

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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SECADA MEDICAL LLC D/B/A)
VENTRIS MEDICAL, LLC)
)
Plaintiff,)
)
v.)
)
NEXXT SPINE, LLC,)
)
Defendant.)

COMPLAINT & JURY DEMAND

CIVIL ACTION No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Secada Medical LLC d/b/a Ventris Medical, LLC (“Ventris” or “Plaintiff”), by its attorneys, brings this complaint against defendant Nexxt Spine, LLC (“Nexxt Spine” or “Defendant”) and alleges as follows.

NATURE OF THE ACTION

1. Ventris develops, markets, and sells innovative tissue and bone healing products to address the procedural needs of general, plastic, vascular, orthopedic, and spinal surgeons.
2. Among its suite of products for surgeons, Ventris offers a surgical matrix product for management of complex wounds called CONNEXT®. Ventris has been continuously offering this product under the CONNEXT® mark for many years.
3. Defendant Nexxt Spine, which has no affiliation with Plaintiff, recently adopted and is using the mark CONNEXX for a surgical implant kit. Defendant also owns intent-to-use federal trademark Application Serial No. 97503747 for CONNEXX (the “CONNEXX Application”).
4. Defendant offers its CONNEXX product to the same surgeons and other medical

professionals in the same hospitals as the CONNEXT product offered and sold by Plaintiff. As such, Defendant is likely to cause consumer confusion and deceive the public regarding the source, sponsorship, and/or affiliation of its goods through use of its infringing CONNEXX mark.

5. The CONNEXT and CONNEXX marks are virtually identical from visual, aural, and conceptual perspectives, and Defendant's goods are highly related to the goods offered by Plaintiff.

6. Defendant's use of the CONNEXX mark infringes Plaintiff's CONNEXT mark and constitutes false designation of origin and unfair competition under the federal Lanham Act.

7. Plaintiff therefore brings this action to end Defendant's infringement of Plaintiff's valuable CONNEXT mark. Plaintiff seeks to enjoin Defendant's infringing conduct and to recover damages and costs that it has sustained as a result of Defendant's intentional use of the confusingly similar CONNEXX mark.

PARTIES

8. Plaintiff is a California limited liability company with its principal place of business at 1201 Dove Street, Suite 470, Newport Beach, CA 92660.

9. Defendant is an Indiana limited liability company with its principal place of business at 14425 Bergen Blvd, Suite B, Noblesville, IN 46060.

JURISDICTION AND VENUE

10. This action arises under the federal trademark statute (the "Lanham Act"), 15 U.S.C. § 1051 et seq.

11. This court has original jurisdiction over the federal trademark and unfair competition claims pursuant to 15 U.S.C. §§ 1114, 1121, 1125, and 28 U.S.C. §§ 1331, 1338, and 1367.

12. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant conducts business within the State of Indiana and this judicial district; Defendant has advertised, promoted, and sold its CONNEXX medical product in the State of Indiana and this judicial district; the causes of action asserted in this Complaint arise out of Defendant's contacts with the State of Indiana and this judicial district; Defendant has caused tortious injury to Plaintiff in this judicial district; and Defendant has sufficient minimum contacts with the State of Indiana through its business and activities offered or conducted in the State of Indiana such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because Plaintiff conducts business within the State of Indiana and this judicial district; Defendant has its principal place of business in this judicial district; Defendant has advertised, promoted, and sold its CONNEXX medical product to consumers in the State of Indiana and this judicial district; the causes of action asserted in this Complaint arise out of Defendant's contacts with the State of Indiana and this judicial district; and Defendant has caused tortious injury to Plaintiff in this judicial district.

FACTUAL ALLEGATIONS

PLAINTIFF AND THE CONNEXT MARK

14. Plaintiff is a biologics company focused on quality, innovative design, and processing of best-in-class products for optimal surgical outcomes. Ventris offers a variety of allograft, synthetic, and bioactive products for soft and hard tissue applications. Its products adhere to Current Good Tissue Practices and are regulated by the FDA Center for Biologics Evaluation and Research.

15. Since at least as early as October 2018, Ventris has offered and sold a bovine

collagen indicated for the management of surgical wounds under the mark CONNEXT® (the “CONNEXT Mark”).

16. The CONNEXT product has been extensively advertised and promoted in the United States, including online through the Ventriss Medical website (<https://www.ventrissmedical.com/connext/>), and marketed to hospitals, insurance companies, and medical professionals.

17. Plaintiff has devoted substantial time, effort, and resources to the development and promotion of the CONNEXT Mark and product.

18. On January 1, 2019, the United States Patent & Trademark Office (“PTO”) issued to Plaintiff U.S. Trademark Registration No. 5,645,141 for the CONNEXT Mark in connection with “[s]ynthetic materials, namely, bovine collagen used for tissue healing for medical purposes” in Class 5.

19. A true and accurate copy of Plaintiff’s federal trademark registration for the CONNEXT Mark is attached hereto as Exhibit A. In addition to this registration, Plaintiff owns common law rights in the CONNEXT Mark as a result of its extensive use and promotion of the mark in commerce.

20. The CONNEXT registration is in full force and effect on the PTO’s Principal Register and gives rise to a presumption in favor of Plaintiff with respect to validity, ownership, and exclusive rights to use the CONNEXT Mark throughout the United States.

21. By virtue of its use and federal registration, Plaintiff has the exclusive right to use the CONNEXT Mark, as well as marks confusingly similar thereto, in commerce in connection with medical goods indicated for surgical use.

**DEFENDANT’S APPLICATION FOR CONNEXT AND
UNAUTHORIZED USE OF PLAINTIFF’S MARK**

22. On information and belief, Defendant owns intent-to-use Application Serial No. 97/503,747 for CONNEXX covering “[o]rthopaedic implant kit comprised of screws, rods, hooks and connectors made of artificial materials as well as surgical instrumentation for implanting the aforesaid components within the spine” in Class 10 (the “CONNEXX Application”).

23. On information and belief, Defendant also owns and operates the website at www.nexxtspine.com, which includes a page dedicated to its CONNEXX product at <https://nexxtspine.com/products/inertia/inertia-connexx/>. A true and accurate screenshot from this website is copied below.



24. Defendant’s CONNEXX mark is nearly identical to Plaintiff’s CONNEXT Mark, with the only difference being in the final letter (“X” as opposed to “T”).

25. Defendant’s CONNEXX products are offered through the same marketing and trade channels and to the same customers as Plaintiff’s products. Both products are sold to the same hospitals, insurance companies, and medical professionals. Both parties’ respective goods

are offered and provided via the same channels of trade.

26. Plaintiff began using the CONNEXT trademark nearly five years ago and well before Defendant's adoption of the confusingly similar CONNEXX trademark. Furthermore, Plaintiff obtained a U.S. registration for the CONNEXT trademark and acquired recognition in the general consuming public well prior to Defendant's application for and use of the virtually identical CONNEXX mark.

27. In or around July of 2023, Plaintiff became aware of Defendant's intent-to-use application for the CONNEXX mark. Defendant's application was published on July 4, 2023, and Plaintiff therefore timely filed an extension of time to oppose the application on July 31, 2023.

28. Plaintiff's counsel spoke with Defendant's counsel on August 10, 2023, regarding Plaintiff's concerns about Defendant's use of the CONNEXX mark. On September 5, 2023, Defendant's counsel replied by email that Defendant had no intention of abandoning the CONNEXX Application or ceasing use of the CONNEXX mark.

29. As of the date of this Complaint, Defendant continues to use the CONNEXX mark to offer its highly-related surgical products. Defendant's failure to comply with Plaintiff's requests demonstrates a deliberate intent to continue to willfully infringe Plaintiff's rights in its CONNEXT Mark.

30. Defendant's unauthorized use of the CONNEXX mark is misleading and is likely to confuse consumers into believing that Defendant's products are authorized by, sponsored by, or otherwise affiliated with or approved by Plaintiff.

31. Defendant's infringing use of the CONNEXX mark is knowing and willful.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

32. Plaintiff realleges and incorporates by this reference paragraphs 1 through 32 of this Complaint as if fully set forth herein.

33. Plaintiff owns the distinctive, valid, protectable, and federally registered CONNEXT Mark.

34. Defendant has used the CONNEXX mark in commerce to advertise and offer Defendant's surgical products.

35. Defendant is not affiliated or associated with Plaintiff or its goods, and Plaintiff does not approve or sponsor Defendant or Defendant's goods.

36. Defendant's activities as described herein are likely to result in confusion, mistake, or deception and cause the public to believe that Plaintiff has produced, sponsored, authorized, licensed, or is otherwise connected or affiliated with Defendant's goods, all to the detriment of Plaintiff.

37. Upon information and belief, Defendant's acts are deliberate and intended to confuse the public as to the source of Defendant's goods and to injure Plaintiff and reap the benefit of Plaintiff's goodwill associated with Plaintiff's trademark.

38. As a direct and proximate result of Defendant's willful and unlawful conduct, Plaintiff has been injured and will continue to suffer injury to its business and reputation unless Defendant is restrained by this Court from infringing Plaintiff's trademark.

39. The actions of Defendant described above constitute trademark infringement in violation of 15 U.S.C. § 1114(1).

40. Plaintiff has been, and will continue to be, damaged and irreparably harmed by the actions of Defendant, which will continue unless Defendant is enjoined by this Court. Plaintiff has no adequate remedy at law in that the amount of harm to Plaintiff's business and reputation

and the diminution of the goodwill of the CONNEXT Mark are difficult to ascertain with specificity. Plaintiff is therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

41. Plaintiff is entitled to actual monetary damages in an amount to be determined at trial and to any profits made by Defendant attributable to its infringing activities.

42. Defendant's infringement of the registered CONNEXT Mark is deliberate, willful, fraudulent, and without extenuating circumstances, and constitutes a knowing use of Plaintiff's trademark. Defendant's infringement is thus an "exceptional case" within the meaning of section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a). Plaintiff is therefore entitled to recover three times the amount of its actual damages and the attorneys' fees and costs incurred in this action, as well as prejudgment interest.

COUNT II

FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. § 1125(a)

43. Plaintiff realleges and incorporates by this reference paragraphs 1 through 43 of this Complaint as if fully set forth herein.

44. Plaintiff owns the distinctive, valid, protectable, and registered CONNEXT Mark.

45. Defendant's use of the CONNEXX mark in commerce to advertise, offer, and sell Defendant's surgical products is without Plaintiff's permission or authority and is in total disregard of Plaintiff's rights to control its trademarks.

46. Defendant's actions as described herein are likely to cause confusion, mistake, and deception among ordinary consumers as to the affiliation, connection, or association of Defendant with Plaintiff, as to the true source of Defendant's goods, and as to the sponsorship or approval of Defendant or Defendant's services by Plaintiff.

47. Defendant's acts have damaged and will continue to damage Plaintiff, and Plaintiff

has no adequate remedy at law.

48. Defendant's actions constitute unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a).

49. In light of the foregoing, Plaintiff is entitled to injunctive relief prohibiting Defendant from using or applying for registration of the CONNEXX mark or any marks confusingly similar thereto, and to recover all damages, including attorneys' fees, that Plaintiff has sustained and will sustain, and all gains, profits, and advantages obtained by Defendant as a result of its infringing acts alleged above in an amount not yet known, and costs pursuant to 15 U.S.C. §1117, as well as prejudgment interest.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND PASSING OFF

50. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 50 of this Complaint as if fully set forth here.

51. Plaintiff owns common law trademark rights in its CONNEXT Mark in the State of Indiana and throughout the United States, and all such rights owned by Plaintiff are superior to any rights that Defendant may claim to have in the CONNEXX mark.

52. Defendant's unauthorized use of the CONNEXX mark in connection with surgical products is likely to cause confusion as to the source or sponsorship of these services, and is likely to lead the public to believe that Plaintiff is affiliated with or sponsors or endorses Defendant and/or Defendant's goods, and is likely to mislead persons in the ordinary course of purchasing Defendant's goods, thereby injuring the reputation and goodwill and unjustly diverting from Plaintiff to Defendant the benefits arising therefrom.

53. Defendant's unlawful activities constitute trademark infringement, unfair

competition, and passing off as proscribed by common law.

54. Defendant's acts of trademark infringement, unfair competition, and passing off were committed, or will imminently be committed, willfully, knowingly, intentionally, and in bad faith.

55. Defendant's acts or intended acts of trademark infringement, unfair competition, and passing off, unless enjoined by this Court, will threaten to cause Plaintiff irreparable damage, loss, and injury for which Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That Plaintiff be granted preliminary and permanent injunctive relief under 15 U.S.C. § 1051 *et seq.*, and the inherent powers of this Court; specifically, that Defendant and all officers, agents, servants, representatives, employees, attorneys, parent and subsidiary corporations, assigns, and successors in interest, and all other persons acting in concert with Defendant, be permanently enjoined from: (i) using the CONNEXX mark, or any other mark confusingly similar to Plaintiff's CONNEXT Mark, in connection with the marketing, promotion, advertising, sale, or distribution of any medical products and related services; and (ii) from any other acts of infringement of Plaintiff's CONNEXT Mark;

B. That Defendant be required to file, within 10 days from entry of an injunction, a declaration with this Court signed under penalty of perjury certifying the manner in which Defendant has complied with the terms of the injunction;

C. That Defendant be adjudged to have violated 15 U.S.C. § 1114 by infringing Plaintiff's CONNEXT Mark;

D. That Defendant be adjudged to have violated 15 U.S.C. § 1125(a) for unfairly

competing against Plaintiff by using a false designation of origin for Defendant's infringing goods;

E. That Plaintiff be awarded any of Defendant's profits derived by reason of said acts, or as determined by said accounting;

F. That Plaintiff be awarded three times any of Defendant's profits and three times of all Plaintiff's damages, suffered as a result of Defendant's willful, intentional, and deliberate acts in violation of the Lanham Act, as well as Plaintiff's costs, attorneys' fees, and expenses in this suit under 15 U.S.C. § 1117;

G. That Plaintiff be granted prejudgment and post judgment interest;

H. That Plaintiff be granted costs associated with the prosecution of this action; and

I. That the Court grant Plaintiff such other and further relief as the Court may deem just and proper.

Dated: November 1, 2023

Respectfully submitted,

By: /s/ Samuel B. Gardner

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Secada Medical LLC d/b/a Ventris Medical, LLC, by and through its legal counsel, respectfully demands and requests that all issues herein properly triable by jury be so tried.

Dated: November 1, 2023.

Respectfully submitted,

By: /s/ Samuel B. Gardner

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 1, 2023, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system.

/s/ Samuel B. Gardner

Samuel B. Gardner