

PARTIES

1. Defendant Focus Health Group, Inc. (“Focus”) is a Tennessee corporation with its principal place of business in Knoxville, Tennessee.
2. Defendant Fred McBee is an owner and officer of Focus, and upon information and belief, is a resident of Tennessee.
3. Defendant Beth Cross is an employee of Focus, and upon information and belief, is a resident of Tennessee.
4. Snap is an Ohio limited liability company with its principal place of business in Dublin, Ohio.
5. Ms. Stamps is the President of Snap, and is currently a resident of Florida.

JURISDICTION AND VENUE

6. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391, as Plaintiffs reside in the Southern District of Ohio, and this is the judicial district in which a substantial part of the events or omissions giving rise to the claims set forth below occurred.
7. This Court has subject matter jurisdiction under 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. Additionally, this Court can exercise jurisdiction under 28 U.S.C. § 1331, because a federal question has been presented, and under 28 U.S.C. § 1367 (supplemental jurisdiction).

FACTS COMMON TO ALL COUNTS

Snap Develops an Epinephrine Convenience Kit

8. Nancy Stamps, RN, is a Registered Nurse with decades of clinical experience caring for patients in various settings.

9. In the course of her clinical experience, Ms. Stamps recognized that escalating costs of epinephrine auto-injectors (used to treat anaphylactic emergencies) created a significant problem for both patients and care-givers alike.

10. As a result, and relying upon her years of clinical experience, Ms. Stamps formed Snap to produce, market and sell epinephrine convenience kits.

11. These kits are FDA registered.

Snap Enters Into a Sales Distribution Agreement with Focus

12. In order to aid in marketing and selling the convenience kits that Snap had created, on or about November 10, 2015, Snap entered into a nonexclusive Sales Distribution Agreement (“Agreement”) with Focus. A true and accurate copy of the Agreement is attached hereto as Exhibit A.

13. Under the Agreement, Snap appointed Focus as a distributor, which Focus accepted, and Focus agreed to exercise its best efforts to promote the sale of the Snap products.

14. However, Snap also reserved to itself the right under the Agreement to assist Focus with sales, to handle or conclude a sale or other transaction, to contact potential customers, and to solicit business. In other words, Snap was permitted to make direct sales and marketing of its products.

15. Shortly after executing the Agreement, Snap and Focus began working together to develop packaging and marketing materials for Snap’s products. This included working with Snap’s graphic design and content consultants to create package design, verbiage and content, as well as content for advertising and marketing.

16. Snap also worked with an FDA consultant to create specific Instructions for Use and product labeling for the Snap products.

17. Throughout the course of the Agreement, Snap and Focus further worked together to develop and refine the sales pitch and marketing materials for the Snap products.

18. Under the Agreement, the results of this and other joint work became the exclusive property of Snap, and anything created by Focus under the Agreement was to be deemed a “work for hire” under the Copyright Act. Ex. A, ¶ 8.7.

19. As a result of directly participating in the development of product improvements and/or new products, the development of Instructions for Use of the product(s), the development of product packaging, as well as the development of marketing and sales materials and strategies, Focus gained access to Snap’s confidential information. In fact, Mr. McBee, Ms. Cross, and others at Focus routinely attended meetings or participated in calls with third parties contracted to provide packaging strategies, product information and development, and marketing content.¹

20. Because it was anticipated that Focus would have access to this confidential information, the Agreement explicitly protected that information. Ex. A, ¶ 13.1.

Ms. Stamps Promotes both Snap Products and Focus Products

21. During the course of the Agreement, Ms. Stamps not only promoted Snap’s products, but, acting as a good business partner, she also assisted in the promotion of various Focus products as well.

22. Ms. Stamps opened doors to customers that Focus did not or would not otherwise have had access to.

23. For example, Snap had an existing relationship with Managed Health Care Associates, Inc. (“MHA”), the country’s largest alternate site GPO. Ms. Stamps was able to get

¹ Upon information and belief, the principal owners of Focus are Fred McBee, Tracy Thompson, and Doug Berry, along with their respective children.

Focus's product(s) listed with MHA, resulting in significant sales for Focus that continues to this day. Ms. Stamps also established a relationship with the wholesaler Henry Schein.

24. In recognition of these efforts, in February 2017, Focus agreed to pay Ms. Stamps a ten percent (10%) commission on gross profits. This would include, for example, a commission on all sales made via MHA.

25. To date, however, Focus has not paid Ms. Stamps a commission as promised.

Focus Proposes a Licensing Agreement.

26. From 2016 until 2018, the business relationship between Snap and Focus seemed to be going smoothly. However, in late 2018 or early 2019, that relationship began to deteriorate.

27. In December 2018, Focus, by and through Mr. McBee, reached out to Snap to propose a licensing agreement whereby Focus would produce and sell a product that was essentially identical to Snap's product. The only difference between the two would be the NDC labeler code² and product branding.

28. In fact, in January 2019, Mr. McBee drove to Columbus, Ohio to present his idea to Ms. Stamps. Mr. McBee demonstrated how the licensed product could be used by Focus to "play a pricing game" with its major wholesalers and government contracts. Although Ms. Stamps indicated that Snap may have some level of general interest in a licensing agreement, it had no interest in playing a "pricing game," and was instead more interested in continuing with the promotion and sale of Snap's products under the then-current Agreement.

² Drug products are identified and reported using a unique, three-segment number, which serves as a universal product identifier. See <https://www.fda.gov/drugs/drug-approvals-and-databases/national-drug-code-directory>.

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