

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AlloSource,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
)	COMPLAINT AND
)	DEMAND FOR TRIAL
)	BY JURY
)	
AlloStem Therapeutics, LLC,)	
)	
Defendant.)	
)	

COMPLAINT AND JURY DEMAND

Plaintiff AlloSource for its Complaint against Defendant AlloStem Therapeutics, LLC (“AlloStem”), alleges as follows:

Nature of the Action

This is an action for trademark infringement by AlloSource to enjoin the Defendant AlloStem from using the mark ALLOSTEM THERAPEUTICS in connection with medical services and/or medical research. Prior to AlloStem’s adopted use, AlloSource has used and registered the mark ALLOSTEM in connection with medical products, namely, human allograft bone and tissue. Absent an injunction, members of the consuming public will be confused as to the source, sponsorship, approval, affiliation, connection, or association of the services and products offered by AlloSource and AlloStem. In addition, AlloSource seeks monetary relief for damages caused by AlloStem’s use of a confusingly similar trademark. AlloStem’s actions constitute violation of the Federal Trademark Act, 15 U.S.C. § 1051 *et seq.*, unfair competition

under the Connecticut Unfair Trade Practices Act (“CUTPA”), Connecticut General Statutes, C.G.S. 42-110a *et seq.*, and unfair competition and unjust enrichment under the common law of the State of Connecticut.

The Parties

1. AlloSource is an Illinois nonprofit corporation with its principal place of business at 6278 South Troy Circle Centennial, Colorado 80111.

2. Upon information and belief, AlloStem is a Delaware nonprofit corporation with its principal place of business at 400 Farmington Avenue, Farmington, Connecticut 06032.

Jurisdiction and Venue

3. This is a civil action arising under the trademark laws of the United States, Title 15, United States Code, Sections 1051 *et seq.*, as amended (hereinafter the “Lanham Act”), 1114(1) and 1125(a), C.G.S. Section 42-110a *et seq.* and the common law of the State of Connecticut.”

4. The Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367.

5. This Court has personal jurisdiction over AlloStem because it conducts business in and/or resides in the State of Connecticut.

6. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because AlloStem resides in this District, may be found in this District, and/or a substantial part of the events giving rise to the claims in this action occurred within this District.

General Allegations

7. AlloSource is a nonprofit organization that began in 1994 as a Denver, Colorado human tissue bank and has since grown into a national tissue bank that develops, processes and distributes life-saving and life-enhancing allografts for bone, tissue and soft tissue transplants.

8. AlloSource is one of America's leading nonprofit bone and tissue networks and the world's largest processors of fresh cartilage, live cellular bone growth substitutes and fresh skin allografts used for life-saving burn applications. Hospitals and medical professionals rely on the quality and consistency of AlloSource's products and services to achieve positive surgical outcomes with AlloSource's top-quality, safe, bio-mechanically sound allograft products and on-call expertise and consultants. Additionally, AlloSource maintains a superior safety record and sophisticated systems for donor screening and evaluation and allograft processing, matching and tracking.

9. Since at least as early as December, 2009, AlloSource has used the mark ALLOSTEM to identify certain products used in connection with human allograft bone and tissue. These products are used in hospital and labs, and other medical facilities. The ALLOSTEM mark is associated amongst medical professionals with AlloSource and the products that it provides under the ALLOSTEM mark. Allosource uses the mark ALLOSTEM to identify products that are distributed, sold, advertised for sale, or otherwise promoted and used within the District.

10. AlloSource owns U.S. Trademark Registration No. 3,755,371 for the ALLOSTEM mark. A copy of the registration certificate for this mark is attached hereto as

Exhibit A.

11. AlloSource extensively promotes its ALLOSTEM mark in connection with its live-cell substitute for autograft bone. AlloSource has been promoting the ALLOSTEM mark continuously since at least as early as 2009.

AlloStem's Acts of Infringement and Unfair Competition

12. In late 2011, AlloSource learned that AlloStem had been using the ALLOSTEM THERAPEUTICS name and mark in connection with medical and scientific research services. The ALLOSTEM THERAPEUTICS name and mark (the "Infringing Mark") is virtually identical to AlloSource's registered ALLOSTEM mark.

13. Upon information and belief, AlloStem is a privately held company that conducts or plans to conduct research and develops or plans to develop targeted cancer therapies, as described in AlloStem's web site, <<http://www.allostem.com>>.

14. Upon learning that AlloStem had adopted the Infringing Mark in connection with medical services, AlloSource's legal counsel requested that AlloStem cease use of the Infringing Mark in correspondences dated December 9, 2011 and February 14, 2012 to AlloStem. In response to the cease and desist demands, AlloStem has refused to discontinue its use of the Infringing Mark.

15. Like AlloSource, AlloStem operates in the medical and medical research fields, and the target audience for both companies' products or services offered under their respective marks include medical and research professionals.

16. AlloStem began using the confusingly similar ALLOSTEM THERAPEUTICS mark in connection with medical services subsequent to AlloSource's first use and registration of the ALLOSTEM mark, and AlloStem is still using the Infringing Mark.

17. Upon information and belief, AlloStem will continue to commit the acts complained of herein unless enjoined.

18. AlloStem has continued using the Infringing Mark despite the constructive knowledge provided by the trademark registration with the United States Patent and Trademark Office. Further, since the initial letter from AlloSource's counsel on December 9, 2011, AlloStem has had actual knowledge of AlloSource's rights in the ALLOSTEM mark. Despite this knowledge, AlloStem continues to intentionally and willfully infringe AlloSource's rights in the ALLOSTEM mark.

19. Upon information and belief, AlloStem has profited and continues to profit from its unlawful acts.

20. The intentional nature of AlloStem's unlawful acts renders this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

COUNT I
(Trademark Infringement Under Federal Law)

21. AlloSource realleges the allegations contained in each of the paragraphs above.

22. This is a claim for infringement of AlloSource's federally registered trademark, as depicted in the attached **Exhibit A**.

23. AlloStem's conduct is likely to cause confusion, mistake, or deception as to the source or origin of AlloStem's services, or the affiliation, sponsorship, or other relationship between the parties in violation of 15 U.S.C. § 1114(1).

24. AlloStem's conduct also constitutes an attempt to trade on the goodwill that AlloSource has developed in the ALLOSTEM mark, all to the damage of AlloSource.

25. By its conduct, AlloStem has caused AlloSource irreparable harm, damage, and injury and will continue to do so unless restrained and enjoined by this Court from further infringing the ALLOSTEM mark.

26. AlloSource has no adequate remedy at law.

COUNT II
(Unfair Competition Under Federal Law)

27. AlloSource realleges the allegations contained in each of the paragraphs above.

28. This is a claim for unfair competition under the Lanham Act, 15 U.S.C. § 1125(a), arising from AlloStem's unlawful acts, including, without limitation, use of a false designation of origin which is likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

29. AlloStem's conduct constitutes an attempt to trade on the goodwill that AlloSource has developed in the ALLOSTEM mark, all to the damage of AlloSource.

30. By its conduct, AlloStem has caused AlloSource irreparable harm, damage, and injury and will continue to do so unless AlloStem is restrained and enjoined by this Court from further infringing the ALLOSTEM mark.

31. AlloSource has no adequate remedy at law.

COUNT III
(Unfair Competition Under Connecticut Statutory Law)

32. AlloSource realleges the allegations contained in each of the paragraphs above.

33. This is a claim for unfair competition under C.G.S. § 42-110a *et seq.*, arising from AlloStem's unlawful acts, including, without limitation, use of a false designation of origin

which is likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval, in violation of Connecticut law.

34. AlloStem's conduct constitutes an attempt to trade on the goodwill that AlloSource has developed in the ALLOSTEM mark, all to the damage of AlloSource.

35. By its conduct, AlloStem has caused AlloSource irreparable harm, damage, and injury and will continue to do so unless AlloStem is restrained and enjoined by this Court from further infringing the ALLOSTEM mark.

36. AlloSource has no adequate remedy at law.

COUNT IV
(Unfair Competition Under Connecticut Common Law)

37. AlloSource realleges the allegations contained in each of the paragraphs above.

38. This is a claim for common law unfair competition. AlloStem's conduct misappropriates AlloSource's valuable intellectual property rights and trades on the goodwill symbolized by the distinctive ALLOSTEM mark and is thereby likely to cause confusion or deception.

39. By its conduct, AlloStem has engaged in unfair competition in violation of the common law of unfair competition of the State of Connecticut

40. AlloStem's actions have caused AlloSource irreparable harm, damage, and injury and will continue to do so unless AlloStem is restrained and enjoined by this Court from further infringing the ALLOSTEM mark.

41. AlloSource has no adequate remedy at law.

Relief Sought

WHEREFORE, AlloSource requests that this Court:

A. Grant preliminary and permanent injunctive relief enjoining AlloStem and its principals, agents, servants, employees, successors, and assigns and all those in privity, concert or participation with them from:

- i. imitating, copying, duplicating or otherwise making any use of the ALLOSTEM mark or any mark confusingly similar to the ALLOSTEM mark;
- ii. manufacturing, producing, distributing, circulating, selling, or otherwise disposing of any printed material which bears any copy or colorable imitation of the ALLOSTEM mark;
- iii. using any unauthorized copy or colorable imitation of the ALLOSTEM mark in such fashion as is likely to relate or connect AlloStem with AlloSource;
- iv. using any false designation of origin or false description which can or is likely to lead the trade or public, or individual members thereof, to believe mistakenly that any service advertised, promoted, offered, or sold by AlloStem is sponsored, endorsed, connected with, approved, or authorized by AlloSource;
- v. causing likelihood of confusion or injury to AlloSource's business reputation and to the distinctiveness of the ALLOSTEM mark by unauthorized use of a confusingly similar mark;
- vi. engaging in any other activity constituting unfair competition or infringement of the ALLOSTEM mark or AlloSource's rights in, or to use, or to exploit the same; and
- vii. assisting, aiding, or abetting another person or business entity in engaging or performing any of the activities enumerated in paragraphs (i) – (vi) above.

B. Find that AlloStem has infringed the ALLOSTEM mark in violation of federal law and has damaged AlloSource's goodwill.

C. Find that AlloStem has unfairly competed with AlloSource by the acts complained of herein in violation of federal law.

D. Find that the acts of AlloStem constitute unfair competition in violation of C.G.S. § 42-110a *et seq.*

E. Find that the acts of AlloStem constitute unfair competition in violation of the common law of the State of Connecticut.

F. Find that the acts of AlloStem constitute unjust enrichment in violation of the common law of the State of Connecticut.

G. Grant an order requiring AlloStem and its principals, agents, servants, employees, successors, and assigns of and all those in privity or concert with AlloStem who receive actual notice of said order to deliver up, or at AlloSource's election certify the destruction of, all signs, articles, promotional, advertising and any other printed materials of any kind bearing the ALLOSTEM mark, and any mark confusingly similar to the ALLOSTEM mark.

H. Grant an order requiring AlloStem and its principals to transfer the domain name www.allostem.com and any other domain names registered by AlloStem or its principals that include the ALLOSTEM mark to AlloSource.

I. Find AlloStem liable and award to AlloSource monetary damages in an amount to be fixed by the Court in its discretion as just, including all of the AlloStem's profits or gains of any kind resulting from AlloStem's willful infringement and/or acts of unfair competition, any damages AlloSource suffered as a result of AlloStem's actions, said damages to be trebled,

AlloSource's costs, and exemplary damages, reasonable attorneys' fees and costs in view of the intentional nature of the acts complained of herein and the exceptional nature of this case, pursuant to 15 U.S.C. § 1117 and C.G.S. § 42-110a.

J. Award AlloSource pre-judgment interest on any monetary award made part of the judgment against AlloStem; and

K. Grant to AlloSource such other and further relief as the Court may deem just, proper and equitable under the circumstances.

Jury Demand

AlloSource demands a trial by jury on all issues so triable.

Dated: April 13, 2012

Respectfully submitted,



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- and -

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