

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

RECEIVED
11 DEC -5 PM 1:45
CLERK, U.S. DIST. COURT
MINNEAPOLIS, MN

Lifecore Biomedical, LLC,

Plaintiff,

vs.

Life Core Technologies, LLC,

and

Med Alliance Group, Inc.

Defendants.

Civil No. _____

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

Jury Trial Demanded

Plaintiff Lifecore Biomedical, LLC ("Lifecore") sues defendants Life Core Technologies, LLC ("LCT") and Med Alliance Group, Inc. ("MAG"), and alleges as follows:

NATURE OF THE ACTION

1. This is an action at law and equity for trademark infringement and deceptive trade practices under the Lanham Act, 15 U.S.C. §§ 1051 et seq. and Minn. Stat. § 325D.44.

2. Defendants LCT and MAG are using a mark confusingly similar to Plaintiff Lifecore's federally registered LIFECORE trademark to advertise and sell medical devices. Lifecore brings this lawsuit to stop Defendants' willful infringing conduct and seeks all available monetary remedies and injunctive relief.



PARTIES, JURISDICTION AND VENUE

3. Plaintiff Lifecore Biomedical, LLC is a company organized and existing under the laws of the State of Minnesota, having its principal place of business located at 3515 Lyman Blvd., Chaska, Minnesota 55318.

4. Defendant Life Core Technologies, LLC is a company organized and existing under the laws of the State of Ohio having its principal place of business located at 9100 S. Hills Blvd. Suite 220, Broadview Heights, Ohio.

5. Upon information and belief, Defendant Med Alliance Group, Inc. is a company organized and existing under the laws of the State of Illinois having its principal place of business located at 3825 Commerce Drive, St. Charles, IL 60174.

6. This is an action for federal trademark infringement in violation of §§ 32 and 43(a) of the Lanham Act (15 U.S.C. §§ 1114, 1125(a)) and deceptive trade practices in violation of Minn. Stat. § 325D.44.

7. This Court has subject matter jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). This case presents well-pleaded federal questions arising under the Lanham Act, 15 U.S.C. §§ 1051 et seq.

8. This Court has supplemental jurisdiction over Lifecore's claims arising under the laws of Minnesota pursuant to 28 U.S.C. § 1367(a) because these state law claims are so related to Lifecore's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

9. The exercise of *in personam* jurisdiction over defendant LCT comports with the laws of the State of Minnesota and the constitutional requirements of due process because LCT advertises and offers its goods to customers and/or potential customers in Minnesota through at least the authorized distributor Medical Alliance Group.

10. The exercise of *in personam* jurisdiction over defendant MAG comports with the laws of the State of Minnesota and the constitutional requirements of due process because MAG advertises and offers for sale infringing goods and uses the infringing "Life Core Technologies" mark in connection with the sale of goods to customers and/or potential customers in Minnesota.

11. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367 because the state law claim originates from the same nucleus of operative facts as do the federal claims.

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), because defendant LCT and defendant MAG are each a corporation subject to personal jurisdiction in this District and a substantial part of the events or omissions giving rise to Plaintiff Lifecore's claims occurred within this District.

GENERAL ALLEGATIONS

Lifecore and its LIFECORE Family of Marks

13. Lifecore is in the business of providing various medical goods. Since 1965, Lifecore has developed technically advanced products that offer long-term

compatibility with the human body. Thousands of medical patients worldwide have benefited from Lifecore's purposeful innovations in, among other medical categories, ophthalmology and orthopedics.

14. Lifecore is the owner of a family of LIFECORE-formative marks including, among other federal registrations, U.S. Trademark Registration No. 2,939,113 (the "'113 Registration), which was duly and legally issued on April 12, 2005, for the word mark LIFECORE, for various pharmaceutical preparations that are used in connection with eye surgery, flexible tissue repair, and other medical procedures. A true and correct copy of the '113 Registration is attached hereto as Exhibit B. The '113 Registration is incontestable within the meaning of 15 U.S.C. § 1065.

15. Lifecore is the owner of, among other federal registrations, U.S. Trademark Registration No. 1,488,016 (the "'016 Registration), which was duly and legally issued on May 17, 1988, for the word mark LIFECORE, for hyaluronic acid for use in pharmaceutical manufacturing processes. A true and correct copy of the '016 Registration is attached hereto as Exhibit C. The '016 Registration is incontestable within the meaning of 15 U.S.C. § 1065.

16. Lifecore is the owner of, among other federal registrations, U.S. Trademark Registration No. 2,962,775 (the "'775 Registration), which was duly and legally issued on June 21, 2005, for the word mark LIFECORE, for use in connection with resorbable and non-resorbable barriers for guided tissue regeneration; synthetic

bone graft binder material for use as a filler and extender material to serve as a temporary replacement for bones. A true and correct copy of the '775 Registration is attached hereto as Exhibit D.

17. Lifecore advertises, offers for sale, and sells its medical goods in interstate commerce under the LIFECORE mark. Lifecore has invested substantially in developing the LIFECORE mark, and in doing so, has acquired significant recognition of its goods and valuable goodwill in the mark.

Defendant LCT's Infringing Activities

18. Defendant LCT is a medical goods company. LCT markets products that relate to selectively cooling the brain thereby inducing mild therapeutic hypothermia. LCT's goods are used in connection with various medical procedures.

19. In or around February, 2011, Lifecore learned that LCT had commenced use of the mark "Life Core Technologies" in connection with the promotion of Defendant's goods and sent correspondence to LCT inquiring about the nature of the goods upon which the mark was used.

20. In or around February, 2011, Lifecore learned that LCT had filed with the United States Patent and Trademark Office Application Serial Nos. 85,128,401 and 85,128,482 for the mark "Life Core Technologies" for use in connection with medical goods.

21. Lifecore does not sponsor, approve, or authorize any of LCT's activities. LCT's goods do not originate from Lifecore or any affiliate of Lifecore.

22. Lifecore's counsel sent correspondence to LCT dated August 31, 2011, wherein Lifecore informed LCT of instances of actual confusion resulting from LCT's use of the "Life Core Technologies" mark and demanded that LCT cease use of the mark. LCT refused.

23. LCT's unauthorized use and application for registration of the "Life Core Technologies" mark in connection with LCT's medical goods has caused actual consumer confusion and is likely to cause confusion by leading the public to falsely believe that Lifecore is in some way affiliated or connected with LCT.

24. LCT's unauthorized use and application for registration of the "Life Core Technologies" mark has caused and is causing Lifecore irreparable harm. LCT's unauthorized use of the "Life Core Technologies" mark has caused and continues to cause irreparable damage to the reputation and goodwill of Lifecore, which has no control over LCT's activities. In addition, LCT's unauthorized use of the "Life Core Technologies" mark also has caused and continues to cause irreparable damage to Lifecore as a result of consumers who are deceived and confused or who are likely to be deceived or confused as to the origin, association, connection, or sponsorship of Defendant's goods.

25. On information and belief, LCT has engaged in the conduct described above willfully, intentionally, knowingly, and in reckless disregard of the obvious and inevitable injurious consequences of this conduct. In using the "Life Core

Technologies” mark, LCT has a bad-faith intent to trade on and profit from Lifecore’s hard-earned goodwill and reputation and to confuse and mislead the public.

Defendant MAG’s Infringing Activities

26. Defendant MAG is a distributor of medical goods. LCT operates the Internet website located at www.lifecoretech.com. One of the web pages associated with that website identifies LCT’s authorized distributors for various regions of the United States. The web page discloses that MAG is LCT’s authorized distributor for, among other states, the state of Minnesota.

27. MAG operates the Internet website located at www.medalliance.com. The “products” web page associated with that web site features the infringing “Life Core Technologies” mark and promotional material offering for sale LCT’s goods which feature the mark.

28. Lifecore does not sponsor, approve, or authorize any of MAG’s activities. The goods that MAG sells do not originate from Lifecore or any affiliate of Lifecore.

29. MAG’s unauthorized use of the “Life Core Technologies” mark in connection with medical goods has caused actual consumer confusion and is likely to cause confusion by leading the public to falsely believe that Lifecore is in some way affiliated or connected with MAG and LCT.

30. MAG’s unauthorized use of the “Life Core Technologies” mark has caused and is causing Lifecore irreparable harm. MAG’s unauthorized use of the

“Life Core Technologies” mark has caused and continues to cause irreparable damage to the reputation and goodwill of Lifecore, which has no control over MAG’s activities. In addition, MAG’s unauthorized use of the “Life Core Technologies” mark also has caused and continues to cause irreparable damage to Lifecore as a result of consumers who are deceived and confused or who are likely to be deceived or confused as to the origin, association, connection, or sponsorship of MAG and LCT’s goods.

31. On information and belief, MAG has engaged in the conduct described above willfully, intentionally, knowingly, and in reckless disregard of the obvious and inevitable injurious consequences of this conduct. In using the “Life Core Technologies” mark, MAG has a bad-faith intent to trade on and profit from Lifecore’s hard-earned goodwill and reputation and to confuse and mislead the public.

FIRST CLAIM FOR RELIEF
Federal Trademark Infringement
15 U.S.C. § 1114

32. Lifecore realleges and incorporates all preceding paragraphs, as if fully set forth herein.

33. Lifecore’s ‘133 Registration, ‘016 Registration, and ‘775 Registration are proof of Lifecore’s exclusive right to use the LIFECORE mark.

34. Lifecore commenced use of the LIFECORE mark in interstate commerce in connection with medical and related goods well prior to Defendants’ use of the mark “Life Core Technologies.”

35. Defendants are not authorized to use the LIFECORE mark or any mark confusingly similar or that in any way represents or implies that Defendants and/or Defendants' goods are in any way associated with Lifecore.

36. Defendants' unauthorized use of the "Life Core Technologies" mark in connection with its offering of medical goods, constitutes trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114. Defendants' use of the "Life Core Technologies" mark is likely to cause confusion, mistake, and/or deception in the market as to the source or origin of Defendants' goods, and has falsely suggested that Defendants and/or their goods are sponsored by, connected to, or associated with Lifecore.

37. As a direct and proximate result of Defendants' knowing, deliberate, and willful infringement of the LIFECORE mark, Lifecore has suffered, and will continue to suffer, irreparable harm to its business, reputation, and goodwill, unless and until Defendants' actions as alleged herein are enjoined.

SECOND CLAIM FOR RELIEF

False Designation of Origin

15 U.S.C. § 1125(a)

38. Lifecore realleges and incorporates all preceding paragraphs, as if fully set forth herein.

39. Lifecore was the first to use the LIFECORE mark in connection with medical goods. As a result of the continued sale by Lifecore of goods under the LIFECORE mark for more than twenty years, Lifecore has become identified in the

public mind as an indicator that the goods to which it is applied emanate from a single source. As such the LIFECORE mark has acquired distinctiveness.

40. As a result of the experience, care, and service of Lifecore in providing premier quality goods, the LIFECORE mark has become associated with Lifecore's goods, and has come to symbolize the reputation for quality and excellence of Lifecore's goods.

41. The LIFECORE mark requires imagination, thought, and perception to reach a conclusion as to the nature of Lifecore's goods. As such, the LIFECORE mark is suggestive, and therefore inherently distinctive.

42. Defendants' use of the "Life Core Technologies" mark in connection with medical goods is likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, or affiliation of Defendants' goods with the medical goods of Lifecore.

43. Defendants are not authorized to use the LIFECORE mark or any mark confusingly similar or that in any way represents or implies that Defendants are in any way affiliated with Lifecore.

44. Defendants' use of the "Life Core Technologies" mark in connection with medical goods constitutes false designation of origin in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

45. As a direct and proximate result of Defendants' knowing, deliberate, and willful misuse of the LIFECORE mark, Lifecore has suffered, and will continue to

suffer, irreparable injury to its business, reputation, and goodwill, unless and until Defendants' actions as alleged herein are permanently enjoined.

THIRD CLAIM FOR RELIEF

Violation of Minnesota Deceptive Trade Practices
Minn. Stat. § 325D.44

46. Lifecore realleges and incorporates all preceding paragraphs, as if fully set forth herein.

47. Defendants have, in the course of their business, used the "Life Core Technologies" mark in a manner that has caused and will continue to cause a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of the goods of Defendants. Defendants' actions also have caused and will continue to cause a likelihood of confusion or of misunderstanding as to the affiliation, connection, or association with, or certification by, Lifecore of Defendants' goods. Defendants' use of the "Life Core Technologies" mark is likely to cause damage to Lifecore. Defendants are therefore engaged in deceptive trade practices within the meaning of Minn. Stat. § 325D.43, *et seq.*

48. Lifecore is entitled to an injunction pursuant to Minn. Stat. § 325D.45, subd. 1.

49. Defendants have willfully engaged in the deceptive trade practice knowing it to be deceptive. Lifecore should be awarded its reasonable attorneys' fees pursuant to Minn. Stat. § 325D.45, subd. 2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lifecore Biomedical LLC respectfully prays that the Court enter judgment, jointly and severally, against each of defendant Life Core Technologies, LLC and defendant Med Alliance Group, Inc. as follows:

A. Grant preliminary and permanent injunctive relief against Defendants, their agents, servants, employees, attorneys, successors, licensees, parents, subsidiaries, affiliates and assigns, and anyone acting in concert or privity with Defendants, jointly and severally:

- (1) prohibiting the use of the "Life Core Technologies" mark, or any other mark or designation that is confusingly similar to the LIFECORE mark, in any way, including without limitation "Life Core Technologies" as a trade name or corporate name and "www.lifecoretech.com" as a domain name; or "Life Core Technologies" on a web site or web page, in buried code or metatags on a web site or web page, or in connection with the retrieval of data or information;
- (2) ordering the transfer of the domain name www.lifecoretech.com to Plaintiff;

- (3) ordering, pursuant to 15 U.S.C. § 1119, that LCT's Application Serial Nos. 85/128,401, and 85/128,402, shall not issue as trademark registrations;
- (3) directing Defendants each to file with the Court and serve on Plaintiff within thirty (30) days after the service on Defendants of such injunction a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

B. Declare that Defendants' infringement and other wrongful acts herein alleged be determined deliberate, willful, and in conscious disregard of Lifecore's rights;

C. Grant an award to Lifecore of all of Defendants' gross and net sales, revenues, and profits received or derived by Defendants or their affiliates from use of the "Life Core Technologies" mark or any other word, image, or logo likely to cause confusion with the LIFECORE mark pursuant to 15 U.S.C. §§ 1117, and other applicable federal law;

D. Order Defendants to deliver to the Court for impoundment and destruction any and all advertising, circulars, price lists, signs, banners, business stationary, prints, packages, labels, containers, freights, cartons, receptacles, wrappers, art work, and other materials in its possession or custody or under their control that infringe Plaintiff's LIFECORE mark;

E. Find that this case is an “extraordinary case” within the meaning of 15 U.S.C. § 1117(a);

F. Award treble damages to Lifecore, together with costs, interest, and reasonable attorneys’ fees as permitted by 15 U.S.C. § 1117(a);

G. Award Lifecore its costs and reasonable attorneys’ fees in prosecuting this action as permitted by Minn. Stat. § 325D.45, subd. 2 and Minn. Stat. § 8.31, subd 3a;

H. Award pre-judgment and post-judgment interest as allowed by law; and

I. Grant Lifecore such other equitable and legal relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Lifecore respectfully demands a trial by jury.

Dated: December 5, 2011

FAEGRE & BENSON LLP

s/ Timothy J. Cruz

James R. Steffen (#204717)

Timothy J. Cruz (#0386626)

90 South Seventh Street

2200 Wells Fargo Center

Minneapolis, Minnesota 55402

Telephone: (612) 766-8049

Facsimile: (612) 766-1600

**ATTORNEYS FOR LIFECORE
BIOMEDICAL LLC**