

1 Attorneys for Plaintiff  
2 SCIENTIFIC SOFTWARE SOLUTIONS, INC.

3 **UNITED STATES DISTRICT COURT**  
4 **WESTERN DISTRICT OF VIRGINIA**

5 Scientific Software Solutions,  
6 Inc., a Virginia corporation,

Case No. \_\_\_\_\_

7  
8 Plaintiff,

9 vs.

10 PediaWorks, Inc., and  
11 PediaCath, Inc.

12 Defendants.  
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1                   **COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR**  
2                   **COMPETITION, AND DILUTION.**

3 Plaintiff, Scientific Software Solutions, Inc. (“Scientific Software”), by its attorneys  
4 identified below, brings this action against Defendants, PediaWorks Inc. and  
5 PediaCath, Inc. (the “Defendants”), and alleges that:  
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7                   **THE PARTIES**

8           1.       Scientific Software is a corporation organized and existing under the laws  
9 of Virginia, having an office at 317 Monte Vista Ave., Charlottesville, Virginia  
10 22903.

11          2.       On information and belief, Defendant PediaWorks, Inc. (“PediaWorks”) is  
12 a company existing under the laws of Ohio, having offices at 11000 Cedar Avenue,  
13 Cleveland, OH 44106, and is conducting business in this District and elsewhere.

14          3.       On information and belief, Defendant PediaCath, Inc. (“PediaCath”) is a  
15 company existing under the laws of Ohio, having offices at 11000 Cedar Avenue,  
16 Cleveland, OH 44106, and is conducting business in this District and elsewhere.  
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18                   **ALLEGATIONS COMMON TO ALL COUNTS**

19          4.       This action arises under the trademark, unfair competition, and dilution  
20 laws for trademark infringement, as a result of Defendants’ willful infringement of  
21 valid rights in the Scientific Software’s PedCath trademark and other unlawful  
22 activities conducted by Defendants in connection with such infringement.

23          5.       This court has jurisdiction under 15 U.S.C. Section 1121, and 28 U.S.C.  
24 Sections 1331, and 1332 and pendant jurisdiction over the claims arising under state  
25 law pursuant to 28 U.S.C. § 1338(b). The amount in controversy exceeds the sum  
26 or value of \$75,000 exclusive of interests and costs.

27          6.       Venue is proper under 28 U.S.C. Sections 1391(b) or (c).  
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1       7.       Scientific Software has been and now is engaged in the business of selling  
2 goods and services (“Scientific Software’s Goods and Services”) under the  
3 trademark “PedCath” (“the Mark”) continuously since at least 13 October 1995 in  
4 interstate commerce.

5       8.       The Mark is used extensively on and in connection with Scientific  
6 Software’s Goods and Services, e.g., on its products, in brochures and other printed  
7 promotional materials distributed by Scientific Software, and on the Internet.

8       9.       Scientific Software’s Goods and Services in connection with which the  
9 Mark has been used have been extensively promoted and marketed through various  
10 forms of media. As a result of such promotional and marketing efforts, and the  
11 quality of Scientific Software’s Goods and Services, the Mark has become widely  
12 and favorably known, a valuable asset of Scientific Software and symbol of its  
13 goodwill, and has acquired distinctiveness and secondary meaning.

14       10.      On information and belief, Defendants are also engaged in the business of  
15 selling goods and/or services (“Defendants’ Goods and Services”) in the same  
16 medical goods and services markets as those of Scientific Software.

17       11.      On information and belief, Defendants conduct business activities, directly  
18 and indirectly, over the Internet including Pediaworks’ fully interactive website,  
19 which seeks and has received donations from this District and elsewhere.

20       12.      On information and belief, Pediath is a successor in interest to  
21 Pediaworks and has benefitted from donations obtained from the Pediaworks  
22 website.

23       13.      On information and belief, Defendants had actual knowledge of Scientific  
24 Software’s Mark.

25       14.      On information and belief, the phrase “Pediath”, a moniker being used  
26 by the Defendants in conjunction with selling their goods and services, is  
27 confusingly similar to the mark “PedCath”, which has created and continues to  
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1 create a likelihood of confusion of origin among purchasers of goods and/or services  
2 provided by the Defendants.

3 15. Notwithstanding Scientific Software's continuous and exclusive use of and  
4 well-known prior rights in its Mark, Defendants have sought to compete unfairly  
5 with Scientific Software by appropriating for use the Mark on and in connection  
6 with goods and/or services that are sold in the same market as the Scientific  
7 Software's Goods and Services.

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9 **COUNT I**  
10 **Violation of 15 U.S.C. Section 1125(a)**  
11 **Federal Unfair Competition**

12 16. Scientific Software incorporates by reference the allegations of Paragraphs  
13 1-15.

14 17. Upon information and belief, the unauthorized use by Defendants in  
15 commerce of the Pediacath moniker on goods and services in the same markets as  
16 those served by Scientific Software is likely to cause the public to mistakenly  
17 believe that Defendants' business activities and goods and services originated from,  
18 are sponsored by, or are in some way associated with Scientific Software,  
19 constitutes false designations of origin or false descriptions or representations and is  
20 likely to cause the Mark to lose its significance as indicators of origin.

21 18. No adequate remedy at law exists to make the Scientific Software whole  
22 for the Defendants' continued unfair competition.

23 19. On information and belief, this complaint is likely to succeed on its merits.

24 20. On information and belief, irreparable harm has been done, and continues  
25 to be done, to the Scientific Software as a result of Defendants' continued willful  
26 infringement of the Mark.

27 21. Defendants' acts are willful, knowing, and malicious.

28 22. On information and belief, Defendants will experience no significant  
hardships as a consequence of being barred from infringing the Mark.

23. Upon information and belief, the actions by Defendants are in violation of 15 U.S.C. Section 1125(a). Defendants; and otherwise infringing rights in the Mark, and competing unfairly with Scientific Software.

24. Scientific Software is entitled, in addition to injunctive and other equitable relief, to damages in amount to be proven at trial.

## **COUNT II**

### **Trademark Infringement Under Virginia Common Law**

25. Scientific Software incorporates by reference the allegations of Paragraphs 1-24.

26. Scientific Software possesses a valid, prior-established trademark entitled to protection under Virginia law.

27. Defendants have continued to use the Pediacath moniker despite constructive and actual notice that the Mark PedCath is a valid Mark, is owned by Scientific Software, and specific notice from Scientific Software to Defendants to cease any and all infringing use of Pediacath.

28. Defendants have been and plan to continue to use the Mark without Scientific Software's consent.

29. Defendants' infringement is knowing, willful, and intentional, and intended to cause confusion, mistake, and/or deceive.

30. Defendants' acts, as described above, constitute trademark infringement of the Mark Pediacath under Virginia law, resulting in irreparable injury to Scientific Software. Defendants are also liable for contributory trademark infringement of the Pedcath trademark under Virginia law.

31. Defendants' infringement has damaged Scientific Software in an amount to be determined at trial. For example and without limitation, Defendants have been unjustly enriched through their unlawful and unauthorized use of the Mark Pediacath.

1 32. Defendants' infringement has caused and, unless restrained by this Court,  
2 will continue to cause Scientific Software irreparable injury.

3 33. Scientific Software has no adequate remedy at law for Defendants'  
4 infringement of their common law trademark rights.

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6 **COUNT III**  
7 **Unfair Competition Under Virginia State Law**

8 34. Scientific Software incorporates by reference the allegations of Paragraphs  
9 1-33.

10 35. Defendants have used the Mark Pediacath unfairly to the detriment of  
11 Scientific Software. Defendants' use of the Mark Pediacath is likely to and has  
12 confused consumers of Scientific Software's Goods and Services.

13 36. As a result of Defendants' conduct, Scientific Software has suffered and  
14 will continue to suffer damage, including reputational damage because of consumer  
15 confusion as to the origin of the goods and services of the Defendants. For example,  
16 and without limitation, Defendants have been unjustly enriched through their  
17 unlawful and unauthorized sales of the Mark Pediacath.

18 37. Defendants' infringement has caused and, unless restrained by this Court,  
19 will continue to cause Scientific Software irreparable injury.

20 38. Scientific Software has no adequate remedy at law.

21 **REQUEST FOR RELIEF**

22 A. That Defendants be required to pay to Scientific Software such damages,  
23 statutory or otherwise greater than \$100,000 pursuant to 15 U.S.C. Section  
24 1117, together with prejudgment interest thereon, as Scientific Software  
25 has sustained as a consequence of Defendants' wrongful acts.

26 B. Order the disgorgement of all of Defendant's profits and advantages  
27 wrongfully gained by Defendants related to Defendant's misconduct  
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1 Dated: September 26, 2012

The Zobrist Law Group

By: /s/ Dale R. Jensen

Dale R. Jensen

Attorneys for Plaintiff

Scientific Software Solutions, Inc.

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