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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CURLIN MEDICAL INC.,
ZEVEX, INC., and
MOOG INC.,

Plaintiffs

v.

ACTA MEDICAL, LLC, JOHN HARRY BREWER, and EVAN BREWER,

Defendants.

Hon. Stanley R. Chesler

Civil No. 2:16-cv-02464-SRC-CLW

FIRST AMENDED COMPLAINT

Curlin Medical Inc. ("Curlin"), ZEVEX, Inc. ("Zevex"), and Moog Inc. ("Moog") (collectively "plaintiffs") for their First Amended Complaint against ACTA Medical, LLC ("ACTA"), John Harry Brewer, and Evan Brewer allege as follows:

The Parties and Relevant Individuals

1. Moog is a New York corporation with a principal place of business at 400 Jamison Road, East Aurora, New York 14052. Moog is a worldwide designer, manufacturer, and integrator of precision motion control products and systems.

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2. Curlin is a Delaware corporation with a principal place of business at Seneca and Jamison Road, East Aurora, New York 14052. Curlin is a wholly-owned subsidiary of Moog. It is a leading developer and supplier of infusion therapy products around the world.

3. Zevex is a Delaware corporation with a principal place of business at 4314 Zevex Park Lane, Salt Lake City, Utah 84123. Zevex is a wholly-owned subsidiary of Curlin. Zevex is one of the world's leading suppliers of enteral products, including portable and stationary pumps, disposable sets, and related accessories.

4. ACTA is a New Jersey limited liability company with a principal place of business at 4 Nevius Drive, Flemington, New Jersey 08822. ACTA distributes and sells certain medical products throughout the United States, including New Jersey.

5. John Brewer is an individual who resides in the State of New Jersey. John Harry Brewer is the founder and sole owner of ACTA.

6. Evan Brewer is an individual who resides in the State of New Jersey. Evan Brewer is and was at all relevant times an officer, director, and employee of ACTA.

7. ACTA, John Brewer, and Evan Brewer are referred to collectively as "defendants."

8. James Bruno is an individual who resides in the State of New Jersey. Bruno is and was at all relevant times a distributor of certain medical products and an agent or representative of ACTA. Following commencement of this lawsuit, plaintiffs and Bruno resolved all claims asserted against Bruno, and Bruno has been dismissed as a defendant in this lawsuit.

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Jurisdiction and Venue

9. This is a patent and trademark infringement action brought under the patent laws of the United States, 35 U.S.C. Section 101, *et seq*., including 35 U.S.C. Section 271, and the trademark laws of the United States, including 15 U.S.C. Sections 1114, 1121(a), and 1125(a).

10. Plaintiffs seek damages for patent infringement and an injunction precluding defendants from making, using, importing, selling or offering to sell, and/or from inducing or contributing to the infringement by others of, plaintiffs' patented technology. Curlin also seeks damages for unfair competition and violations of the Lanham Act, and seeks an injunction precluding defendants from using and infringing Curlin's trademark, trade dress, and product images, and from make false statements regarding the nature, characteristics, and qualities of defendants' products.

11. This Court has subject matter jurisdiction under 28 U.S.C. Sections 1331 and 1338(a) and 15 U.S.C. Section 1121(a).

12. This Court has personal jurisdiction over ACTA because ACTA has a principal place of business in New Jersey, because a substantial part of the events or omissions giving rise to the claims occurred within this district and state, and ACTA is subject to service in this district.

13. This Court has personal jurisdiction over John Brewer and Evan Brewer because they are domiciled in the State of New Jersey, because a substantial part of the events or omissions giving rise to the claims occurred within this district and state, and they are subject to service in this district.

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14. Venue is proper under 28 U.S.C. Sections 1400 and 1391 because defendants are subject to personal jurisdiction in this district. Defendants have also committed acts of patent infringement and trademark infringement in this district.

Background and Facts

Plaintiffs' Infusion Therapy Products

15. Plaintiffs' expertise in the medical market includes the application of advanced technologies to the precision control of motion and fluids. Plaintiffs are regarded as leading developers of infusion therapy products, which are products used by caregivers to intravenously administer medication to a patient.

16. Plaintiffs have invested substantial time and resources in research and development in order to design and develop advanced infusion systems that improve medication safety, optimize application performance, and reduce medication expenses. Plaintiffs offer a range of medical pump technologies and fluid delivery systems with the goal of simplifying processes, increasing safety, and enhancing patient and caregiver outcomes.

17. By investing substantial time and resources in research and development, plaintiffs have achieved unmatched dependability, ease-of-use, and flexibility in application of its patented products. These three characteristics define the plaintiffs' line of infusion pumps, and is why they are so highly regarded by the caregivers who use them.

18. Plaintiffs have a highly positive and well-known reputation and have developed positive and valuable goodwill in their trade name and products.

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19. Plaintiffs' infusion pumps require the use of an infusion administration set. An "administration set" is a specially-designed and engineered tubing assembly, and associated customized components, used to transport liquids from a pump to a patient. Plaintiffs' administration sets are designed specifically and exclusively for use with plaintiffs' line of infusion pumps and are not intended for use, or properly used, with any other manufacturer's pumps.

20. The administration sets designed for use with plaintiffs' line of infusion pumps include an anti-free flow feature/device that prevents inadvertent free flow of the infusion liquid. The anti-free flow device also allows the intentional priming of the set by gravity, thereby reducing the set-up time.

21. Plaintiffs' administration sets are uniquely designed to be easy for caregivers to use while still providing exceptional patient care and safety.

22. Plaintiffs' administration sets are specifically designed to be used exclusively with plaintiffs' line of infusion pumps as a complete system. At great expense, plaintiffs have subjected and continuously subject the complete system to rigorous testing to ensure the accuracy and safety of its functions.

23. Use of administration sets not specifically designed and tested for use with plaintiffs' line of infusion pumps poses a material risk of inaccuracy in the flow rate leading to underinfusion and overinfusion, which is dangerous and may be fatal. In addition, the use of contaminated or incorrect materials to construct the administration sets poses a risk of leaching and contamination of fluids, placing patients at risk.

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