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*Attorneys for Plaintiffs Howmedica Osteonics Corp.  
and Stryker Corporation.*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

HOWMEDICA OSTEONICS CORP. and  
STRYKER CORPORATION,

Plaintiffs,

V.

WRIGHT MEDICAL TECHNOLOGY, INC. and  
WRIGHT MEDICAL GROUP, INC.,

Defendants.

: Civil Action No. 12-6042  
: (ES)  
: District Judge:  
: Magistrate Judge:

X

## COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiffs Howmedica Osteonics Corp. and Stryker Corporation (collectively "Plaintiffs"), complain of defendants Wright Medical Technology, Inc. and Wright Medical Group, Inc. (collectively "Defendants"), and allege as follows, upon knowledge with respect to itself and its own acts, and upon information and belief as to all other matters:

## NATURE OF THE SUIT

This is an action in which, *inter alia*, Plaintiffs seek pecuniary and injunctive relief from the various acts of Defendants arising under the Trademark Laws of the United States, 15 U.S.C. §§ 1051 *et seq.*, and related state claims for trademark infringement, unfair competition, and

other torts arising under the statutory and common law of the State of New Jersey. Defendants' illegal acts have irreparably harmed the goodwill and reputation of Plaintiffs, and have caused Plaintiffs significant damage.

### **PARTIES**

1. Plaintiff Howmedica Osteonics Corp., a wholly owned subsidiary of Stryker Corporation, is a New Jersey corporation with its principal place of business at 325 Corporate Drive, Mahwah, New Jersey 07430.

2. Plaintiff Stryker Corporation is a Michigan corporation with its principal place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

3. Upon information and belief, defendant Wright Medical Technology, Inc. is a Delaware corporation and has its principal place of business at 5677 Airline Road, Arlington, Tennessee 38002.

4. Upon information and belief, defendant Wright Medical Group, Inc. is a Delaware corporation and has its principal place of business at 5677 Airline Road, Arlington, Tennessee 38002.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this dispute pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a), as this action arises under the Trademark Laws of the United States; and also pursuant to 28 U.S.C. § 1332, because Plaintiffs are citizens of states different from those of all Defendants, and the amount in controversy exceeds \$75,000.

6. This Court has supplemental jurisdiction over the state law claims set forth in this Complaint pursuant to 28 U.S.C. § 1367(a).

7. The claims alleged in this Complaint arise in the State and District of New Jersey and elsewhere.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391.

## **BACKGROUND**

### **Plaintiffs' Trademark Rights**

9. Plaintiffs are global leaders in the development of orthopedic products and services and are committed to researching and developing new ways to address people's needs — including introducing new products that are designed to replicate the natural movement of a knee.

10. As part of these efforts, Plaintiffs developed a knee implant and promotional campaign that plays upon the Plaintiffs' knee implant, is based on a single radius design, *i.e.*, a “round,” not an oval design, and uses the designation GETAROUNDKNEE™. The campaign includes substantial use of the mark GETAROUNDKNEE™, with use in some instances as GET AROUND KNEE (collectively referred to herein as the mark “GETAROUNDKNEE”).

11. Plaintiff Stryker Corporation has filed several United States trademark applications for the mark GETAROUNDKNEE™, which are currently pending:

App. No.	Trademark	Filing Date	Goods/Services
85505008	GETAROUNDKNEE™	December 28, 2011	Class: 009 – Computer software used for education, instruction, counseling and learning in the medical and healthcare fields; computer software for browsing and controlling images, animation, and information in the medical and healthcare fields
85509367	GETAROUNDKNEE™	January 5, 2012	Class: 016 – Printed matter, namely, books, magazines, articles, handouts and written presentation in the field of medicine  Class: 044 – Advisory services relating to the surgical and medical field; medical services; information services relating to the surgical and medical field; information services relating to the surgical and medical field provided online from a computer database or the internet

App. No.	Trademark	Filing Date	Goods/Services
85579848	GETAROUNDKNEE™	March 26, 2012	<p>Class: 035 – Promoting public awareness of health issues regarding orthopedic surgery</p> <p>Class: 041 – Educational services, namely, conducting conferences, seminars, workshops and classes in the field of orthopedic surgery and distribution of course materials in connection therewith</p>

12. After expending substantial effort and monies to create the advertising and promotional campaign, Plaintiffs launched the campaign in early February 2012 at the American Academy of Orthopedic Surgeons in San Francisco. This launch included displaying various information related to Plaintiffs' knee implant as well as the GETAROUNDKNEE™ mark.

13. The campaign continued with a massive print advertising effort beginning in April 2012, in which the mark GETAROUNDKNEE™ was and is prominently featured. At least some of the print advertising features a golf motif as well as professional golfer Fred Funk. This print advertising was and continues to be distributed within the orthopedic community and also to the public at large.

14. Plaintiffs have also invested significant money and time for a series of television commercials beginning in May 2012 that creatively promoted the "circular motion" knee concept and use the GETAROUNDKNEE™ mark. The commercials have run during top-rated major network shows such as Good Morning America, The Today Show, The NBC Nightly News, and The View. The commercials exclaim that "sometimes circles just make sense." The television aspect of the campaign has caught the attention of many surgeons and patients alike given the uniqueness of the commercials.

15. Plaintiffs' promotional campaign also included reaching out directly to orthopedic surgeons. An explanatory mailing was sent to 24,000 surgeons to to introduce them to and

educate them about the campaign. It was and is important to Plaintiffs to ensure that surgeons are well informed about Plaintiffs' products.

16. Plaintiffs also maintain a website, [www.GETAROUNDKNEE.COM](http://www.GETAROUNDKNEE.COM), which describes Plaintiffs' knee implants and provides information directed to orthopedic surgeons, patients, and the general public. This website also features the GETAROUNDKNEE™ mark, as well as aspects of the print and television efforts described above.

17. Plaintiffs' campaign is likely among the most ambitious direct-to-patient advertising and educational efforts undertaken by an orthopedic manufacturer. Plaintiffs also created the campaign to have a relation to the knee implant itself and to maintain continuity through all advertising media.

18. Plaintiffs' promotional campaign has successfully increased the public awareness of Plaintiffs' knee implants and the GETAROUNDKNEE™ mark such that they are now well known within the industry and also among the general public.

#### **Defendants' Wrongful Conduct**

19. Long after Stryker's campaign was in full swing, defendant Wright Medical Technology, Inc. registered the domain name GET-A-ROUND-KNEE.COM, all as part of an attempt to trade on the goodwill Stryker established with its unique campaign.

20. Defendants launched the [WWW.GET-A-ROUND-KNEE.COM](http://WWW.GET-A-ROUND-KNEE.COM) website on or about August 29, 2012. The actual website [www.GET-A-ROUND-KNEE.COM](http://www.GET-A-ROUND-KNEE.COM) includes an introductory page that provides little information about Wright Medical's knee implants. Pages from the GET-A-ROUND-KNEE.COM web age are attached as Exhibit A.

21. A search on GOOGLE.com for the term "GETAROUNDKNEE™" yields three paid "hits," *i.e.* paid placements. The first is Plaintiffs' own paid advertisement. However, the very next is Defendants' paid advertisement, in which Defendants have employed the specific tagline

GET AROUND KNEE as the caption for a brief description of, and link to, its website. These top two paid hits appear as follows:

**Stryker Get Around Knee**1 (877) 818 2495  
[www.getaroundknee.com/Find-A-Doctor](http://www.getaroundknee.com/Find-A-Doctor)  
Learn About The Stryker Get Around Knee Replacement System Today.

Find Orthopedic Surgeons      Learn About Knee Surgery  
Knee Replacement Information    Attend A Free Seminar

**Get Around Knee Info | get-a-round-knee.com**  
[www.get-a-round-knee.com/](http://www.get-a-round-knee.com/)  
Wright Knee Replacement Implant Fit For Activities Like Golf

22. Similar results were found when using Microsoft's Bing.com, Yahoo!'s and Ask.com's search engines. A sample of the aforementioned search results are attached as Exhibit B.

23. Defendants did not have the permission of Plaintiffs to use the GETAROUNDKNEE™ mark in any manner.

24. Defendants have no association, affiliation, sponsorship, or any other connection to Plaintiffs with respect to its GETAROUNDKNEE™ mark.

25. Defendants have acted deliberately in an ongoing attempt to cause substantial and irreparable damage to Plaintiffs' business and to confuse consumers as to the source or sponsor of the websites, services, and owner of the GETAROUNDKNEE™ mark.

#### **FIRST CLAIM FOR RELIEF**

##### **False Designation Of Origin And Unfair Competition In Violation Of 15 U.S.C. § 1125(a)**

26. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

27. Defendants' use of the phrase "GET AROUND KNEE" in its search engine advertisements for its website GET-A-ROUND-KNEE.COM, among other acts by Defendants, are likely to continue to cause confusion and/or mistake, or to deceive as to origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

28. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously, and in conscious disregard of Plaintiffs' rights.

29. The aforesaid conduct of Defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Plaintiffs' property and business.

30. The aforesaid conduct of Defendants has caused Plaintiffs to sustain monetary damage, loss, and injury in an amount to be determined at the time of trial.

31. Plaintiffs have no adequate remedy at law.

## **SECOND CLAIM FOR RELIEF**

### **Common-Law Unfair Competition**

32. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

33. The aforesaid acts of Defendants constitute unfair competition and unfair business practices contrary to the common laws of the United States and the State of New Jersey.

34. The unfair competition and unfair business practices of Defendants have been continuous, deliberate, malicious, willful, and done in conscious disregard of Plaintiffs' rights.

35. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously, and in conscious disregard of Plaintiffs' rights.

36. The aforesaid conduct of Defendants has caused and, unless restrained by this Court, will continue to cause immediate and irreparable injury to Plaintiffs' property and business.

37. The aforesaid infringement by Defendants has caused Plaintiffs to sustain monetary damage, loss, and injury in an amount to be determined at the time of trial.

38. Plaintiffs have no adequate remedy at law.

### **THIRD CLAIM FOR RELIEF**

#### **Unfair Competition Under N.J.S.A. § 56:4-1**

39. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

40. Defendants' unauthorized use of the GETAROUNDKNEE™ and GET AROUND KNEE marks, particularly in connection with the advertising for its website GET-A-ROUND-KNEE.COM, constitutes unfair competition through Defendants' appropriation for their own use of the reputation and goodwill of Plaintiffs in violation of N.J.S.A. § 56:4-1.

41. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously, and in conscious disregard of Plaintiffs' rights.

42. The aforesaid conduct of Defendants has caused and, unless restrained by this Court, will continue to cause immediate and irreparable injury to Plaintiffs' property and business.

43. The aforesaid infringement by Defendants has caused Plaintiffs to sustain monetary damage, loss, and injury in an amount to be determined at the time of trial.

44. Plaintiffs have no adequate remedy at law.

### **FOURTH CLAIM FOR RELIEF**

#### **Cybersquatting In Violation Of 15 U.S.C. § 1125(d)**

45. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

46. Defendants have registered, trafficked in, and used domain names that are confusingly similar to, and dilutive of, Plaintiffs' GETAROUNDKNEE™ distinctive mark, with bad-faith intent to profit from such use.



47. Defendants' activities constitute cybersquatting in violation of 15 U.S.C. § 1125(d).

48. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously, in bad faith, and in conscious disregard of Plaintiffs' rights.

49. The aforesaid conduct of Defendants has caused and, unless restrained by this Court, will continue to cause immediate and irreparable injury to Plaintiffs' property and business.

50. The aforesaid conduct of Defendants has caused Plaintiffs to sustain monetary damage, loss, and injury in an amount to be determined at the time of trial.

51. Plaintiffs have no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Howmedica Osteonics Corp. and Stryker Corporation demand judgment against defendants Wright Medical Technology, Inc. and Wright Medical Group, Inc. as follows:

A. A preliminary and permanent injunction enjoining Defendants and their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, from:

1. Using, reproducing, advertising, or promoting GETAROUNDKNEE™ mark in connection with the offer or sale of any goods or services, the use of any domain name, the rendering of any service or any commercial activity;

2. Using, reproducing, advertising, or promoting any trademark or URL that is confusingly similar to, or a colorable imitation of, the GETAROUNDKNEE™ mark;

3. Using, reproducing, advertising, or promoting any trademark, or name that may be calculated to represent, or that has the effect of representing, that the products or services of Defendants or any other person are sponsored by, authorized by, or in some way associated with Plaintiffs;

4. Injuring the commercial reputation, renown, and goodwill of Plaintiffs or the GETAROUNDKNEE™ mark;

5. Using or reproducing any word, term, name, symbol, or device, or any combination thereof, which confuses or falsely represents or misleads, is calculated to confuse, falsely represent, or mislead, or which has the effect of confusing, falsely presenting, or misleading, that the activities of Defendants or another are in some way connected with Plaintiffs or are sponsored, approved, or licensed by Plaintiffs; and

6. Otherwise unfairly competing with Plaintiffs.

B. An order directing that ownership of the domain names used by Defendants in their infringing scheme (GET-A-ROUND-KNEE.COM, and all others identified in the future) be immediately transferred by the concerned domain registrars to Plaintiffs;

C. An accounting to determine Defendants' profits in connection with sales of products or services identified by the GETAROUNDKNEE™ mark, or use by Defendants of any mark, badge, designation, materials, or publications likely to be confused with the foregoing and an award to Plaintiffs of such profits;

D. An award of compensatory damages arising out of Defendants' infringement and trebled as provided by 15 U.S.C. § 1117 and/or N.J.S.A. § 56:4-2;

E. A monetary award to Plaintiffs in the amount of the actual damages sustained by it resulting from Defendants unfairly competing with Plaintiffs;

F. An award to Plaintiffs of exemplary and/or punitive damages;

G. An award by the Court to Plaintiffs of its reasonable attorney fees and the costs of this action;

H. Prejudgment and postjudgment interest on the above monetary awards; and

I. Such other and further relief as this Court deems equitable and just.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiffs Howmedica Osteonics,  
Corp. and Stryker Corporation.*

Dated: September<sup>27</sup>, 2012

By: 

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**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither Plaintiffs nor Plaintiffs' attorney is aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiffs Howmedica Osteonics, Corp.  
and Stryker Corporation.*

Dated: September<sup>27</sup>, 2012

By: 

Charles P. Kennedy

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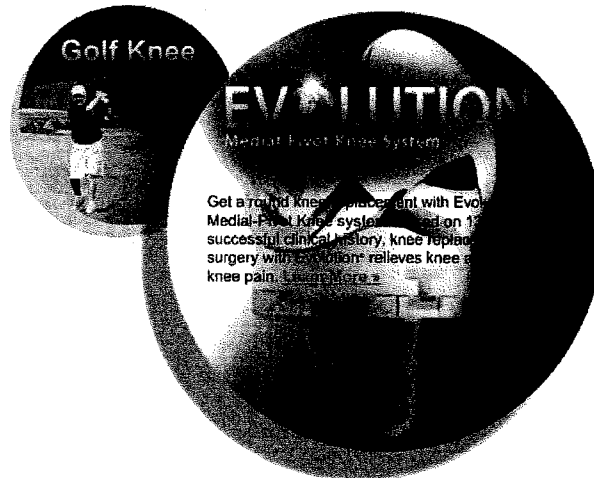
# EXHIBIT A

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## *Looking around knee replacement options*



### EVOLUTION®

Get a round knee replacement with Evolution® Medial-Pivot Knee system. Wright's knee replacement is designed to mimic the natural motion of your knee. Patients claim Wright's total knee replacement system relieves knee pain and knee arthritis. [Learn More »](#)

### Golf Knee

Wright's Medial-Pivot Knee System is fit for a golfer. Read about other golfers who experienced knee pain and knee arthritis before receiving Wright's total knee replacement surgery. [Learn More »](#)

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