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12 Attorneys for Plaintiff Activator Methods International, Ltd.

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 ACTIVATOR METHODS INTERNATIONAL,
16 LTD.

Case No. CV-

17 Plaintiff,

COMPLAINT

18 v.

19 DARRYL JACOBS, CHIROFIRST LTD., and
20 APEXQUICK LTD.,

21 Defendants.

22 Plaintiff, Activator Methods International, Ltd., complains against the Darryl Jacobs,
23 Chirofirst Ltd. and Apexquick Ltd. as follows:

24 **NATURE OF ACTION**

25 1. This is a complaint for patent infringement, trade dress infringement and false
26 designation of origin under federal law, and unfair competition under Nevada law. The complaint
is based upon the defendants' offers for sale, sale and importation into the United States of a
chiropractic instrument which incorporates the inventions of U.S. utility patents 5,626,615 and
5,653,733, and the design of U.S. patent Des. 374,081.

THE PARTIES

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2 2. Plaintiff, Activator Methods International, Ltd. (“AMIL”), is an Arizona
3 corporation having its principal place of business at 2950 North 7th Street, Suite 200, Phoenix,
4 Arizona 85014.

5 3. Defendant Darryl Jacobs is, on information and belief, a citizen and resident of the
6 United Kingdom, and an officer of defendants Chirofirst Ltd. and Apexquick Ltd.

7 4. Defendant Chirofirst Ltd is a corporation organized in the United Kingdom, was
8 incorporated on February 27, 2002, under Company No. 04382614, and has a registered office
9 address of 24 Fulwood Avenue, Bournemouth BH11 9NJ, England.

10 5. Defendant Apexquick Ltd. is a corporation organized in the United Kingdom, was
11 incorporated on September 13, 1995, under Company No. 0310566, and has a registered office
12 address of 24 Fulwood Avenue, Bournemouth BH11 9NJ, England. Hereinafter, Darryl Jacobs,
13 Chirofirst Ltd. and Apexquick Ltd. are referred to collectively as “Defendants.”

14 6. In January 2006, Darryl Jacobs attended a trade show in Las Vegas, Nevada, and
15 there, representing Apexquick Ltd. and Chirofirst Ltd., offered for sale and sold a chiropractic
16 instrument under the “Adjustor Pro” name. That instrument was subsequently sent to the
17 purchaser in Albuquerque, New Mexico, by Apexquick Ltd.

18 7. Apexquick Ltd. acknowledges on its website, www.apexquick.com, offering the
19 “Adjustor-Pro” chiropractic instrument, manufactured by ChiroFirst Ltd., for sale in the United
20 States. The website states that “Apexquick is a company dedicated to supplying top quality
21 products and services to the Chiropractic Profession in the U.K., Ireland, Europe, South Africa
22 and recently in the U.S.A.” The Apexquick Ltd. website further states that Apexquick represents
23 ChiroFirst Ltd. and the “Adjustor-Pro” chiropractic adjusting instrument, and that Apexquick Ltd.
24 provides chiropractic adjusting equipment reconditioning and repair services.

JURISDICTION AND VENUE

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8. Counts I and II herein arise under the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285. Count III arises under the patent laws of the United States, §§ 271, 281-285 and 289. Count IV is for unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and Count V arises under the common law of the State of Nevada prohibiting unfair competition.

9. This court has subject matter jurisdiction of Counts I-IV under the provisions of 28 U.S.C. § 1331 (federal question) and, additionally with respect to Counts I-III, § 1338(a) (action arising under an Act of Congress relating to patents). The court has jurisdiction of Count V, which alleges violation of state law, under the provisions of 28 U.S.C. §§ 1338(b) and 1367(a) (supplemental jurisdiction).

10. Venue with respect to the Defendants is properly within this district under the provisions of 28 U.S.C. § 1391(d), the Defendants being aliens, because the Defendants committed an infringing act in this district, and because Defendants offer the “Adjustor-Pro” chiropractic instrument in this district to those who visit the Apexquick Ltd. website, and sales of that instrument can be made to customers in this district through that site.

COUNT I
INFRINGEMENT OF THE ‘615 PATENT

11. On May 6, 1997, United States Letters Patent 5,626,615 (“the ‘615 patent”) entitled “Chiropractic Adjusting Instrument” was duly and legally issued to Activators Methods, Inc. (“AMI”), as the assignee of the inventors Tony S. Keller and Arlan W. Fuhr. AMI was merged into and became Activator Methods Seminar Sales, Inc., which became AMIL by a change of name in 1999. A copy of the ‘615 patent is attached hereto as Exhibit A. AMIL is the sole owner of the ‘615 patent and has the sole right to sue and recover for its infringement.

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COUNT III
INFRINGEMENT OF THE '081 PATENT

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2 19. On September 24, 1996, United States Letters Patent Des. 374,081 (“the ‘081
3 patent”) entitled “Force Applying End of a Chiropractic Adjustment Instrument Including Body
4 Contact Member and Shank” was duly and legally issued to Activator Methods, Inc. (“AMI”), as
5 assignee of the inventors Tony S. Keller and Arlan W. Fuhr. AMI was merged into and became
6 Activator Methods Seminar Sales, Inc., which became AMIL by a change of name in 1999. A
7 copy of the ‘081 patent is attached hereto as Exhibit C. AMIL is the sole owner of the ‘081
8 patent and has the sole right to sue and recover for its infringement.

9 20. The Defendants have offered to sell, sold and/or imported in the United States a
10 chiropractic instrument under the “Adjustor-Pro” name that infringes the ‘081 patent in violation
11 of 35 U.S.C. § 271.

12 21. On information and belief, the Defendants will continue to infringe the ‘081 patent
13 unless enjoined by this court.

14 22. As a consequence of the acts of infringement by Defendants of the ‘081 patent
15 complained of herein, AMIL has been damaged in an amount yet to be determined, and AMIL
16 will continue to be damaged by such acts in the future unless such acts are enjoined by this court.

COUNT IV
TRADE DRESS INFRINGEMENT
AND FALSE DESIGNATION OF ORIGIN

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19 23. AMIL and its predecessors have studied, developed and taught chiropractic
20 methods that have evolved from 35 years of empirical research and 15 years of clinical research
21 in this field. AMIL and its predecessors developed the ACTIVATOR METHODS Chiropractic
22 Technique (“AMCT”), a method that uses the latest advances in orthopedic and neurological
23 examinations to provide improved chiropractic patient care. Over 35,000 doctors have been
24 trained in AMCT, the most widely used chiropractic technique in the world.
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1 24. Over 30 years ago, AMIL's co-founder and principal, Dr. Arlan Fuhr, first
2 developed an adjusting instrument for use in connection with the AMCT technique. The present
3 versions of this device are uniquely designed, hand-held instruments used by qualified AMCT
4 practitioners to give low-force, high-speed chiropractic adjustments to patients. The U.S. Food
5 and Drug Administration has approved these instruments for use in the chiropractic field.

6 25. For nearly 30 years, AMIL (including its predecessors) has advertised and
7 promoted its products and services. For at least 5 years, AMIL has used products in their present
8 forms in connection with its services.

9 26. As a result of AMIL's advertising and promotional efforts, and its dedication to
10 providing products and services of the highest quality, the design and configuration of its
11 instruments have earned valuable goodwill and are favorably recognized and relied on by the
12 relevant trade and consuming public as indicating high-quality products and services originating
13 from a single source, and have become uniquely associated with and hence serve to identify
14 AMIL.

15 27. To protect the goodwill symbolized by the designs and configurations of its
16 instruments, AMIL (including its predecessors) has obtained patents and trademark registrations,
17 including but not limited to the '081 patent and U.S. Trademark Registration 2,586,822 on the
18 Supplemental Register. A copy of Registration 2,586,822, which is owned by AMIL, is attached
19 as Exhibit D.

20 28. The Defendants' offers to sell, offers to service, sales and servicing of a
21 chiropractic instrument in the United States according to the design of the '081 patent and U.S.
22 Trademark Registration 2,586,822 is likely to cause confusion, or to cause mistake, as originating
23 from or connected with AMIL and constitutes infringement of AMIL's trade dress in its
24 chiropractic instruments and false designation of origin. Moreover, Defendants' unauthorized
25 display of AMIL's trademark and trade dress on its website, www.apexquick.com, in connection
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1 with offers to service and repair instruments, is likely to cause confusion, or to deceive as to
2 affiliation, connection, or association of Defendants with AMIL, or as to the origin, sponsorship
3 or approval of Defendants' goods, services or commercial activities by AMIL.

4 29. The Defendants' acts constitute a violation of 15 U.S.C. § 1125(a), i.e., § 43(a) of
5 the Lanham Act.

6 30. The Defendants' acts have caused and, unless restrained by this court, will cause
7 AMIL and the public to suffer great and irreparable damage and injury, and AMIL has no
8 adequate remedy at law.

9 31. AMIL has suffered damages and the Defendants have been unjustly enriched as a
10 result of their infringing activities. The exact amount of AMIL's damages is presently unknown
11 and will be subject to proof at trial.

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13 **COUNT V**
UNFAIR COMPETITION UNDER NEVADA COMMON LAW

14 32. AMIL incorporates the allegations of paragraphs 11 to 31 of this complaint as
15 though set forth fully herein.

16 33. The Defendants have engaged in unfair and fraudulent business practices by the
17 acts herein alleged that violate the common law of the State of Nevada.

18 34. The Defendants' acts have caused and, unless restrained by this court, will cause
19 AMIL and the public to suffer great and irreparable damage and injury, and AMIL has no
20 adequate remedy at law.

21 35. AMIL has suffered damages and the Defendants have been unjustly enriched as a
22 result of their infringing activities. The exact amount of AMIL's damages is presently unknown
23 and will be subject to proof at trial.

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WHEREFORE, PLAINTIFF, AMIL, prays for judgment as follows:

a. That Defendants have infringed United States Letters Patents 5,626,615, 5,653,733, and Des. 374,081;

b. That the Defendants and their respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, be enjoined from infringing, inducing others to infringe, or contributing to the infringement of United States Letters Patent 5,626,615, 5,653,733, and Des. 374,081;

c. That Defendants be ordered to account for and pay to plaintiff AMIL the damages to which AMIL is entitled as a consequence of this infringement;

d. That AMIL be awarded its costs and attorney fees herein in accordance with Title 35, United States Code, Section 285;

e. That the Defendants, their officers, directors, principals, agents, servants, employees, attorneys, successors, and assigns have infringed AMIL's trade dress in its chiropractic instruments, and have falsely designated the origin of their products by infringing on AMIL's property rights;

f. That Defendants, their officers, directors, principals, agents, servants, employees, attorneys, successors, and assigns, and all persons acting in concert, combination or participation with any of the aforementioned persons, either directly or indirectly, singly or together, be enjoined pursuant to 15 U.S.C. § 1116 from, *inter alia*, manufacturing, having manufactured, using, selling, marketing, advertising, offering for sale, importing and/or distributing any chiropractic instruments or other products that infringe AMIL's trade dress in its chiropractic instruments;

g. That AMIL be awarded damages adequate to compensate for the Defendants' infringement of AMIL's trade dress in its chiropractic instruments;

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h. That AMIL be awarded damages against Defendants pursuant to 15 U.S.C. § 1117, and that such damages be trebled in accordance with that section;

i. That the court award AMIL its reasonable attorney fees pursuant to 15 U.S.C. § 1117;

j. That Defendants, their officers, directors, principals, agents, servants, employees, attorneys, successors, and assigns, and all those acting in concert, combination or participation with any of the aforementioned persons, either directly or indirectly, singly or together, be enjoined pursuant to the common law of the State of Arizona from committing any further acts of unfair competition against AMIL;

k. That the court award AMIL its costs;

l. That the court award AMIL pre-and post-judgment interest;

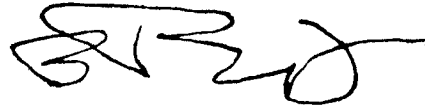
m. That AMIL be awarded such other and further relief as the court may deem just and equitable.

DEMAND FOR JURY TRIAL

AMIL demands a jury trial as to all issues triable by jury in this action.

RESPECTFULLY SUBMITTED this 22nd day of May, 2006.

GREENBERG TRAUIG, LLP



By: _____
Booker T. Evans, Jr.

Attorneys for Plaintiff Activator Methods
International, Ltd.