

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

|   |   |                              |
|---|---|------------------------------|
| MEDLINE INDUSTRIES, INC.,<br>an Illinois corporation, | ) | CIVIL ACTION NO. : 20-cv-171 |
|   | ) |                              |
| Plaintiff,  | ) |                              |
|   | ) |                              |
| v.  | ) | <b>COMPLAINT</b>             |
|   | ) | <b>JURY TRIAL DEMAND</b>     |
| OFFICEMART, INC.,<br>a North Carolina corporation,    | ) |                              |
|   | ) |                              |
| Defendant.  | ) |                              |

Plaintiff, Medline Industries, Inc. ("Medline"), for its Complaint against Defendant, OfficeMart, Inc. ("OfficeMart"), alleges the following:

This action arises from OfficeMart's use of Medline's famous "MEDLINE" trademark to perpetuate a false and deceptive price-gouging scheme on healthcare organizations during the COVID-19 global pandemic.

**THE PARTIES**

1. Medline is an Illinois corporation with its principal place of business in Northfield, Illinois.
2. On information and belief, OfficeMart is a North Carolina corporation with its principal place of business in Garner, North Carolina.

**NATURE OF ACTION**

3. The world has recently been turned upside down by a global pandemic. Communities throughout the United States and across the world are coming together in the fight against COVID-19. It has never been truer – crises bring out the best and worst in people. Defendant falls into the latter of those categories.

4. Medline is the largest privately-held manufacturer and distributor of healthcare products in the world. It has used the house mark MEDLINE for over fifty years. Medline's customers have come to rely on and trust the MEDLINE brand and the high-quality products that it represents.

5. While Medline has always been a trusted partner in the healthcare industry, its customers rely on Medline now more than ever. Medline's customers – hospitals, emergency rooms, nursing home facilities, COVID-19 testing centers – are on the front lines fighting a virus with no cure or vaccine. Frontline healthcare professionals risk their lives daily to help victims of this virus. These professionals need personal protective equipment ("PPE") more than ever. Medline's array of PPE products includes masks, gowns, and gloves, among others.

6. To aid in this fight, Medline has taken several measures to increase its production and delivery of PPE to frontline workers. Some of these efforts include: doubling its acquisition and distribution of reusable facemasks and surgical gowns to supplement PPE supply; reprocessing disposable masks and gowns for additional use; restructuring manufacturing operations to produce additional volume of hand sanitizer at a 200% increase; prioritizing shipments of PPE and other supplies to areas hardest hit by COVID-19; accelerating deliveries of masks, gloves, and hand sanitizer; and initiating air freighting of PPE to the U.S. to cut three to four weeks out of the typical supply chain cycle. Further information about Medline's efforts is set forth in the attached press releases and articles attached hereto as **Exhibit A**.

7. Healthcare workers are the frontline heroes fighting COVID-19. Medline is doing all it can to protect and support them, but infringers are risking safety and valuable resources and damaging Medline's trademarks and reputation in the process. OfficeMart is offering alleged

Medline gowns, from a manufacturer that cannot be associated with Medline, at grossly-inflated prices. This must stop.

8. While frontline workers are in desperate need of PPE, including medical gowns, OfficeMart has attempted to use the well-known MEDLINE mark to sell medical gowns at prices at least 200-300% higher than Medline's average selling price. Moreover, OfficeMart claims that the alleged MEDLINE medical gowns are made in Mexico, although Medline has no factories making medical gowns in Mexico and has not authorized any Mexican manufacturer to make gowns. OfficeMart has misled Medline's customers into believing it has millions of MEDLINE medical gowns and that Medline has authorized inflated prices. Despite the high demand for medical gowns, Medline has not raised its prices.

9. Medline continues its efforts to provide medical equipment and gear to battle this pandemic. Unfortunately, those efforts include combatting wrongdoers who in times of need take advantage of healthcare workers for financial gain. To protect its customers from confusion, mistake, and deception and to protect the goodwill associated with the MEDLINE mark, Medline brings this lawsuit against OfficeMart for federal and state trademark infringement, unfair competition, false association, false endorsement, false designation of origin, and trademark dilution.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 because the action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and this lawsuit is between citizens

of different states. This Court has supplemental jurisdiction over Medline's state law claims pursuant to 28 U.S.C. § 1367(a).

11. Venue is proper in this federal judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Medline's claims occurred in this district and OfficeMart is a resident of this district.




### **FACTS**

#### **A. Medline is a Market Leader in Healthcare Supplies**

12. Medline is the largest privately held manufacturer and distributor of healthcare supplies in the United States. Since at least as early as 1967, Medline has offered a wide variety of healthcare products and services under its MEDLINE marks. Today, Medline's products can be found in most hospitals, extended-care facilities, surgery centers, physician offices, home health agencies, and retail outlets.

13. Medline coined the term "Medline" over fifty years ago for use as its company name as well as its house mark. Since that time, Medline has used this distinctive name and mark in connection with its entire range of offerings. Medline's products and services offered under its MEDLINE marks include hospital gowns, scrubs, lab coats, and other medical apparel; surgical and laboratory equipment and supplies; wound care dressings and supplies, incontinence management products and solutions; a wide variety of over-the-counter medications and remedies; and clinical and educational programs. In fact, Medline is the market leader in several product categories, including medical drapes and gowns, medical examination gloves, durable medical equipment, and surgical procedure tray kits.

14. Medline's longstanding trademark rights in its MEDLINE mark are reflected in part by its many United States federal trademark registrations, including:

| MARK   | REG. NO.           | CLASSES   |
|--|--------------------|---|
| MEDLINE  | Reg. No. 897,881   | Class 10  |
| MEDLINE  | Reg. No. 894,673   | Class 22  |
| MEDLINE  | Reg. No. 894,684   | Class 5   |
| MEDLINE  | Reg. No. 1,810,374 | Classes 3, 5, 10, and 16  |
| MEDLINE  | Reg. No. 3,778,944 | Class 44  |
|   | Reg. No. 3,311,664 | Classes 3, 5, 9, 10, 12, 16, 20, 21, 24, 25, 27, and 35             |
| MEDLINE  | Reg. No. 3,311,898 | Classes 3, 9, 11, 12, 16, 20, 21, 22, 24, 25, 27, and 35            |
| MEDLINE  | Reg. No. 3,365,696 | Classes 5 and 10  |
| MEDLINE  | Reg. No. 3,301,915 | Class 24  |
|   | Reg. No. 5,166,882 | Classes 3, 5, 9, 10, 11, 12, 16, 20, 21, 22, 24, 25, 27, 35, and 44 |
|  | Reg. No. 5,171,995 | Classes 3, 5, 9, 10, 11, 12, 16, 20, 21, 22, 27, 35 and 44          |

(collectively referred to herein as "Medline Marks"). These registrations are valid, subsisting and constitute conclusive evidence of Medline's exclusive right to use the Medline Marks for the goods and services specified in the registrations. 15 U.S.C. § 1115(b). Medline registrations Reg. Nos. 897,881; 894,673; 894,684; 1,810,374; 3,778,944; 3,311,664; 3,311,898; 3,365,696 and 3,301,915 are incontestable. 15 U.S.C. § 1065. Copies of Medline's trademark registration certificates and USPTO TESS printouts are attached hereto as **Exhibit B**.

15. For decades, products offered under the Medline Marks have enjoyed enormous commercial success. Medline offers over 550,000 different products and has accrued \$11.7 billion in overall company sales. Each year, 8 million medical procedures in the United States use MEDLINE drapes and gowns. Medline was ranked number 32 on the Forbes 2018 list of largest privately held companies in United States.

16. Over the years, Medline has invested millions of dollars promoting products under its Medline Marks. Medline promotes its products featuring the Medline Marks in the United States through various means, including online, through social media, print media, and other promotional and point of sale materials (e.g., brochures). Medline has also enjoyed widespread and substantial media coverage and critical acclaim.

17. As a result of Medline's extensive sales, promotion, and advertising of its products, the Medline Marks have become famous among the general consuming public of the United States, and represent an extraordinarily valuable goodwill to Medline.

18. Medline's famous marks do more than identify it as the source of its products and services – the Medline Marks represent high quality. More than ever, Medline's customers and end-consumers rely on the MEDLINE brand for their personal well-being and safety as they take their place on the front-line in the fight against COVID-19.

**B. OfficeMart's Attempted Sales of Fake MEDLINE PPE and Price Gouging**

19. Medline is proud to support medical professional heroes on the front lines of the fight against COVID-19. Sadly, but perhaps not surprisingly, scammers are springing up to profit on the extraordinary need for PPE. OfficeMart's actions are the type of unlawful conduct that puts frontline responders at risk, as well as damaging Medline's reputation.

**1. OfficeMart's Attempted Sales to the University of Vermont Medical Center**

20. On information and belief, on or about April 13, 2020, Mike Tuohey, the national sales manager of OfficeMart, e-mailed the University of Vermont Medical Center, one of Medline's customers.

21. On information and belief, Mr. Tuohey's April 13th e-mail was directed to Charles Miceli, Chief Supply Chain Officer Network Vice President for the University of

Vermont Medical Center ("UVMC"). The subject-line of the e-mail was "Read: New Ventilator - Found 200 in Germany Can Ship Monday/Tuesday." Mr. Miceli responded and stated that UVMC did not need ventilators, but that they were looking for re-usable gowns. Mr. Tuohey responded and offered to sell "Medline Gowns (Mexico)" in quantities of 7 million, 11 million, and 20 million, priced as follows:

**Medline Gowns (Mexico): 5-7 days shipping**

|         |                      |             |
|---------|----------------------|-------------|
| Level 1 | 20 million available | \$6.15/each |
| Level 2 | 11 million available | \$6.40/each |
| Level 3 | 7 million available  | \$7.15/each |

22. These prices are at least 200-300% higher than the prices Medline actually charges for sterile surgical gowns, and even more outrageous compared to Medline's prices for its non-sterile isolation gowns.

23. In his April 13th e-mail, Mr. Tuohey further stated:

We have the MedLine gowns, is that what you're looking for?

We have them locked up until today, but just sold 6 million of them.

I was just notified that the gowns in Mexico have gone under contract with another company for production. Tomorrow will be the last day for us to grab some of the remaining stock before the other company takes it.

We are working on getting a relationship with another manufacturing plant however that is still in the works. My understanding is we'll be able to get some orders with this manufacturer again but it might be a couple weeks.

So any orders we don't get out tomorrow we'll have to wait until their production run is done. As a result of this they have increased the price \$0.50.

Even with a 50 Cent increase these are still the lowest price gowns that I have seen anywhere. These gowns are ready to ship so this is the fastest way for them to get them.

I'd be happy to speak with any of your clients if they have any questions for me. We can also set up the escrow very quickly to assist them.

Just remember the funds must be released from the escrow when the products are being shipped not when they arrive. We will have somebody on the ground verifying everything and if the client desires they could also send to somebody there.

24. Mr. Tuohey also attached to his e-mail Medline's FDA 510(k) pre-market approval letter for "Eclipse surgical gowns" dated July 4, 2019 and pages from an old Medline catalog featuring isolation gowns. The FDA letter is a publicly-available document that is downloadable on the internet from the FDA's website. The surgical gowns referenced in the FDA letter are not the same products as the isolation gowns featured in the Medline catalog pages provided by Mr. Tuohey.

25. Further, on information and belief, the FDA approval pages for "Indications of Use" provided by Mr. Tuohey were altered to include "OfficeMart.com" letterhead and contact information for OfficeMart at the bottom of the page. Copies of Mr. Tuohey's e-mails and the accompanying altered FDA certificate and catalog pages are attached hereto as **Exhibit C**.

## **2. OfficeMart's Attempted Sales to RWJBarnabas**

26. On or about April 15, 2020, RWJBarnabas Health, another Medline customer, notified Medline that Defendant OfficeMart was offering to sell it large quantities of its gowns.

27. On information and belief, on April 15, 2020, Mike Tuohey e-mailed Diane Checchio of RWJBarnabas Health. The subject line of his e-mail was "Last Chance for MedLine Gowns to be ordered." In his April 15, 2020 e-mail, Mr. Tuohey offered to sell 500,000 or one million gowns to RWJBarnabas Health. RWJBarnabas's System Vice President, Sourcing and Contracts, Philip Maneri, asked Mr. Tuohey for a sample. In response, Mr. Tuohey stated:

In normal times we could probably get you one of each level, but unfortunately now they're selling out in large bulk orders so fast that the manufacturer won't do it.

I attached the pamphlet for the gowns and the FDA certs etc...



I just talked with 2 states that will be putting in multi million gown orders.

If you are considering a larger order, I can get it submitted ahead of the State orders so you get your gowns first.

28. On information and belief, in another e-mail from Mr. Tuohey to Ms. Checchio,

Mr. Tuohey wrote the following:

I was just notified that the gowns in Mexico have gone under contract with another company for production. Tomorrow will be the last day for us to grab some of the remaining stock before the other company takes it.

We are working on getting a relationship with another manufacturing plant however that is still in the works. My understanding is we'll be able to get some orders with this manufacturer again but it might be a couple weeks.

So any orders we don't get out tomorrow we'll have to wait until their production run is done. As a result of this they have increased the price \$0.50.

Even with a 50 Cent increase these are still the lowest price gowns that I have seen anywhere. These gowns are ready to ship so this is the fastest way for them to get them.

I'd be happy to speak with any of your clients if they have any questions for me. We can also set up the escrow very quickly to assist them.

Just remember the funds must be released from the escrow when the products are being shipped not when they arrive. We will have somebody on the ground verifying everything and if the client desires they could also send to somebody there.

Mr. Tuohey also provided in that same e-mail the following pricing information:

**Medline Gowns (Mexico): 5-7days shipping**

Level 1 1.2 million \$6.20/each

Level 2 7 million available \$6.45/each

Level 3 2,000 available \$7.20/each

29. On information and belief, Ms. Checchio wrote to Mr. Tuohey and asked him to confirm whether the gowns were "Medline gowns." Mr. Tuohey responded "Yes" and stated that he "just got notified have to do the wire [payment] at time of order, or they won't ship."

30. On information and belief, Mr. Tuohey then provided Ms. Checchio with wire transfer information to a bank account with "First National Bank" in the name of "OfficeMart, INC."

31. On information and belief, Mr. Tuohey also attached to one of his e-mails to Ms. Checchio the same FDA 510(k) pre-market approval letters for Eclipse surgical gowns that were provided to UVMC, along with some of the same pages from the old Medline catalog featuring isolation gowns. Copies of Mr. Tuohey's e-mails and the accompanying FDA letter and catalog pages are attached hereto as **Exhibit D**.

32. Shortly after receiving Mr. Tuohey's solicitation e-mail, Bob Taylor, the Senior Vice President of Supply Chain for RWJBarnabas, e-mailed Medline's Sales Account Representative, Brendan Dooley, asking "why is an office supply company offering to sell us Medline products?" Mr. Taylor further stated, "If I find that Medline is selling product into non-healthcare channels it will be the end of any business relationship." A copy of Mr. Taylor's April 15, 2020 e-mail to Brendan Dooley is attached hereto as **Exhibit E**.

**C. OfficeMart's Offer of Fake MEDLINE PPE**

33. Medline has not authorized OfficeMart or its representative, Mike Tuohey, to sell MEDLINE gowns.

34. Medline does not manufacture nor have an authorized manufacturer of its gowns in Mexico.

35. On information and belief, Medline has not sold genuine gowns to either OfficeMart or Mike Tuohey.

36. On information and belief, Medline is not aware of any third party who has previously purchased MEDLINE gowns in the very large quantities offered by OfficeMart or Mike Tuohey, namely, 20 million, 11 million, and 7 million, to UVMC or RWJBarnabas Health. Indeed, on information and belief, it is unlikely that any source can offer that many gowns at one time given the current COVID-19 crisis and the high demand for PPE products like gowns.

37. On information and belief, Mike Tuohey provided conflicting information on whether OfficeMart was selling surgical or isolation gowns. Regardless, Mike Tuohey's offer to sell MEDLINE gowns at \$6.15, \$6.40, or \$7.15 per gown is thus inflated to 200-300% of Medline's actual selling price for surgical gowns and even more for isolation gowns. Medline has not increased the prices of its gowns during the COVID-19 crisis.

38. Thus, on information and belief, OfficeMart is falsely claiming to sell MEDLINE gowns obtained from a manufacturer in Mexico in extraordinary quantities of 20 million, 11 million, and 7 million at prices at least three-times higher than Medline's usual prices.

### **FIRST CAUSE OF ACTION**

#### **Trademark Infringement – 15 U.S.C. § 1114**

39. Medline realleges the allegations contained in Paragraphs 1 through 38 above as if fully set forth herein.

40. Medline is the exclusive owner of each of the federally-registered Medline Marks.

41. Medline has the exclusive right to use each of the Medline Marks in United States commerce for, inter alia, advertising, promoting, offering for sale, and selling goods including MEDLINE gowns.

42. Medline's exclusive rights in and to the Medline Marks predate any rights that OfficeMart could establish in and to any mark that consists of "Medline" in whole and/or in part.

43. OfficeMart is using the Medline Marks in commerce to advertise, promote, offer for sale, and sell MEDLINE gowns.

44. OfficeMart's use of the Medline Marks in commerce on, for, and/or in connection with the advertising, promotion, offering for sale, and/or sale of products, as alleged herein, is causing and is likely to continue causing consumer confusion, mistake, and/or deception about whether OfficeMart is Medline, and/or whether OfficeMart is a licensee, authorized distributor, and/or affiliate of Medline and/or products that Medline offers under its Medline Marks.

45. Based on Medline's longstanding and continuous use of the Medline Marks in United States commerce, as well as the federal registration of the Medline Marks, OfficeMart had actual and constructive knowledge of Medline's superior rights in and to the Medline Marks when OfficeMart began using the Medline Marks as part of its bad-faith scheme to confuse and deceive consumers as alleged herein.

46. Upon information and belief, OfficeMart adopted and uses the Medline Marks in furtherance of OfficeMart's willful, deliberate, and bad-faith scheme of exploiting the extensive consumer goodwill, reputation, fame, and commercial success of products that Medline offers under its Medline Marks including, without limitation, MEDLINE gowns.

47. Office Mart's use of the Medline Marks is, on information and belief, done with knowledge that such imitation is intended to cause confusion, or to cause mistake, or to deceive.

48. On information and belief, OfficeMart has made, and will continue to make, substantial profits and gain from its unauthorized use of Medline's Medline Marks, to which Defendant is not entitled at law or in equity.

49. OfficeMart's aforesaid acts constitute infringement of Medline's registered Medline Marks, in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

50. On information and belief, OfficeMart's aforesaid acts of infringement are willful and intentional.

51. Medline has suffered, and will continue to suffer, irreparable harm from OfficeMart's acts and conduct complained of herein, unless restrained by law. The damage suffered by Medline is exacerbated by the fact that Defendant is advertising and offering for sale MEDLINE gowns at inflated prices in exorbitant amounts during a global pandemic when Medline's products are necessary to protect public health. Such conduct has caused complaints from Medline's customers regarding the manner in which Medline's gowns are purportedly sold and distributed during the COVID-19 pandemic. Medline's mission is to provide products, education, and support to healthcare professionals, especially during times of crisis. OfficeMart's conduct imminently and irreparably harms Medline and the MEDLINE brand.

52. OfficeMart's aforesaid acts greatly and irreparably damage Medline, and will continue to cause damage unless restrained by this Court. Therefore, Medline is without an adequate remedy at law.

### **SECOND CAUSE OF ACTION**

#### **Unfair Competition, False Association, and False Designation of Origin – 15 U.S.C. § 1125**

53. Medline realleges the allegations contained in Paragraphs 1 through 52 above as if fully set forth herein.

54. OfficeMart's unauthorized use of the Medline Marks has caused, and is likely to continue causing, confusion, mistake, or deception, in that purchasers and others have assumed, and are likely to continue assuming, that OfficeMart's "Medline" products are put out by

Medline, or that they are sponsored by Medline or connected or affiliated with Medline's MEDLINE products.

55. OfficeMart's use of the Medline Marks is, on information and belief, done with knowledge that such imitation is intended to cause confusion, or to cause mistake, or to deceive.

56. OfficeMart's aforesaid acts constitute unfair competition, in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

57. On information and belief, OfficeMart's aforesaid acts of unfair competition are willful and intentional.

58. OfficeMart's aforesaid acts greatly and irreparably damage Medline, and will continue to cause damage unless restrained by this Court. Therefore, Medline is without an adequate remedy at law.

### **THIRD CAUSE OF ACTION**

#### **Trademark Dilution – 15 U.S.C. § 1125**

59. Medline realleges the allegations contained in Paragraphs 1 through 58 above as if fully set forth herein.

60. The Medline Marks were famous before and at the time OfficeMart began using the Medline Marks in commerce on, for, and/or in connection with the advertising, promotion, offering for sale, and/or sale of products, including, without limitation, gowns.

61. OfficeMart's use of the famous Medline Marks in commerce on, for, and/or in connection with the advertising, promotion, offering for sale, and/or sale of products, including, without limitation, PPE, is likely to dilute the distinctive quality of the famous Medline Marks.

62. OfficeMart's acts as described herein are likely to and have tarnished Medline's valuable business reputation and goodwill.

63. OfficeMart's acts are likely to cause and have caused dilution of the famous Medline Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

64. On information and belief, OfficeMart's aforesaid acts of dilution have been committed deliberately and willfully, with knowledge of Medline's exclusive rights and goodwill in the Medline Marks and with a bad faith intent to cause dilution of the Medline Marks.

65. OfficeMart's aforesaid acts greatly and irreparably damage Medline, and will continue to cause damage unless restrained by this Court. Therefore, Medline is without an adequate remedy at law.

#### **FOURTH CAUSE OF ACTION**

##### **Violation of North Carolina Unfair and Deceptive Trade Practices Act –**

##### **N.C. Gen. Stat. § 75-1.1**

66. Medline realleges the allegations contained in Paragraphs 1 through 65 above as if fully set forth herein.

67. OfficeMart's unauthorized use of the Medline Marks has caused, and is likely to continue causing, confusion, mistake, or deception, in that purchasers and others have assumed, and are likely to continue assuming, that OfficeMart's "Medline" products are put out by Medline, or that they are sponsored by Medline or connected or affiliated with Medline's MEDLINE products.

68. OfficeMart's unauthorized use of the Medline Marks is unethical and unscrupulous and therefore unfair because OfficeMart is charging inflated prices for medical gowns during the COVID-19 global pandemic when need and demand for such products is great and so OfficeMart's acts of price-gouging harm the public interest.

69. OfficeMart's unauthorized use of the Medline Marks constitutes egregious and aggravating circumstances because OfficeMart is using the Medline Mark to charge inflated prices for medical gowns during the COVID-19 global pandemic when need and demand for such products is great and so OfficeMart's acts of price-gouging harm the public interest.

70. OfficeMart's unauthorized use of the Medline Marks is made in and affects commerce in North Carolina and between North Carolina and other states.

71. OfficeMart's aforesaid acts proximately caused injury to Medline in the form of damages and injury to Medline's reputation.

72. OfficeMart's aforesaid acts constitute violations of the North Carolina Unfair and Deceptive Trade Practices Act – N.C. Gen. Stat. § 75-1.1.

73. On information and belief, OfficeMart's aforesaid acts of unfair competition are willful and intentional.

74. OfficeMart's aforesaid acts greatly and irreparably damage Medline, and will continue to cause damage unless restrained by this Court. Therefore, Medline is without an adequate remedy at law.

## **FIFTH CAUSE OF ACTION**

### **Common Law Unfair Competition**

75. Medline realleges the allegations contained in Paragraphs 1 through 74 above as if fully set forth herein.

76. OfficeMart's use of the Medline Marks has caused, and is likely to continue causing, confusion, mistake, or deception, in that purchasers and others have assumed, and are likely to continue assuming, that OfficeMarts "Medline" products are put out by Medline, or that they are sponsored by Medline or connected or affiliated with Medline's products.



77. OfficeMart's use of the MEDLINE Marks is, on information and belief, done with knowledge that such imitation is intended to cause confusion, or to cause mistake, or to deceive.

78. OfficeMart's aforesaid acts constitute unfair competition, in violation of North Carolina common law.

79. On information and belief, OfficeMart's aforesaid acts of unfair competition are willful and intentional.

80. OfficeMart's aforesaid acts greatly and irreparably damage Medline, and will continue to cause damage unless restrained by this Court. Therefore, Medline is without an adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Medline prays for relief as follows:

A. An Order:

1. Finding in Medline's favor on each Cause of Action asserted herein;
2. Preliminarily and permanently enjoining OfficeMart, its agents, servants, employees, officers and all persons and entities in active concert and participation with them from using the Medline Marks (or any other mark(s) confusingly similar thereto) for, on, and/or in connection with the manufacture, distribution, advertising, promoting, offering for sale, and/or sale of any goods or services, including, without limitation, gowns;
3. Preliminarily and permanently enjoining OfficeMart, its agents, servants, employees, officers and all persons and entities in active concert and participation with them from falsely representing itself as being a distributor, authorized retailer, and/or licensee of Medline and/or any of

Medline's products, including, without limitation, gowns, and/or otherwise falsely representing to have an association or affiliation with, sponsorship by, and/or connection with, Medline and/or any of Medline's products; and

4. Ordering OfficeMart to file with the Court and serve upon Medline's counsel, within 30 days after service of the order of injunction, a report in writing under oath setting forth in detail the manner and form in which OfficeMart has complied with the injunction;

- B. An Order that OfficeMart provide Medline with a full accounting of all manufacture, distribution, and sale of products under the Medline Marks, as well as all profits derived therefrom;
- C. An Order that OfficeMart pay to Medline all of OfficeMart's profits derived from the sale of infringing goods offered under the Medline Marks;
- D. Award Medline treble actual damages pursuant to N.C. Gen. Stat. § 75-16;
- E. Find that Defendant's acts and conduct complained of herein render this case are "exceptional";
- F. Award Medline its costs and reasonable attorneys' fees incurred in this matter;
- G. An Order that OfficeMart destroy all unauthorized goods and materials within the possession, custody, and control of OfficeMart that bear, feature, and/or contain any copy or colorable imitation of the Medline Marks;
- H. Grant Medline a trial by jury on all issues so triable;
- I. Award Medline pre-judgment and post-judgment interest against OfficeMart; and
- J. Award Medline such other relief that the Court deems just and equitable.

Dated: April 23, 2020

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

By: /s/ Ashly Boesche (*special admission pending*)

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