

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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MÖLNLYCKE HEALTH CARE AB	:	
	:	
Plaintiff,	:	COMPLAINT
-v-	:	AND JURY DEMAND
	:	
SZY HOLDINGS LLC	:	Case No. 1:21-cv-05415
	:	
Defendant.	:	
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Plaintiff, Mölnlycke Health Care AB (“Plaintiff” or “Mölnlycke”) by its undersigned attorneys, Duane Morris LLP, for its Complaint against SZY Holdings LLC (“Defendant” or “SZY”) alleges as follows:

NATURE OF THE ACTION

This action is being brought by Plaintiff to stop Defendant’s wrongful marketing, promotion, advertising and sale of wound care products in the United States that violates Plaintiff’s trademark rights. This is an action for trademark infringement and unfair competition under Sections 32 and 43(a) of the Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. §§ 1114, 1125(a), Deceptive Practices and False Advertising New York Gen. Bus. Law §§ 349-350 and for substantial and related claims of trademark infringement and unfair competition under the common law of the state of New York. Plaintiff brings this action based on Defendant’s promotion, marketing, advertising and sale of wound care products in connection with the name MEDITAC as well as the MEDITAC Logo,  (collectively, the “Infringing Marks”). Defendant’s marketing, promotion, advertising and sale of wound care products, including bandages and adhesive tapes under the Infringing Marks violates Plaintiff’s longstanding rights in its MEPITAC trademark for wound dressings, medical and surgical

bandages and fixatives for bandages. Defendant's conduct constitutes federal trademark infringement and federal unfair competition as well as trademark infringement and unfair competition under the common law of the state of New York, and is a flagrant violation of Plaintiff's trademark rights.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1338(a) and 1338(b). The Court also has subject matter jurisdiction under 28 U.S.C. § 1332(a). This Court has personal jurisdiction because Defendant is organized under the laws of the State of New York, and resides in New York.

2. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because Defendant resides in this district and has its company headquarters here.

PARTIES

3. Plaintiff, Mölnlycke Health Care AB, is a corporation organized under the laws of Sweden, with its principal place of business at Gamlestadvägen 3C, Göteborg, 40252 Sweden. Mölnlycke is the owner of the valuable MEPITAC® trademark.

4. Upon information and belief, Defendant, Defendant, SZY Holdings LLC is a limited liability company organized and existing under the laws of the State of New York. Defendant's principal place of business is 300 Liberty Avenue, Brooklyn, NY 11207.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Mölnlycke's Business and MEPITAC Trademark.

5. Mölnlycke is a leading international medical solutions company headquartered in Sweden, with a U.S. headquarters near Atlanta, Georgia. For decades, Mölnlycke has manufactured and sold innovative medical products and devices, including wound care products,

gauzes, dressings, bandages, and adhesive medical tapes used by doctors, nurses, health care professionals, and the general public.

6. Mölnlycke owns U.S. Registration No. 3,051,065 for its mark MEPITAC, which has a constructive date of first use of June 4, 2004, registered on January 24, 2006 and enjoys incontestability status. A copy of the registration certificate and U.S. Patent and Trademark Office (“USPTO”) TSDR printout is hereto attached as Exhibit A.

7. Mölnlycke uses its MEPITAC trademark in connection with its wound, medical and surgical dressings, bandages and fixatives to market and sell its products for a variety of wound, medical and surgical applications, including adherence to a patient’s skin and fixing the products to tubes, drains, electrodes, intravenous lines, etc.

8. Mölnlycke has marketed, advertised, and promoted its goods under the MEPITAC trademark in the United States continuously since at least as early as 2005, including in this district (collectively, the MEPITAC trademark and MEPITAC Reg. No. 3,051,065 herein referred to as the “MEPITAC Mark”).

9. Mölnlycke’s wound, medical and surgical care products, sold under the MEPITAC Mark, are sold to and used by hospitals, doctors, nurses, urgent care centers and other medical and health professionals, in addition to the general public.

10. Indeed, numerous Mölnlycke products, including its MEPITAC product, are readily available at CVS pharmacy locations in this district and elsewhere in New York and the United States as a whole.

11. Mölnlycke’s MEDITAC product is also available on Amazon.com.

12. Mölnlycke spends in excess of \$1 million dollars per year to advertise and market its products to consumers in the United States, including through its website at www.Mölnlycke.us.

13. Mölnlycke's marketing, and the quality of its innovative product offerings, have made its products widely used by medical and health professionals and the general public.

14. As a result of Mölnlycke's substantial investment of time, effort and financial resources in developing, marketing, advertising, and promoting its goods under the MEPITAC Mark, the MEPITAC Mark has acquired and maintained a highly regarded reputation and substantial goodwill. The MEPITAC Mark symbolizes the substantial and material goodwill that Mölnlycke has created throughout the United States.

15. The MEPITAC Mark has become well known to the consuming public and trade as identifying Mölnlycke as the source of its innovative goods and as a result consumers are able to distinguish Mölnlycke's goods from those of its competitors.

16. MEPITAC, which is a coined term, is a conceptually strong trademark. Moreover, by virtue of the substantial sales of products under the mark, the MEPITAC Mark is commercially strong as well.

17. Accordingly, the MEPITAC Mark is strong and deserving of maximum protection under trademark law.

B. Defendant's Violations of Mölnlycke's Intellectual Property Rights and Defendant's Acts of Unfair Competition

18. Defendant SZY Holdings LLC sells products under the brand name MEDITAC.

19. Defendant claims ownership of U.S. Trademark Registration No. 4,479,060 for the mark , which registered on February 4, 2014, for "military tote bags,

shoulder bags and backpacks” in Class 18 (the “MEDITAC Logo”). Until recently, Defendant’s MEDITAC Logo was used solely on military tote bags, backpacks, and other sorts of bags.

20. The only specimens of use (i.e., photographic evidence that the mark was being used in commerce) ever submitted to the USPTO by Defendant for the MEDITAC Logo were of a “Tactical Backpack.” Defendant submitted the exact identical images, to prove continued use of the mark—two pictures of a black backpack with the MEDITAC Logo on the packaging—on October 29, 2013 and June 5, 2019.

21. On February 12, 2019, Defendant filed a trademark application (Application Serial No. 88297676) at the USPTO for MEDITAC as a standard character mark (together with the MEDITAC Logo, the “Infringing Marks”). In addition to the goods described in the application for the MEDITAC Logo, Defendant sought registration for: “Adhesive bandages; First aid kits; Gauze; Medical adhesive tape; Adhesive wound closure strips; Burn dressings; Medical gear bags containing first aid kits; Backpacks containing first aid kits; Fanny packs containing first aid kits” in Class 5.

22. The goods described in the application for the MEDITAC standard character mark would bring Defendant’s MEDITAC-branded goods into direct competition with Mölnlycke’s wound care products marketed under its MEPI- marks, including its MEPITAC Mark. Therefore, almost two (2) years ago, Mölnlycke partially opposed Defendant’s MEDITAC standard character application for the Class 5 goods. That proceeding is currently pending before the Trademark Trial and Appeal Board.

23. Since the opposition was filed, Defendant has expanded its use of the Infringing Marks. By way of example, Defendant has expanded its product offerings to a variety of medical goods, including gauze, bandages, adhesive tapes, tourniquets, and other wound dressings.

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