

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CHEYTAC USA, LLC.

Plaintiff,

VS.

NEXTGEN TACTICAL, LLC,
and DENNIS OMANOFF,
individually,

Defendants.

§ § § § § § § § § § § §

Civil Action No:

17-60925-CIV-ALTONAGA/Goodman

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff, CHEYTAC USA, LLC, (“CheyTac”), by and through undersigned attorneys, hereby files this Amended Complaint, complaining of the actions of NEXTGEN TACTICAL, LLC, a Florida Limited Liability Company (“NextGen”) and Dennis Omanoff, an individual (“Omanoff”), (collectively, “Defendants”).

I. PRELIMINARY STATEMENT

1. CheyTac is a pioneer and acknowledged leader in the development and design of its patented balance control flight projectiles (bullets) and high caliber tactical rifles (“CheyTac Products”) which enable these projectiles to travel further and with greater accuracy than competitors. CheyTac Products are widely recognized high-technology products used by military and law enforcement agencies around the world. CheyTac has multiple engineering locations and sells products in over 10 countries worldwide, including a facility in Charleston, South Carolina. (*See* DE 1, Exh.1, Declaration of Joseph Warren. (“Warren”) at ¶¶ 4-11).

2. CheyTac employs 5 full time employees and over 10 consultants and sells its products online through its website www.cheytac.com. CheyTac's estimated annual revenue is between \$700,000 and \$1,000,000.

3. NextGen is a Florida limited liability company started in April 2017 by Omanoff with its principal place of business located in Cocoa Beach, Florida. All the members of NextGen are former high-level employees, including the former Chief Executive Officer, of CheyTac. (DE 1, Exh. 1, Warren Decl. at ¶¶ 33, 36; *See also* DE 1, Exh. 20.)

4. Several of CheyTac's most award-winning and proprietary products, "M200 and M300 Intervention" rifles and .375 CT and .408CT ("CheyTac Products") are the foundation to this lawsuit. The M200 and M300 Intervention rifles include an interchangeable .375 and .408 caliber barrel that has garnered international recognition and has been ranked the #1 Sniper Rifle in the world by the Military Channel. The M200 and M300 incorporate a proprietary lands and groove barrel design and receiver connection which minimize drag forces on the munitions by placing a specific spin rate on the munitions. The proprietary spin rate and patent method enable CheyTac's projectiles to travel up to 2.6 miles. (DE 1, Exh. 1, Warren Decl. at ¶ 9; *See also* DE 1, Exh. 24.)

5. CheyTac has acquired through assignment U.S. Patent No. 6,629,669 titled "Controlled Spin Projectile" to protect these methods of imparting optimal spin on CheyTac ammunition. (DE 1, Exh. 1, Warren Decl. at ¶ 32; *See also* DE 1, Exhs. 19 and 28.)

6. CheyTac labels its .375 and .408 munitions as ".375CT" and ".408CT" on its website and packaging.

7. CheyTac's .375CT and .408CT munitions have created a commercial impression amongst sophisticated purchasers who expect the term "CT" to be trademarked and originate

from CheyTac. (DE 1, Exh. 1, Warren Decl. at ¶¶ 6, 8-10.)

8. The term “CT” is an abbreviation for “CHEYTAC” and the two terms have identical connotations.

9. Several trade secrets incorporated into the M200, M300, and .375CT and .408CT caliber munitions give CheyTac a competitive advantage.

10. Defendant Omanoff, acting as a Co-Trustee of the Omanoff Family Trust (“Omanoff Trust”) with Elaine Omanoff, owned 6,000,000 shares of in CheyTac (approximately 1/3 of all CheyTac shares) as of September 28, 2015. (DE 1, Exh. 1, Warren Decl. at ¶ 15; *See also* DE 1, Exh. 8.)

11. On September 28, 2015, Omanoff was appointed Chief Executive Officer of CheyTac and executed a Proprietary Rights Agreement (“PRA”) with CheyTac.

12. Omanoff’s PRA contained both non-competition and non-solicitation clauses. (DE 1, Exh. 1, Warren Decl. at ¶ 16; *See also* DE 1, Exhibit 9.)

13. On September 28, 2016 CheyTac executed a Membership Interest Purchase Agreement for 6,000,000 shares with DMB Technology LLC. (*See* DE 1, Exh. 13.)

14. On February 11, 2016, DMB Technology LLC shares were repurchased pursuant to the Membership Interest Purchase Agreement.

15. On February 12, 2016, 3,000,000 shares were issued to Omanoff, the Omanoff Family Trust, and Praecisa Tenuras LLC.

16. CheyTac’s reputation and goodwill suffered throughout 2016 under Omanoff’s leadership as CEO prior to Omanoff’s resignation.

17. Upon Omanoff’s resignation, CheyTac executed with Omanoff a “Membership Interest Purchase Agreement and Settlement Agreement” (“Omanoff Membership

Agreement”) to purchase all 9,000,000 shares held by Omanoff and the Omanoff Family Trust. (*See* DE 1, Exhs. 14 and 30.)

18. The Omanoff Membership Agreement included a non-disparagement clause. (DE 1, Exh. 1, Warren Decl. at ¶ 27; *See also* DE 1, Exh. 14.)

19. In March 2017, Omanoff created a NextGen Products Flyer (“Flyer”) depicting a new brand of rifles and ammunition that directly compete with CheyTac Products. (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-40; *See* DE 1, Exh. 21.)

20. Omanoff emailed a copy of the NextGen Flyer to at least one known, longtime CheyTac client, Jord Carlet. (DE 1, Exh. 1, Warren Decl. at ¶ 39; *See* DE 1, Exhs. 21-22.)

21. In April 2017, NextGen was registered as Florida Limited Liability Company with its principal place of business in Cocoa Beach, Florida. Omanoff is listed as the Managing Member of NextGen. (DE 1, Exh. 1, Warren Decl. at ¶ 33; *See* DE 1, Exh. 20.)

22. CheyTac seeks a permanent injunction to stop NextGen’s continued use and sale of CheyTac’s patented technology and trade secrets and to prevent the otherwise inevitable disclosure to NextGen of CheyTac’s highly confidential information, trade secrets and intellectual property through CheyTac’s former employees.

23. CheyTac also seeks a temporary injunction to prevent any destruction or alteration of documents and other evidence, prevent further infringement of CheyTac’s patents and trademarks, and prevent further hiring of CheyTac’s employees or former employees, and order NextGen to refrain for a reasonable period from marketing, selling, or distributing any product in the high caliber rifle and ammunition industry, and any products that competes with CheyTac or falsely designates its goods as CheyTac Products. CheyTac further seeks a constructive trust as set out below.

II. PROCEDURAL BACKGROUND

A. The Parties

24. Plaintiff CHEYTAC USA, LLC is a limited liability company organized under the laws of Georgia, with its principal place of business at 225 St. Phillips Street, Charleston, South Carolina 29403. (DE 1, Exh. 1, Warren Decl. at ¶ 3; *See* DE 1, Exh. 2.)

25. Defendant NEXTGEN TACTICAL, LLC is a limited liability company formed under the laws of the State of Florida, with its principal places of business at 801 S. Atlantic Avenue, Cocoa Beach, FL 32931. (DE 1, Exh. 1, Warren Decl. at ¶ 33; *See* DE 1, Exh. 20.)

26. Defendant Dennis Omanoff is an individual who resides in Cocoa Beach, FL. Dennis Omanoff is a citizen of Florida and is the Managing Member of NEXTGEN TACTICAL LLC. (*See* DE 1, Exh. 20.)

B. Jurisdiction and Venue

27. This is a civil action seeking monetary and injunctive relief for patent infringement under 35 U.S. U.S.C. §§ 271, 281-285, misappropriation of trade secrets under 18 U.S.C. § 1832, trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), unfair competition, false designation of origin, and trademark dilution under Section 43(a) and (c) of the Lanham Act, 15 U.S.C. §§ 1125(a) and (c), trade dress infringement the Lanham Act, 15 U.S.C. § 1127, and for substantial and related claims of breach of contract, breach of loyalty, unjust enrichment, tortious interference with a contract, and unfair and deceptive trade practices under the statutory and common laws of the States of Florida and Georgia, all arising from the Defendants unauthorized misappropriation of trade secrets and unauthorized use of the CheyTac's patent and trademarks in connection with the manufacture, distribution, marketing, advertising, promotion, offering for sale, and/or sale of

NextGen's high caliber rifles and ammunition. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of seventy-five thousand dollars (\$75,000) and arises under the laws of the United States.

28. This Court has personal jurisdiction over NextGen because it is registered in Florida and maintains a principal place of business in Florida. NextGen conducts and solicits business with parties located in Florida, and the causation of tortious injury within the state by acts or omission outside the state.

29. This Court has personal jurisdiction over Omanoff because he is a resident of Florida, owns and operates a Florida registered company, the transaction of business in state, the contracting to market, distribute and sell goods in the state, the derivation of revenue from goods consumed in the state, and the causation of tortious injury in the state by acts or omission outside the state.

30. The Court has subject matter jurisdiction pursuant to § 39 of the Federal Trademark Act, 15 U.S.C. § 1121 and the Judicial Code, 28 U.S.C. §§ 1331, 1332(a) and (c), and 1338(a) and (b) of the federal law claims. This Court has supplemental jurisdiction over CheyTac's state law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the claims in this action within the Court's original jurisdiction that they form part of the same case or controversy.

31. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or §§ 1400(a) and (b).

III. FACTUAL BACKGROUND

A. The Technology in the Context of the Dispute

32. CheyTac began manufacturing high caliber rifles and ammunition in 2011 and has

since become a leader in ballistic and high caliber rifle technology. CheyTac products are sold to law enforcement and military agencies worldwide, which rely on its proprietary and patented technology in protecting vital national interests and maintaining peace and stability. (DE 1, Exh. 1, Warren Decl. at ¶ 11.)

33. To maintain its position as an industry leader, CheyTac expends substantial time, resources and expense developing confidential business information, trade secrets, and intellectual property. CheyTac's business depends on the protection of its trade secrets and intellectual property around the world. CheyTac customers rely on CheyTac's craftsmanship, proprietary designs, and patented "balanced flight" to acquire and engage targets at greater distances than competitors. (DE 1, Exh. 1, Warren Decl. at ¶¶ 6-8, Exhibits 28-32.)

34. For years, ballistic designers have attempted to create a projectile that travels over 2 miles accurately without experiencing significant drag forces. CheyTac Products have solved these challenges by combining a proprietary rifle barrel lands and grooves with its "balanced flight" munitions which allow its bullets to travel up to 2.6 miles. (DE 1, Exh. 1, Warren Decl. at ¶ 32; *See* Exhibit 19.)

35. CheyTac has substantially improved its ballistic and high caliber rifle barrel designs from its basic design by creating the M200 Intervention rifle ("M200") and M300 Intervention rifle ("M300") and .375CT and .408CT munitions. CheyTac has invested thousands of dollars and man-hours to improve its brand and product technology. (DE 1, Exh. 1, Warren Decl. at ¶¶ 6, 8.)

36. Only recently, and after substantial investment by CheyTac, has it been able to achieve global recognition as one of the top firearms and munitions manufacturers in the

world. (DE 1, Exh. 1, Warren Decl. at ¶¶ 6-10.)

37. The M200, M300, .375CT, and .408 CT open new business opportunities for CheyTac because of its unique and proprietary designs and patterns. Consequently, damage to CheyTac's M200, M300, .375CT, and .408CT not only hurts the market for high performance ballistics, it also harms CheyTac prospects and the broad opportunities opened to it. The wrongful conduct of the Defendants has harmed and continues to harm CheyTac's revenue and opportunities.

38. The balance flight ballistic technology and rifle barrel design of the M200, M300, .375CT, and 408CT have become CheyTac's most popular products and cornerstone to CheyTac's research and investment.

B. CheyTac's Trade Secrets

39. CheyTac's business success is highly dependent upon extensive research and development activity. CheyTac's design specifications, architecture, technical and engineering data, laboratory testing, and benchmark testing give CheyTac market and performance advantages, and are not generally known by CheyTac's competitors. The precise nature of and identity of new products and features under development and the various creative and practical approaches taken to implement certain types of product development are not generally disclosed to CheyTac's best customer, much less its competitors. (*See* DE 1, Exh. 9-10.)

40. Omanoff, as former Chief Executive Officer at CheyTac, had access to the proprietary ballistics and rifle barrel designs, customer lists, email, expense and travel reports, desktop and laptop computers, suppliers, hand-held smart devices, and office files and records. On information and belief, Omanoff and John Taylor misappropriated

CheyTac's proprietary and trade secret information when they founded NextGen to directly compete against Cheytac. Such information would be valuable to NextGen and would enable NextGen to rapidly produce competing products that cause consumer confusion as source and quality of the products. Access to CheyTac's ballistic and rifle barrel specifications, technical and engineering data, and customer lists would make it easier for NextGen to design similar products with the same appearance and designs as CheyTac Products. This would give NextGen improper but equal footing with third-party customers and market channels.

41. CheyTac has advanced its ballistic and rifle barrel technology with several features that provide substantial competitive advantage to CheyTac. CheyTac's conceptual and practical implementation strategies and means and methodologies to implement these strategies are highly sensitive and protected trade secrets. Any competitor would have to spend a substantial amount of time and money to reverse engineer and replicate the advantages provided by the trade secrets in CheyTac Products.

42. CheyTac's business is supported by confidential and proprietary commercial information and trade secrets gained through investing years of hard work and hundreds of thousands of dollars. The confidential and proprietary information and trade secrets that afford CheyTac an advantage over its competitors consist, at least in part, of the following:

- a. Future design plans and roadmaps for ballistic and rifle barrel design features and attributes including additional systems implementing the same;
- b. Unpublished ballistic and rifle system design and performance specifications;
- c. Identities of CheyTac's customers and their needs and interests, as well as information about their respective key decision makers;

- d. Information on CheyTac's licensing structure and terms and pricing;
- e. CheyTac's compensation plans including salary and incentive plans and related information;
- f. Marketing plans for new releases and related products;
- g. CheyTac's phone lists and email addresses and other contact information;
- h. Confidential alliances and partnerships and their terms and conditions
- i. Information regarding the position, performance history, skill-set, and identity of CheyTac's engineers, gunsmiths, managers, marketing personnel and consultants, including the organizational structure.

43. CheyTac takes numerous precautions to maintain the confidentiality of its confidential information, trade secrets, and intellectual property. All employees must sign Confidentiality and Proprietary Rights Agreements and Invention Assignment Agreements. Physical access to CheyTac's facilities is limited to those authorized through a key card or code system. CheyTac employees escort visitors while on the premises and limit access to just those portions relevant to the business purpose of the visitor, and any information shared is on a need-to-know basis. The entry and exit of the facility is monitored with security cameras. A multi-leveled security password-linked database and document access system allow access to documents and information on a need-to-know basis.

44. As a condition of his employment, Omanoff certified that he read, understood, and would comply with the policies contained within the CheyTac's "Principles for Growing Value." (*See* DE 1, Exhs. 11 and 27.)

C. Plaintiff's Intellectual Property Rights

45. On October 7, 2003, U.S. Pat. No. 6,629,669 ("'669") titled "Control Spin

Projectile” was duly and legally issued by the United States Patent and Trademark Office to inventor Warren S. Jensen. (DE 1, Exh. 1, Warren Decl. at ¶ 32; DE 1, Exh. 19.)

46. The ’669 Patent and claims relate to the methods and applications of controlling bullet spin rates. (*See* DE 1, Exh. 19.)

47. The ’669 Patent is currently in full force and effect.

48. All right, title and interest in the ’669 Patent has been assigned to CheyTac, who is the sole owner of the ’669 Patent. (*See* DE 1, Exh. 28.)

49. On April 29, 2003, CheyTac registered the word mark “CHEYTAC” with the United States Patent and Trademark Office (“USPTO”) on the Principal Register (U.S. Registration No. 2,711,809), for use in connection with “ammunition” (the “CheyTac Word Mark”). A renewal was filed on May 24, 2013. Under Section 7(b) of the Federal Lanham Act, 15 U.S.C. §1057(b), the CheyTac Word Mark constitutes *prima facie* evidence of the validity of the Word Mark, of CheyTac’s ownership of same, and of CheyTac’s exclusive right to use the Word Mark CHEYTAC in commerce on or in connection with the goods specified in the Certificate of Registration. In addition, on May 24, 2013, the Registration became incontestable under 15 U.S.C. §1065. Subject to certain statutory limitations, the Registration now constitutes conclusive evidence of the validity of the CheyTac word mark, of CheyTac’s ownership of same, and of CheyTac’s exclusive right to use the Word Mark in commerce on or in connection with the goods within international class 013 as described in the Certificate of Registration. (*See* DE 1, Exh. 17.)

50. On April 2, 2013, CheyTac registered the word mark “SEIZE THE DISTANCE” with the United States Patent and Trademark Office (“USPTO”) on the Principal register, (U.S. Registration No. 4,312,281), for use in connection with “ALL TYPES OF FIREARMS

AND AMMUNITION INCLUDING LONG RANGE SNIPER RIFLES AND PATENTED AMMUNITION” (the “Distance Word Mark”). (See DE 1, Exh. 16.)

51. On February 20, 2017, CheyTac filed a trademark application for the word mark “CHEYTAC USA” with the United States Patent and Trademark Office (“USPTO”) on the Principal Register, Serial No. 87342181, for use in connection with “Firearms; and ammunition for firearm” (the “CheyTac USA Word Mark Application”). (DE 1, Exh. 18.)

52. The CheyTac Word Mark, Distance Word Mark, and CheyTac USA Word Mark Application are collectively referred herein as “CheyTac Marks.”

53. CheyTac has acquired trade dress rights in the design and appearance of the M200 and M300 Intervention rifle and mountable bipod.

54. CheyTac has acquired common law rights in the marks “.408CT” and “.375CT.”

D. The Misconduct

55. Omanoff was CheyTac’s Chief Executive Officer, a member of the Board of Managers, and a shareholder from September 2015 until his voluntary resignation in November 2016. On condition of his appointment to CEO, Omanoff executed a Proprietary Rights Agreement (“PRA”) with CheyTac on September 28, 2015, which contained both non-compete and non-solicitation clauses (See DE 1, Exh. 9.)

56. Omanoff PRA contains a non-competition clause (clause 7) which provides (in pertinent part):

“During my association with the Company and for a period of two (2) years following there termination of said association for any reason whatsoever, voluntarily or involuntarily, I shall not engage directly or indirectly, either personally or as an employee, associate, shareholder, partner, manager,

salesperson, agent or in any other individual or representative capacity whatsoever, or by means of any corporate or legal advice, in any person, corporation, or other entity that sells products or services within any Company market area, which as of the date hereof is international, as of the date of termination that are similar to the products and/or services sold by the Company at any time during the last two years prior to the termination of my association with the Company; provided, however, that the term "Competing Business" shall not include any of the activities of employee/consultant/Member or his/its Affiliates that are excluded from the definition of "Business" as set forth in Exhibit A hereto." (See DE 1, Exhs. 9-10.)

57. Omanoff's PRA contain a non-solicitation clause (clause 8) which provides (in pertinent part):

"Additionally, during my association with the Company and for a period of two (2) years following the termination of said association for any reason whatsoever, voluntarily or involuntarily, I shall not, directly or indirectly, attempt to dislodge, divert, prejudice or interfere with current or future employees or current or future customers of the Company. In connection with the foregoing, during my association with the Company and for the above-referenced two-year (2) year period:

*(a). **Employees.** I shall not, directly or indirectly, solicit, hire, or engage or attempt to hire or engage any individual who is an employee or a consultant of the Company whether for or on my behalf for any entity in which I shall*

have a direct or indirect interest (or any subsidiary or affiliate of any such entity).

*(b). **Customers.** I shall not, directly or indirectly, solicit or contact any person or entity which is a present or former client, or potential client of the Business, for the purpose of introducing, offering, or selling to such person or entity any service that compete with the service offered or sold by the Company... ” (See DE 1, Exhs. 9-10.)*

58. Omanoff’s PRA includes provisions to prevent the unauthorized disclosure of trade secrets. Clause 2 of the PRA provides (in pertinent part):

“Assignment of Rights. All Proprietary Information and all patents, patent rights, copyright, trade secret rights, trademark rights and other rights (including, but not limited to, intellectual property rights) anywhere in the world in connection therewith is and shall be the Company sole property. I hereby assign to the Company any and all rights, title and interest I may currently have or acquire in such Proprietary Information. At all times, both during my association with the Company and after its termination, I will keep in confidence and trust and will not use or disclose and Proprietary Information or anything relating to it with the prior written consent of a Company officer, except as may be necessary in the ordinary course of performing my duties to the Company. ” (See DE 1, Exhs. 9-10.)

59. Omanoff owed a duty of loyalty to CheyTac to act in good faith and with due regard for the interests of CheyTac both during and after employment.

60. After Omanoff joined CheyTac, revenue steadily declined while Omanoff would

receive interest on his salary if CheyTac was unable to immediately pay.

61. While Omanoff was Chief Executive Officer of CheyTac, several proprietary measures were taken to secure its proprietary ballistic and rifle barrel technology including: acquiring U.S. Patent No. 6,629,669 through the conveyance of a Patent Assignment from DBM Technologies, LLC; acquiring Trademark Registration No. 2,711,809 through the conveyance of a Trademark Assignment from Tactical High Energy Impact Systems, LLC.

62. Omanoff was the Chief Executive Officer when both M200 and M300 Intervention and .375CT .408CT were designed and manufactured. Omanoff had unfettered access to all plans, specifications, and designs of CheyTac Products as a result of his position at CheyTac. (DE 1, Exh. 1, Warren Decl. at ¶¶ 29-32; *See* DE 1, Exhs. 17 and 19.)

63. CheyTac first discussed with Omanoff terminating his position as Chief Executive Officer in the summer of 2016.

64. On information and belief, it was during this time that Omanoff first contacted Taylor about his plans to create NextGen.

65. Omanoff's contravention of CheyTac's Board of Managers' decisions, his insubordination, and his failure to perform in good faith substantially harmed CheyTac's reputation and goodwill. By mutual Agreement, Omanoff left CheyTac on November 1, 2016 and sold all remaining Omanoff and Omanoff Trust shares to CheyTac. (*See* DE 1, Exh. 14.)

66. On November 1, 2016, Omanoff executed a Membership Interest Purchase Agreement and Settlement Agreement, which contained a non-disparagement clause. (DE 1, Exh. 1, Warren Decl. at ¶ 25.)

67. After his departure from CheyTac, Omanoff recruited the following key CheyTac personnel to join him at NextGen Georgia and who would eventually join him at NextGen:

- a. John Taylor – left CheyTac in January 2017;
- b. Brock Gardner, an independent contractor who had assembled CheyTac products, stopped consulting with CheyTac in January 2017. (DE 1, Exh. 1, Warren Decl. at ¶ 36.)

68. Taylor was a valuable member of CheyTac and was specifically targeted to lead all CheyTac's research and development after Omanoff left. With CheyTac, Taylor was an excellent performer who contributed substantially to the technical trade secrets and intellectual property. CheyTac entrusted Taylor to work in good faith and in CheyTac's interest with the confidential information, trade secrets and intellectual property. Taylor's contribution was instrumental to the design and manufacture of all CheyTac Products, and protection of its intellectual property. Omanoff has induced Taylor to violate his PRA by bringing with him CheyTac's trade secrets and intellectual property.

69. Taylor's misappropriations of CheyTac trade secrets and infringement of its intellectual property has facilitated NextGen in almost immediately bringing high caliber rifles and ammunition ("Infringing Goods") to market. At least one of CheyTac's customers has asked CheyTac how NextGen could offer a product competitive with CheyTac so quickly.

70. Upon information and belief, NextGen and Omanoff have used CheyTac's designs, customer lists, source code, specification, customer contact information, market forecasts.

71. Omanoff created a product flyer ("NextGen Flyer") in early 2017 that offers the Infringing Goods within the same industry and market channels as CheyTac products. (DE 1, Exh. 1, Warren Decl. at ¶ 40.)

72. On April 17, 2017 Omanoff registered NextGen Tactical, LLC (“NextGen”), with the Florida Division of Corporations, in direct competition with CheyTac. (DE 1, Exh. 1, Warren Decl. at ¶ 33.)

73. In April 2017, NextGen launched its website www.nextgentactical.net, which markets, advertises, and sells the Infringing Goods. (DE 1, Exh. 1, Warren Decl. at ¶ 41.)

74. As a former high-level executive of CheyTac, Omanoff holds substantial knowledge of CheyTac’s confidential information, trade secrets and intellectual property, which he is currently disclosing and utilizing in the production and sale of the Infringing Goods. (See DE 1, Exhs. 21 and 23-26.)

75. In April of 2017, Omanoff directly solicited CheyTac customers and attached the NextGen Flyer.

76. In April 2017, Omanoff disparaged CheyTac and CheyTac executives while directly soliciting CheyTac customers in violation of Omanoff’s Agreements.

77. NextGen’s website offers for sale a “NEXTGEN .375” rifle, as well as the NEXTGEN WINMAG, Long Range, and Retribution System rifles. These rifles have a confusingly similar appearance and design to CheyTac’s M300 Intervention rifle.

78. The “NEXTGEN .375” rifle includes CheyTac trademarks engraved on the body of the rifle and leg of the bipod.

79. NextGen’s own statements and product information provided on their website make it clear they are directly competing against CheyTac Products. With Omanoff, Taylor, and Gardner on the payroll, NextGen now has direct access to CheyTac’s confidential and proprietary information, trade secrets, and intellectual property, which give CheyTac its competitive advantage.

80. If CheyTac's trade secrets and intellectual property are used, disclosed, or transferred, the value to CheyTac of its trade secrets and intellectual property, particularly in the M200, M300, .375CT, and .408CT will be significantly damaged and may be destroyed. NextGen and the individual defendants, on the other hand, will unjustly benefit from their misappropriation of CheyTac trade secrets and intellectual property.

COUNT ONE
PATENT INFRINGEMENT
AGAINST BOTH DEFENDANTS
35 U.S.C. § 271(a)

81. As a cause of action and grounds for relief, Plaintiff CheyTac alleges that Defendants have engaged and are currently engaged in acts of patent infringement in violation of 35 U.S.C. § 271(a) and incorporates by reference prior Paragraphs 1 through 80 of the Complaint, inclusive, as if fully set forth herein.

82. Upon information and belief, NextGen, at Omanoff's behest, has infringed and continues to infringe one or more claims of CheyTac's '669 Patent, including every element of at least claim 1 of the '669 Patent in this District and elsewhere under 35 U.S.C. § 271(a). (DE 1, Exh. 1, Warren Decl. at ¶ 49.).

83. Claim 1 of the '669 Patent, which is currently in effect, states as follows:

"A projectile comprising:

a body including a bearing surface and an ogive continuous to and extending forward from the bearing surface;

a plurality of grooves and a plurality of lands formed on the bearing surface of the projectile in an alternating pattern for imparting a predetermined spin damping moment to the projectile in flight; and

a ratio of a total surface the projectile to a total surface area of the physical feature in the range of to 3.00:1 to 4.00:1.”

84. Upon information and belief, NextGen has manufactured ammunition in the United States or imported it into the United States, which meets all the limitations of at least claim 1 of the '669 Patent either literally or under the doctrine of equivalents and thus infringes at least claim 1. (DE 1, Exh. 1, Warren Decl. at ¶ 49, Carlet Decl., ¶ 13.). Omanoff, on behalf of NextGen, has sent a flyer showing ammunition that appears to be identical to CheyTac ammunition to people in the United States, and he has shown ammunition similar to CheyTac's at a trade show. CheyTac has made numerous attempts to meet, confer, and inspect the ammunition that is the basis for the patent infringement claims, but to no avail. Defendants have refused Plaintiff's numerous requests and denied that any NextGen ammunition exists.

85. NextGen's acts of infringement have been without permission, consent, authorization or license of CheyTac.

86. Upon information and belief, NextGen will continue to infringe the '669 Patent unless and until it is enjoined by this Court.

87. NextGen has caused and will continue to cause CheyTac injury and damage by infringing the '669 Patent. CheyTac will suffer further irreparable injury unless and until NextGen is enjoined from infringing the '669 Patent.

COUNT TWO
TRADE SECRET MISAPPROPRIATION
AGAINST BOTH DEFENDANTS
18 U.S.C. § 1832, Defend Trade Secrets Act

88. As a cause of action and grounds for relief, Plaintiff CheyTac alleges that

Defendants have engaged and are currently engaged in acts of trade secret misappropriation under the Defend Trade Secrets Act, 18 U.S.C. §1832 and common law and incorporates by reference prior Paragraphs 1 through 80 of the Complaint, inclusive, as if fully set forth herein.

89. As part of its cause of action against the individual Defendant Omanoff, Plaintiff alleges on information and belief that Omanoff substantially and personally participated and participates in the trade secret misappropriation complained of herein. Plaintiff alleges on information and belief that Omanoff used and uses Defendant NextGen, LLC, to deliberately carry out the acts of trade secret misappropriation complained of herein. (DE 1, Exh. 1, Warren Decl. at ¶ 48.)

90. Due to Omanoff's employment relationships with CheyTac, he had access to and direct knowledge of CheyTac's confidential trade secrets including customer lists, market research, customer contracts, intellectual property, bills of material, product design, schematics, source code, components lists, testing procedures, market forecast, competitor analyses, of all CheyTac Products. These trade secrets are economically valuable to Cheytac because they are not generally known and not readily ascertainable by other persons who could obtain economic value from them. CheyTac has taken reasonable steps to maintain the secrecy of these trade secrets.

91. Omanoff knows and has acknowledged that CheyTac's trade secrets are meant to be kept confidential, witnessed by the fact that, when he was CEO of CheyTac he responded to a query from a potential customer asking for product details by saying, "This is confidential and proprietary information . . . we do not share our IP, Trade Secrets or confidential information." (June 9, 2016).

92. Omanoff has used these trade secrets to directly compete against CheyTac for the benefit of NextGen, by creating ammunition based on CheyTac's technical designs and specifications, putting up a website and creating a flyer displaying rifles and ammunition apparently based on these trade secrets, displayed models and renderings of products based on CheyTac rifles and ammunition, and solicited clients, such as Jord Carlet, from CheyTac's confidential customer lists.

93. CheyTac's confidential customer lists are not readily available to the public. The listings are a distillation of larger lists, reflecting considerable effort, knowledge, time, and expertise on the part of CheyTac. As such, these listings are entitled to protection from any former employee who uses them to the detriment of Cheytac's business interests.

94. The confidential trade secret information is related to CheyTac's products use in, or intended use, in interstate commerce or foreign commerce.

95. Omanoff was prohibited from misappropriating CheyTac trade secrets under the Defend Trade Secrets Act, 18 U.S.C. §1832.

96. Omanoff breached his duties to CheyTac by disclosing CheyTac's trade secrets and by using CheyTac trade secrets to directly compete against CheyTac for the benefit of NextGen (DE 1, Exh. 1, Warren Decl. at ¶ 48.)

97. Upon information and belief, NextGen's and Omanoff's, misappropriation has been willful and malicious.

98. As a direct and proximate result of NextGen's and Omanoff's misappropriation of CheyTac trade secrets, CheyTac has been irreparably injured and has sustained significant damage in an amount to be determined at trial. CheyTac is threatened with losing current customers, goodwill, and revenue.

99. Plaintiff believes that unless enjoined by this Court, Defendants will continue to misappropriate CheyTac trade secrets, thereby deceiving the public and causing the Plaintiff immediate and irreparable injury for which there is no adequate remedy at law.

COUNT THREE
TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT
AGAINST BOTH DEFENDANTS
15 U.S.C. §1125(a)(1)(A) and (B)

100. As cause of action and ground for relief, Plaintiff CheyTac alleges that Defendants have engaged in trade dress infringement by representing to consumers that their products have a source, nature, and quality that they do not have and incorporates by reference Paragraphs 1 through 80 of the Complaint, inclusive, as if fully set forth herein.

101. As a cause of action and grounds for relief, Plaintiff CheyTac alleges that Defendants Dennis Omanoff and NextGen have engaged and are engaged in acts of trade dress infringement under Sections 43(a)(1)(A) and (B) of the federal Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B).

102. As described above, CheyTac owns all rights, title and interest in and to the CheyTac's M200 and M300 Intervention's appearance, design, and trade dress rights.

103. CheyTac's use of its trade dress rights in commerce, have been substantially exclusive, continuous, and long-standing and represents the extensive goodwill built by CheyTac Products.

104. CheyTac's trade dress rights in the appearance and design of the M200 and M300 Intervention is primarily non-functional. The rifles incorporate non-functional design elements, such as stock, bipod and color scheme that have no effect on the rifles' shooting

capacity but contribute to their overall appearance and make the rifles recognizable within the industry.

105. CheyTac's trade dress has acquired secondary meaning in that consumers have come to recognize the well-known appearance and design of the M200 and M300 Intervention, and associate that appearance and design with a single source. That CheyTac's rifles have gained secondary meaning is evidenced by a recent online article describing CheyTac as "the world's most powerful rifle." [DE 54, Exh. 5]. CheyTac rifles were also featured in the film, "Shooter," with Mark Wahlberg, and the video game, "Call of Duty."

106. Source code on NextGen's website indicated that the rifle images posted there originated from CheyTac products. [DE 35-2, Exh. 5]. Further, the Defendants' willful and intentional copying of the CheyTac's trade dress provides *prima facie* evidence of distinctiveness.

107. Defendant NextGen, acting through Omanoff, has offered on its website and flyers a "NEXTGEN .375" rifle, which has an appearance and design that are confusingly similar to CheyTac's M300 Intervention Carbon Fiber rifle. The "NEXTGEN .375" includes CheyTac Marks engraved on the body of the rifle and leg of the tripod. Upon information and belief, the "NEXTGEN .375" intentionally copies the M300 Intervention's appearance and design and was created to confuse and deceive consumers as to the source of their high caliber rifles and ammunition in violation of CheyTac's trade dress rights. (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-46; DE 1, Exhs. 21 and 23-26.).

108. Defendant NextGen, acting through Omanoff, has offered on its website and flyers a "NEXTGEN .300 WINMAG" rifle, which has an appearance and design that are confusingly similar to CheyTac's M300 Intervention Composite rifle. Upon information and

belief, the “NEXTGEN .300 WINMAG” intentionally copies the M300 Intervention Composite’s appearance and design and was created to confuse and deceive consumers as to the source of their high caliber rifles and ammunition in violation of CheyTac’s trade dress rights.

109. Defendant NextGen, acting through Omanoff, has offered on its website and flyers two rifles, a “NEXTGEN Long Range” rifle and a “NEXTGEN Retribution System” rifle both of which have an appearance and design that are confusingly similar to CheyTac’s M300 Intervention Aluminum rifle. The “NEXTGEN Retribution System” rifle include CheyTac’s “CHEYTAC” and “SEIZE THE DISTANCE” federally registered trademarks engraved on the body of the rifle and leg of the tripod. Upon information and belief, these rifles intentionally copy the M300 Intervention’s appearance and design and were created to confuse and deceive consumers as to the source of their high caliber rifles and ammunition in violation of CheyTac’s trade dress rights.

110. By copying the appearance and design of the M300 Intervention rifles, Defendants have falsely designated the origin of their Infringing Goods and falsely or misleadingly represented the source, origin, nature, and quality of goods, thereby violating Plaintiffs’ trade dress rights under Section 43(a) of the federal Lanham Act. The Defendants’ continued sales of the “NEXTGEN .375” rifle, “NEXTGEN .300 WINMAG” rifle, “NEXTGEN Long Range” rifle and a “NEXTGEN Retribution System” rifle will continue to cause confusion, mistake or deception among consumers as to the source or origin of Defendants’ products, and/or as to the source or origin of CheyTac’s products. (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-46; DE 1, Exhs. 21 and 23-26.)

111. As a direct and proximate result of Defendants' actions, CheyTac has sustained and is likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

112. CheyTac has no adequate remedy at law.

113. By reason of the foregoing, Defendants are liable to CheyTac for trade dress infringement under Sections 43(a)(1)(A) and (B) of the federal Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B), and CheyTac is entitled to Defendants' profits, CheyTac's damages, the costs of the action, plus reasonable attorneys' fees by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

114. Plaintiffs are entitled to treble damages and increased profits, plus attorneys' fees, by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

115. Plaintiffs are entitled under Section 36 of the Lanham Act, 15 U.S.C. §1118 to a court order providing that all Defendants' Infringing Products bearing CheyTac's trade dress, along with all means of making such Infringing Products, be delivered up and destroyed.

COUNT FOUR
TRADEMARK INFRINGEMENT: UNFAIR COMPETITION
AND FALSE DESIGNATION OF ORIGIN
UNDER THE LANHAM ACT
AGAINST BOTH DEFENDANTS
15 U.S.C. §§ 1114 and 1125(a)(1)

116. As a cause of action and ground for relief, Plaintiff CheyTac alleges that Defendants have and are engaged in unfair competition under 15 U.S.C. §1125(a)(1) and incorporates by reference Paragraphs 1 through 80 of the Complaint, inclusive, as if fully set forth herein.

117. On April 29, 2003, CheyTac registered the word mark “CHEYTAC” with the United States Patent and Trademark Office (“USPTO”), under U.S. Registration No. 2711809, for use in connection with its “high-caliber rifles and ammunition” on the Principal Register (the “Registration”). The Registration was renewed on May 24, 2013. Under Section 7(b) of the Federal Lanham Act, 15 U.S.C. §1057(b), the Registration constitutes *prima facie* evidence of the validity of the Word Mark, of CheyTac’s ownership of same, and of CheyTac’s exclusive right to use the Word Mark “CHEYTAC” in commerce on or in connection with the goods specified in the Certificate of Registration. In addition, on May 24, 2013, the Registration became incontestable under 15 U.S.C. §1065. Subject to certain statutory limitations, the Registration now constitutes conclusive evidence of the validity of the “CHEYTAC” Mark, of CheyTac’s ownership of the Mark, and of CheyTac’s exclusive right to use the Word Mark in commerce on or in connection with its products.

118. On April 2, 2013, CheyTac registered the word mark “SEIZE THE DISTANCE” with the United States Patent and Trademark Office (“USPTO”), under U.S. Registration No.

4312281 for use in connection with “all types of firearms and ammunition including long range sniper rifles and patented ammunition” on the Principal Register (the “Registration”).

119. On February 20, 2017, CheyTac filed a trademark application for the mark “CHEYTAC USA” with the United States Patent and Trademark Office (“USPTO”), under U.S. Serial No. 87342181 for use in connection with “firearms; and ammunition for firearms” on the Principal Register (the “Application”)

120. As part of the action against the Defendants Omanoff and NextGen, Plaintiff alleges that Defendants Omanoff and NextGen substantially participated and participate in the unfair competition complained of herein and used and continue to use NextGen to deliberately carry out acts of unfair competition complained herein. (DE 1, Exh. 1, Warren Decl. at ¶ 48.)

121. Defendants are aware and have actual knowledge of CheyTac Products and CheyTac Registrations and Applications. Defendants intentionally copied and offered in interstate commerce, by means of a flyer distributed to several persons, including persons in the United States, which advertised high caliber rifles and ammunition that are confusingly similar to CheyTac Products and CheyTac Marks. Defendants also solicited clients regarding such confusingly similar products at the Special Operations Forces Industry Conference in Tampa, Florida in May 2017.

122. Defendants’ infringing goods were designed to have the same distinctive overall appearance and look as CheyTac Products and are confusingly similar in total image, appearance, and overall aesthetic look. As a result, the public is, and is likely to be, confused as to the source or origin. (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-46; *See* DE 1, Exhs. 3, 21 and 23-26.). To prevail in a claim for trademark infringement, a plaintiff must show that the

defendants used the mark in a manner *likely to confuse* consumers. *N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1218 (11th Cir. 2008).

123. Defendants have used in commerce and continue to use in commerce, the CheyTac Marks to unfairly benefit from Plaintiff's success by selling the same products bearing the same word marks and falsely designating the origin of NextGen products in this jurisdiction. (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-46; DE 1, Exhs. 21 and 23-26.)

124. Defendants have used CheyTac marks on its infringing goods with the express intent to pass off Defendant's inferior Infringing Goods as those of CheyTac's to cause confusion and mistake, and to deceive and mislead the purchasing public into believing that Defendant's Infringing Products are authorized, sponsored, affiliated with or associated with CheyTac, and to trade on CheyTac's reputation for high-quality and to improperly appropriate to themselves CheyTac Products and Marks.

125. Upon information and belief, Defendants' conduct as alleged herein is willful and is intended to and is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of NextGen with Plaintiff.

126. Defendants' conduct as alleged herein constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and (c).

127. Defendants' use of CheyTac's registered trademarks is likely to cause confusion, mistake, or deception as to the source, affiliation, sponsorship or authenticity of Defendants' goods. Thus, CheyTac will continue to sustain substantial injury, loss and damage to its ownership of its trademarked goods.

128. Plaintiff is entitled to receive all appropriate injunctive relief, including but not limited to, the relief available under 15 U.S.C. § 1116.

129. Defendants' conduct as alleged herein is causing immediate and irreparable harm and injury to Plaintiff, and to its goodwill and reputation, and will continue to both damage Plaintiff and confuse the public unless enjoined by this court. Plaintiff has no adequate remedy at law.

**COUNT FIVE
TRADEMARK INFRINGEMENT UNDER FLORIDA COMMON LAW
AGAINST BOTH DEFENDANTS**

130. Plaintiff re-alleges and incorporates herein the allegations in Paragraphs 1 through 80, and 116 through 129 inclusive.

131. As described above, Plaintiffs own all rights, title and interest in and to the CheyTac trademarks.

132. As described above, the trademarks are distinctive, and Plaintiffs have built up valuable goodwill in the trademarks.

133. Defendants NextGen, a Florida LLC, and Omanoff, on behalf of NextGen, infringed the CheyTac trademarks "CHEYTAC", "SEIZE THE DISTANCE," and "CHEYTAC USA" by using CheyTac trademarks without authorization on NextGen goods which is likely to cause confusion, deception, or mistake about the source of the goods.

134. Defendants intentionally copied and offered in interstate commerce, by means of a flyer distributed to several persons, including persons in the United States, advertising high caliber rifles and ammunition that are confusingly similar to CheyTac Products and CheyTac Marks. Defendants also solicited clients regarding such confusingly similar products at the Special Operations Forces Industry Conference in Tampa, Florida in May 2017. Defendants' infringing goods were designed to have the same distinctive overall appearance and look as CheyTac Products and are confusingly similar in total image, appearance, and overall

aesthetic look. As a result, the public is, and is likely to be, confused as to the source or origin.

135. Defendants' use of the trademarks infringes Plaintiff's rights therein and has and will continue to cause confusion, mistake, or deception among consumers as to the source and origin of Defendants' counterfeit rifles and ammunition under Florida common law.

136. Defendants' conduct deceived or is likely to deceive, and caused or is likely to cause, confusion or mistake among actual and prospective consumers of the Plaintiff's products by passing off Defendants' products as being manufactured, sponsored or otherwise approved by or connected with the Plaintiff.

137. As a direct and proximate result of Defendants' infringements of Plaintiff's common law trademark rights under the State of Florida common law, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

138. Defendants are liable for the infringement of Plaintiff's Trademarks because they personally directed, controlled, ratified and participated in the infringing activity.

139. Plaintiff has no adequate remedy at law.

140. By reason of the foregoing acts, Defendants are liable to Plaintiff for trademark infringement and Plaintiff is therefore entitled to preliminary and permanent injunctive relief and monetary damages.

141. Plaintiffs are entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

COUNT SIX
TRADE SECRET
TRADE DRESS INFRINGEMENT UNDER FLORIDA COMMON LAW
AGAINST BOTH DEFENDANTS

142. Plaintiff re-alleges and incorporates herein the allegations in Paragraphs 1 through 80, and 101 through 115 inclusive.

143. Defendants' actions constitute misappropriation of trade secrets under Florida common law.

144. Defendants NextGen, a Florida LLC, and Omanoff, on behalf of NextGen, misappropriated Plaintiff's trade secrets in its customer lists and design and specification of its M200 and M300 rifles.

145. Defendant NextGen, acting through Omanoff, has offered on its website and flyers a "NEXTGEN .375" rifle, which has an appearance and design that are confusingly similar to CheyTac's M300 Intervention Carbon Fiber rifle. The "NEXTGEN .375" includes CheyTac Marks engraved on the body of the rifle and leg of the tripod. Upon information and belief, the "NEXTGEN .375" intentionally copies the M300 Intervention's appearance and design and was created to confuse and deceive consumers as to the source of their high caliber rifles and ammunition in violation of CheyTac's trade dress rights. (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-46; DE 1, Exhs. 21 and 23-26.).

146. As a direct and proximate result of Defendants' infringements of Plaintiff's common law trade secret rights under the State of Florida, Plaintiff has sustained and is likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

147. Plaintiff has no adequate remedy at law.

148. By reason of the foregoing acts, Defendants are liable to Plaintiff for Trade Dress infringement and Plaintiff is therefore entitled to preliminary and permanent injunctive relief and monetary damages.

149. Plaintiff is entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

COUNT SEVEN
BREACH OF CONTRACT
AGAINST OMANOFF
Georgia Common Law

150. As a cause of action and ground for relief, Plaintiff CheyTac alleges that the individual Defendant Omanoff, has breached both his Proprietary Rights Agreement (PRA) and Member Purchase Agreements with CheyTac, respectively, and incorporates by reference Paragraphs 1 through 80 of the Complaint, inclusive, as if fully set forth herein.

151. The PRA forbids Omanoff from competing with CheyTac or soliciting CheyTac customers or employees within two years of the termination of his employment with CheyTac and forbids him to reveal CheyTac trade secrets.

152. Omanoff has failed to abide by the terms of his PRA by soliciting CheyTac employees, including John Taylor, soliciting CheyTac customers, including Jord Carlet, violating the confidentiality of CheyTac's confidential customer list (a trade secret) in doing so, and creating NextGen, a business through which he offers goods for sale that directly compete with CheyTac in the high-caliber rifle and ammunition industry.

153. Omanoff's Member Purchase Agreement forbids him to disparage CheyTac or its employees.

154. Omanoff has failed to abide by the terms of his Member Purchase Agreements by disparaging CheyTac and its employees, specifically, by telling customer Jord Carlet that CheyTac and its employees had let Carlet down.

155. By reason of the foregoing, Defendant Omanoff has willfully breached, either during or after his employment with CheyTac, his obligations, and agreements arising out of non-solicitation, non-compete, and trade secret clauses of his Proprietary Rights Agreement and the non-disparagement clause of his Membership Interest Purchase Agreement and Settlement Agreement with CheyTac. (*See* DE 1, Exhs. 9 and 14.)

156. CheyTac has a right to complain about Omanoff's breaches because Omanoff's signing of the agreements was designed to protect CheyTac from Omanoff's using his knowledge of CheyTac's intellectual property and trade secrets to CheyTac's detriment.

157. Omanoff's breaches of his agreements with CheyTac have caused and will continue to cause harm to CheyTac through loss of reputation, loss of customers and their business, resulting in monetary losses to CheyTac. CheyTac therefore prays for money damages for Omanoff's breaches, as well as any other relief that this Court considers fair and just.

COUNT EIGHT
DECEPTIVE AND UNFAIR TRADE PRACTICES
AGAINST BOTH DEFENDANTS
Fla. Stat. §§ 501.203(3), 501.204(1)

158. As a cause of action and ground for relief, Plaintiff CheyTac alleges that NextGen, a Florida LLC, and Omanoff have and are engaged in deceptive and unfair trade practice under sections 501.203(3) and 501.204(1), Florida Statutes (FDUTPA), and incorporates by reference Paragraphs 1 through 80 and 101 through 149 of the Complaint, inclusive, as if fully set forth herein. *See also Big Tomato v. Tasty Concepts, Inc.*, 972 F. Supp. 662, 664 (S.D. Fla. 1997) (holding that competitors may seek injunctive relief under FDUTPA); *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cty., Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015) (holding that competitors may bring FDUTPA claims based on 2001 amendment of statute).

159. As described above, Defendants have engaged in unfair trade practices by representing to consumers that their products have a source, nature, and quality that they do not have. For example, (1) Defendants NextGen, a Florida LLC, and Omanoff, on behalf of NextGen, circulated a Products Flyer offering for sale ammunition as “.375ct” and “.408ct”, in violation of CheyTac’s trademark rights, to CheyTac customers in an attempt to solicit business away from CheyTac; (2) NextGen’s website and flyer offer a “NEXTGEN .375” rifle, “NEXTGEN .300 WINMAG” rifle, “NEXTGEN Long Range” rifle and a “NEXTGEN Retribution System” rifle that are deliberately designed to look identical to the CheyTac M300 Intervention rifles, even displaying CheyTac’s trademarks “CHEYTAC,” “CHEYTAC USA” and “SEIZE THE DISTANCE.” (DE 1, Exh. 1, Warren Decl. at ¶¶ 38-46; DE 1, Exhs.

21 and 23-26.); (3) Defendants solicited clients regarding such confusingly similar products at the Special Operations Forces Industry Conference in Tampa, Florida in May 2017.

160. Defendants have engaged in false and misleading representations and omissions of material fact to consumers and have engaged in deceptive conduct.

161. Defendants' false and misleading representations and deceptive conduct are material in that they have caused and are likely to cause prospective consumers of the Plaintiff's products to be deceived as to the identity of the person to whom rights belong and as to the level of quality of the product.

162. Defendants have disparaged the goods and services and business reputation of Plaintiff through false and misleading representations of material fact by attacking the expertise and knowledge and business acumen of CheyTac executives. (See DE 54, Exh. 3). Thus, Omanoff, by and through NextGen, has provided knowingly false and misleading representations of fact and conduct in violation of Florida's Deceptive and Unfair Trade Practices Act, Sections 501.203(3) and 501.204(1), Florida Statutes.

163. As a direct and proximate result of said misleading and deceptive conduct, the Plaintiff, as well as consumers, have sustained and are likely to continue to sustain damages in terms of loss of reputation, customers, and sales.

164. Defendant Omanoff is personally liable for the afore-described deceptive unfair trade practices because he personally directed, controlled, and participated in the unfair activity.

165. Plaintiff has no adequate remedy at law.

166. Pursuant to Florida's Deceptive and Unfair Trade Practices Act §§ 501.207 – 501.2075, the Plaintiff is entitled to enjoin Defendants' unlawful conduct as well as obtain compensatory damages, punitive damages, and attorney's fees.

COUNT NINE
TORTIOUS INTERFERENCE WITH A CONTRACT
AGAINST OMANOFF
Georgia Common Law

167. As a cause of action and ground for relief, Plaintiff CheyTac alleges that Defendant Omanoff has been and is engaged in tortious interference with a contractual relationship and incorporates by reference Paragraphs 1 through 80 of the Complaint, inclusive, as if fully set forth herein.

168. John Taylor was bound by the non-competition clause in his Proprietary Rights Agreement, which is governed by Georgia law, not to compete with CheyTac for two years after leaving CheyTac.

169. On information and belief, Omanoff actively, on behalf of Nextgen, a Florida LLC, willfully, intentionally, and improperly encouraged or induced John Taylor, whom he solicited, recruited, and hired, to breach his contractual obligations to CheyTac by leaving CheyTac and, within less than two years, joining NextGen, a company designed to compete with CheyTac products, all in violation of Taylor's Proprietary Rights Agreement. (*See* DE 1, Exh. 1, Warren Decl. at ¶ 36.)

170. Omanoff's inducement of Taylor to breach his agreements with CheyTac has caused and will continue to cause harm to CheyTac through loss of customers and their business, resulting in monetary losses to CheyTac. CheyTac therefore prays for money

damages for Omanoff's interference, as well as any other relief that this Court considers fair and just.

COUNT TEN
BREACH OF DUTY OF LOYALTY
AGAINST OMANOFF
Georgia Common Law

171. As a cause of action and ground for relief, Plaintiff CheyTac alleges that Defendant Omanoff has breached his common law duty of loyalty owed to CheyTac and incorporates by reference Paragraphs 1 through 80, 89 through 99, 151 through 157, and 168 through 170 of the Complaint, inclusive, as if fully set forth herein.

172. Omanoff former CEO of CheyTac, after giving his notice that he would be leaving CheyTac, but before ceasing to work for CheyTac, took several CheyTac products, such as rifles and scopes, to his home in California and did not return them for at least 30 days. Omanoff ceased working for CheyTac after returning the CheyTac products. Upon information and belief, Omanoff during that period allowed others to study and possibly reverse engineer these products in anticipation of being able to use this knowledge in starting his own business, which would compete with CheyTac products.

173. CheyTac has suffered damages in an amount within the jurisdictional limits of the Court and will, unless enjoined by this Court continue to suffer damages proximately caused by Omanoff's breach of duty to CheyTac.

174. The misconduct of Omanoff was and continues to be intentional, malicious, willful, fraudulent, wanton, deliberate, and lacking an entire want of care which would raise the presumption of conscious indifference to consequences, giving rise to CheyTac's right to recover punitive damages under Ga. Code § 51-12-5.

COUNT ELEVEN
UNJUST ENRICHMENT
AGAINST BOTH DEFENDANTS
Georgia/Florida Common Law

175. CheyTac repeats and re-alleges each and every allegation of paragraphs 1 through 174 as though fully set forth herein.

176. Defendants NextGen, a Florida LLC, and Omanoff, on behalf of NextGen, were aware of the CheyTac Products, trade secrets, and intellectual property and acted in willful disregard by creating NextGen and manufacturing Infringing Products which directly compete against CheyTac. (DE 1, Exh. 1, Warren Decl. at ¶ 48.)

177. Plaintiffs have been denied financial compensation from the proceeds of the Defendants' counterfeit and infringing rifles and ammunition, which have benefited from the Plaintiffs' intellectual property, trade secret, and other rights. Defendants have received monies that unjustly enrich them at CheyTac's expense. This constitutes unjust enrichment under Florida common law, or, in the alternative, under Georgia common law. The circumstances are such that equity and good conscience require the Defendants to disgorge their unjust enrichment in an amount to be proven at trial.

178. CheyTac requests that in order to facilitate the disgorgement of Defendants' ill-gotten proceeds, this Court impose a constructive trust against the Defendants from their illicit profits from the use of CheyTac's confidential information, trade secrets, and intellectual property.

DAMAGES

179. CheyTac repeats and re-alleges each and every allegation of paragraphs 1 through [**] as though fully set forth herein. CheyTac affirmatively pleaded and seeks monetary relief that in the aggregate exceeds \$75,000.

Jury Demand

180. CheyTac hereby demands pursuant to Federal Rule of Civil Procedure 38(b) a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants, jointly and severally, and that such judgment include the following:

1. The Court issue injunctive relief restraining and enjoining Defendants and each of them and their agents, servants, employees, attorneys, officer and those persons in active concert or participation with them, including any parties with whom NextGen, or Omanoff have shared or disclosed any of the confidential and proprietary trade secrets and intellectual property from doing any of the following:
 - A. Altering, deleting, or destroying any documents, electronic data, or other evidence in NextGen or Omanoff's possession pending production to CheyTac;
 - B. Disclosing, sharing, selling, conveying, transferring, transmitting, reproducing by any means or in any form or medium, concealing, or hiding, removing or moving from their present locations, altering, destroying, disposing of or using in any way, directly or indirectly, any of CheyTac's trade secrets or intellectual property;
 - C. Designing, architecting, coding, manufacturing, implementing, or selling or offering

to sell any products or services base in any way upon or in which are incorporated or embodies, any of CheyTac's trade secrets and intellectual property;

D. Undertaking or continuing any development or research or work using former CheyTac employees or consultants in any capacity in which it would be inevitable or probable for such person to use or disclose any of CheyTac's trade secrets or intellectual property;

E. Marketing, selling, or distributing for a reasonable period of time any Infringing Products including any product that competes with CheyTac.

2. An ORDER from the Court declaring that the Defendants, jointly and severally:

- a. competed unfairly with Plaintiff as defined by § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), and at common law and have otherwise injured the Plaintiff's business reputation in the manner complained of herein;
- b. infringed Plaintiff's exclusive rights in the CheyTac Marks;
- c. have infringed one or more claims of the '669 Patent; and

3. An ORDER from the Court providing that the Defendants, jointly and severally:

- a. Be permanently enjoined from (a) continuing to infringe Plaintiff's trademarks in the Infringed Products; (b) making, having made, offering to sell or selling any CheyTac Products or any other reproduction, counterfeit, copy or colorable imitation of their merchandise and products; (c) using the CheyTac trademarks on any product or packaging or invoices or any other reproduction, counterfeit, copy or colorable imitation of said marks; and (d) otherwise unfairly competing with the Plaintiff or its agents or distributors or otherwise injuring Plaintiff's business reputation. Such injunction shall extend to the Defendants and their respective

agents, servants, employees, officers, successors, licensees and assigns and all persons acting in concert or participation with each or any of them;

- b. Be required in equity to account for, within 15 days of the ORDER, account for and pay to Plaintiff the profits Defendants have realized which are attributable to its acts of unfair competition pursuant to Section 43(a) of the Federal Trademark Act, 15 U.S.C. §1125(a) and/or trademark infringement pursuant to § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a), as amended;
- c. Be required to deliver for destruction all counterfeit merchandise and products, as well as any advertisements, labels, signs, packages, boxes, cartons, wrappers, and all other materials in the possession custody or under the control of either Defendants which are, bear or are packaged with the CheyTac trademark infringing reproduction of counterfeit merchandise which bear or are packaged with any infringing reproduction of the marks, and all tooling, molds, patterns or designs and any means for making or duplicating the same pursuant to § 36 of the Federal Trademark Act, 15 U.S.C. § 1118.
- d. Be required to pay the Plaintiff the Defendant's profits and any costs of this action and any damages which the Plaintiff sustained as a result of Defendants' willful acts of trademark infringement and unfair competition and such damages shall be trebled pursuant to § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a), as amended.
- e. Be required to pay any exceptional damages under 35 U.S.C. §285.
- f. Be required to pay to Plaintiff actual and exemplary damages against the Defendants on the cause of action alleged herein and the recovery of pre-

judgment and post-judgement interest as allowed by law.

- g. Be required to pay to Plaintiff, as punitive damages, \$100,000 or an amount as the Court may deem just and proper. Be required to pay the Plaintiff its reasonable attorney's fees and costs incurred in pursuit of this action.
- 4. That a constructive trust be imposed against the Defendants and each of the individual defendants for the profits from use of the confidential information, trade secrets and intellectual property belongs to CheyTac.
- 5. The Court grants such other and further relief, both general and special, at law or in equity, to which Plaintiff CheyTac may be justly entitled.

Dated: August 7, 2017

Respectfully Submitted,

By: /s/ Andrew S. Rapacke
Andrew S. Rapacke, Esquire
Attorney for Plaintiff
THE RAPACKELAW GROUP, P.A.
Florida Bar No: 0116247
1836 N. Pine Island Road
Plantation, FL 33322
Telephone: (954) 533-4396
Facsimile: (954) 206-0484
Email and Court designation:
andy@arapackelaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/DE. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generate by CM/DE or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing on August 7, 2017.

By: /s/ Andrew S. Rapacke

Florida Bar No. 0116247

Service List

Counsel for Defendants

Benjamin D. Van Horn, Esq.

John Da Grosa Smith, Esq.

Kristina M. Jones, Esq.

SMITH LLC

1320 Ellsworth Industrial Blvd., Ste. A1000

Atlanta, GA 30318

Email: bvanhorn@smithlit.com

Email: jdsmith@smithlit.com

Email: kjones@smithlit.com

Counsel for Plaintiff

Andrew Rapacke
Florida Bar No. 0116247
The Rapacke Law Group, P.A.
950 S. Pine Island Road, Suite A-150
Plantation, FL 33324
(954) 533-4396 Telephone
(954) 206-0484 Facsimile andy@arapackelaw.com

Roy D. Wasson
Florida Bar No. 332070
Wasson & Associates, Chartered
Courthouse Plaza—Suite 600
28 West Flagler Street
Miami, Florida 33130
(305) 372-5220 Telephone
(305) 372-8067 Facsimile
roy@wassonandassociates.com
e-service@wassonandassociates.com