mass. Gen. Laws ch. 110B §12, by eroding the public's

exclusive identification of the mark with 210 Innovations, thus diminishing its distinctiveness and effectiveness.

38. Upon information and belief, Creative Medical Concepts' unlawful conduct in violation of Mass. Gen. Laws ch. 110B §12 is willful, intentional and in conscious disregard of the rights of 210 Innovations.

39. As a direct result of Creative Medical Concepts' unlawful conduct in violation of Mass. Gen. Laws ch. 110B §12, 210 Innovations has been and will continue to be irreparably and substantially harmed and injured. If Creative Medical Concepts' trademark dilution is allowed to continue, 210 Innovations will sustain further loss, damage and irreparable injury.

COUNT VII

MASSACHUSETTS UNFAIR BUSINESS PRACTICES

40. 210 Innovations hereby incorporates and realleges paragraphs 1 through 39 above, as if fully set forth herein.

41. The activities of Creative Medical Concepts alleged herein constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce under Mass. Gen. Laws ch. 93A §§ 2.

42. The activities of Creative Medical Concepts alleged herein have been a willful and/or knowing violation of Mass. Gen. Laws ch. 93A §§ 2, as defined in Mass. Gen. Laws ch. 93A §§ 11.

PRAYER FOR RELIEF

WHEREFORE, 210 Innovations prays for:

(1) A judgment that Creative Medical Concepts and/or those in privity with Creative Medical Concepts have directly infringed, contributorily infringed, and/or induced infringement of the '503 patent;

(2) An order that Creative Medical Concepts and/or those in privity with Creative Medical Concepts be preliminarily and permanently enjoined from infringing the '503 patent, either directly, contributorily, or by inducement;

(3) A judgment that Creative Medical Concepts and/or those in privity with Creative Medical Concepts have infringed and diluted 210 Innovations' Safe•t mate® trademark, and engaged in unfair competition in respect to 210 Innovations' rights, in violation of both the federal Lanham Act and Massachusetts state law;

(4) An order that Creative Medical Concepts and/or those in privity with Creative Medical Concepts be preliminarily and permanently enjoined from infringing and/or diluting 210 Innovations Safe•t mate® trademark, and engaging in unfair competition in respect to 210 Innovations' rights, in violation of either the federal Lanham Act and/or Massachusetts state law;

(5) A judgment that Creative Medical Concepts and/or those in privity with Creative Medical Concepts have injured 210 Innovations by engaging in unfair business practices under Mass. Gen. Laws ch. 93A §§ 2;

(6) An order that Creative Medical Concepts and/or those in privity with Creative Medical Concepts be preliminarily and permanently enjoined from engaging in unfair business practices under Mass. Gen. Laws ch. 93A §§ 2 with respect to 210 Innovations;

(7) An award of all profits derived by Creative Medical Products from its patent infringement, trademark infringement, dilution in violation of both the federal Lanham Act and Massachusetts state law, unfair competition in violation of both the federal Lanham Act and Massachusetts state law, and unfair business practices under Mass. Gen. Laws ch. 93A §§ 2, and/or any other damages to which 210 Innovations may be entitled, together with prejudgment interest and costs as fixed by the Court;

(8) An award of threefold the damages sustained by 210 Innovations due to the willful and deliberate nature of Creative Medical Concepts' patent infringement, trademark infringement, dilution in violation of both the federal Lanham Act and Massachusetts state law, unfair competition in violation of both the federal Lanham Act and Massachusetts state law, and unfair business practices under Mass. Gen. Laws ch. 93A §§ 2;

(9) An order under 15 U.S.C. § 1118 requiring Creative Medical Products to destroy all materials infringing 210 Innovations' Safe•t mate® trademark;

(10) An award of its attorney's fees under 15 U.S.C. § 1117, 35 U.S.C. § 285, Mass. Gen. Laws ch. 93A §§ 11 and any other applicable statute;

(11) An award of costs in an amount to be determined at trial; and

(12) An award any other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff 210 Innovations demands a jury trial for all claims as provided for in Rule 38 of the Federal Rules of Civil Procedure.

210 INNOVATIONS, LLC,

By its attorneys,



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