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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Allegro Enterprises, Inc., an Arizona  
corporation,

Plaintiff,

v.

Independent Living Products, Inc., an  
Arizona corporation doing business as  
ActiveForever.com,

Defendant.

No.

**COMPLAINT**

(Jury Trial Demanded)

Plaintiff Allegro Enterprises, Inc. ("Allegro"), for its Complaint against defendant  
Independent Living Products, Inc., which does business as ActiveForever.com  
("ActiveForever"), alleges as follows:

**THE PARTIES**

1. Allegro is an Arizona corporation with its principal place of business  
located in Mesa, Arizona.

2. ActiveForever is, upon information and belief, an Arizona corporation with  
its principal place of business located in Peoria, Arizona. Upon information and belief,  
ActiveForever transacts interstate business in Arizona and elsewhere.

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**JURISDICTION AND VENUE**

3. This action for copyright infringement and unfair competition arises under 17 U.S.C. § 501 and the common law of the State of Arizona.

4. This Court has original jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) for claims arising under the Copyright Act, and under 28 U.S.C. § 1367 and 28 U.S.C. § 1338(b) for the related state-law claim.

5. This Court has personal jurisdiction over ActiveForever because ActiveForever is a citizen of Arizona, has purposefully availed itself of the privilege of conducting business in Arizona, and because ActiveForever has committed a tort in or directed at the forum.

6. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and because ActiveForever is subject to personal jurisdiction in this district.

**FACTUAL BACKGROUND**

7. Allegro is engaged in the business of promoting and selling medical supplies to individuals and businesses.

8. Since at least as early as 1997, Allegro has continuously operated and publicly displayed a web site at “www.allegromedical.com” to promote and sell medical supplies. Allegro’s web site allows customers to browse and search for, and purchase, a wide variety of medical supplies such as catheters, syringes, and suppositories. Allegro’s web site also features original photographs of various products.

9. Allegro has invested considerable sums to promote its web site and the products offered for sale on its web site. As a result of this investment, the web site has received a large number of visitors and Internet traffic, and has enjoyed tremendous commercial success and popularity.

10. Allegro’s web site, its individual web pages, and certain photographs available thereon are original works of authorship. Allegro owns valid copyrights for those photographs.

11. ActiveForever is also engaged in the business of promoting and selling medical supplies that compete directly with those offered by Allegro.

12. ActiveForever was founded in Scottsdale, Arizona in August 2002.

13. Sometime in 2003, ActiveForever created a web site located at “www.activeforever.com” to promote and sell medical supplies. ActiveForever’s web site, like Allegro’s web site, allows customers to browse and search for, and purchase, medical supplies.

14. Starting in 2006, ActiveForever started to recruit numerous employees of Allegro who were responsible for the development of Allegro’s e-commerce business strategies and the development of Allegro’s web site.

15. For instance, in 2006 alone, ActiveForever recruited the individual responsible for Allegro’s e-commerce marketing, the individual responsible for developing Allegro’s web site, and the individual responsible for Allegro’s product marketing.

16. Since 2006, ActiveForever has continued to recruit employees from Allegro and has attempted to copy substantial portions of Allegro’s business strategies.

17. Not content with recruiting Allegro employees and copying its business strategies, ActiveForever has now directly copied photographs from Allegro’s web site.

18. In particular, ActiveForever has copied photographs owned by Allegro and used on Allegro’s web site for the “Magic Bullet” suppository and the “Peddle Master” portable vehicle hand controls products.

19. Upon information and belief, this copying and infringement by ActiveForever has been intentional and willful.

20. ActiveForever profits from this infringement by using the photographs to sell these products on the ActiveForever web site.

21. Upon information and belief, ActiveForever has copied other pictures and copyrighted works from Allegro.

22. Upon information and belief, ActiveForever’s use in commerce of photographs that are copied from Allegro’s web site is likely to cause confusion, mistake

1 or deception as to the origin, sponsorship, or approval of ActiveForever's products and  
2 services, or the affiliation, connection, or association of ActiveForever with Allegro.

3 23. Similarly, upon information and belief, ActiveForever's failure to disclose to  
4 customers the true origin of the photos on its web site is likely to cause confusion, mistake or  
5 deception as to the origin, sponsorship, or approval of ActiveForever's products and services,  
6 or the affiliation, connection, or association of ActiveForever with Allegro.

7 24. Upon information and belief, ActiveForever's acts described above  
8 constitute a deliberate, intentional and willful attempt to confuse and deceive purchasers,  
9 to injure the business of Allegro, to trade on the business reputation of Allegro, and to  
10 interfere with Allegro's business relationships.

11 25. Allegro has not authorized ActiveForever to reproduce, distribute, publicly  
12 display, or prepare derivative works of Allegro's web site, or its individual web pages, or  
13 its photographs.

#### 14 **FIRST CAUSE OF ACTION**

#### 15 **(Infringement of Copyright; 17 U.S.C. § 501)**

16 26. Allegro realleges and incorporates by reference the allegations in the  
17 foregoing paragraphs as though fully set forth herein.

18 27. As set forth above, Allegro is the owner of copyrights for certain  
19 photographs on its web site.

20 28. Allegro has obtained Registration Nos. VA 1-750-032 and VA 1-750-032  
21 covering these photographs from the U.S. Copyright Office.

22 29. ActiveForever has infringed Allegro's copyrights by reproducing and  
23 distributing copies of, preparing derivative works of, and publicly displaying Allegro's  
24 photographs without the authorization of Allegro.

25 30. This wrongful conduct constitutes a violation of Section 501 of the  
26 Copyright Act, 17 U.S.C. § 501.

27 31. ActiveForever's conduct has greatly and irreparably damaged Allegro and  
28 will continue to so damage Allegro unless restrained by this Court.

32. Allegro is entitled to an injunction, statutory damages, actual damages, and an award of attorneys' fees and other costs as provided under 17 U.S.C. § 504.

**SECOND CAUSE OF ACTION**

**(Common Law Unfair Competition)**

33. Allegro realleges and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth herein.

34. ActiveForever's wrongful conduct described above constitutes unfair competition under the common law of Arizona.

35. ActiveForever's conduct has greatly and irreparably damaged Allegro and will continue to so damage Allegro unless restrained by this Court.

36. Allegro is without an adequate remedy at law and is entitled to an injunction as well as damages in an amount to be proved at trial.

WHEREFORE, Allegro prays for relief as follows:

1. That the Court find that ActiveForever willfully infringed Allegro's copyrights and order ActiveForever to pay to Allegro the maximum amount of statutory damages available under 17 U.S.C. § 504(c) in an amount of \$150,000 per infringement of each work;

2. That the Court order ActiveForever to account for and pay to Allegro all profits derived by reason ActiveForever's use of Allegro's copyrighted works;

3. That the Court order ActiveForever to pay to Allegro all damages incurred by Allegro by reason of ActiveForever's use of Allegro's copyrighted works;

4. That the Court award compensatory damages in an amount to be proven at trial;

5. That the Court award punitive and exemplary damages;

6. That the Court order ActiveForever to pay to Allegro the costs of this action, together with reasonable attorneys' fees and costs;

7. That the Court order that ActiveForever, and all of its agents, partners, servants, employees, and all others in active concert or participation with ActiveForever,

1 be enjoined and restrained during the pendency of this action, and permanently thereafter,  
2 from using any copyrighted work owed by Allegro or any work that is substantially  
3 similar to a copyrighted work owned by Allegro;

4 8. That the Court order ActiveForever to file with the Court and serve on  
5 Allegro an affidavit setting forth in detail the manner and form in which it has complied  
6 with the terms of the injunction; and

7 9. That the Court grant such other and further relief as the Court deems just  
8 and equitable.

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Federal Rule of Civil Procedure 38, Allegro hereby demands trial by  
11 jury of all issues triable by a jury.

12 DATED this 11th day of April, 2011.

13 SNELL & WILMER L.L.P.

14  
15 By /s/ Joseph G. Adams

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