

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

PHIL DURANGO, LLC, a Colorado limited liability company,

Plaintiff,

v.

PSR GROUP, Inc., a Kentucky corporation, d/b/a PD3 and PRODUCT, DESIGN,  
DEVELOPMENT AND DISTRIBUTION CORP., a Kentucky Corporation,

Defendant.

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**COMPLAINT FOR INJUNCTIVE RELIEF, DAMAGES AND JURY DEMAND**

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Phil Durango, LLC ("Plaintiff"), for its Complaint against PSR Group, Inc. d/b/a PD3 and Product, Design, Development and Distribution Corp. ("Defendant" or "PSR Group"), alleges as follows:

**I. THE PARTIES**

1. Plaintiff is a Colorado limited liability company, having a business address of 21899 Grandview Ave, Golden, CO 80401.
2. Upon information and belief, Defendant is a Kentucky corporation having a business address in London, KY 40743.

**II. JURISDICTION AND VENUE**

3. This action is for patent infringement under 35 U.S.C. § 271; trademark infringement under §§ 32(1) and 43(a) of the Trademark Act of July 5, 1946, as amended, commonly known as the

Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 *et seq.*; and trademark infringement and unfair competition in violation of common law of the State of Colorado.

4. This Court has original subject matter jurisdiction over all asserted claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367 (the supplemental jurisdiction statute codifying the pendent and ancillary jurisdiction doctrines).

5. Upon information and belief, PSR Group is subject to personal jurisdiction in this judicial district, as PSR Group sells, offers for sale, advertises and promotes its products, including infringing products, as described hereinafter, through at least an interactive website that has been used by or is accessible to consumers in the State of Colorado and this judicial district. Upon information and belief, Defendant targeted a Colorado audience when it knowingly selected a confusingly similar mark and infringing design for its tourniquets in order to copy Plaintiff's widely acclaimed tourniquets. By using a similar domain name for its website to promote its product and touting test results that refer to Plaintiff's tourniquet and not Defendant's, Defendant is not merely selling its products online. Rather, Defendant is engaging in a targeted campaign directed toward Plaintiff in Plaintiff's home state in order to confuse or deceive Colorado consumers. Defendant has committed and continues to commit acts of patent infringement in the State of Colorado and has conducted business within this judicial district; the activities giving rise to Plaintiff's claims occurred in this judicial district; and/or Plaintiff has been damaged in this judicial district by PSR Group's tortious conduct.

6. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 U.S.C. §§ 1391..

### **III. GENERAL ALLEGATIONS**

7. Plaintiff has received wide acclaim for developing a highly effective, one-handed tourniquet that is marketed and sold throughout the world. Indeed, the U.S. Army recognized Plaintiff's tourniquet as one of the "Top 10 Inventions of 2005." As such, Plaintiff has become recognized by consumers throughout the U.S. and the world as a source of high quality goods that are targeted to the military and civilian use (*e.g.*, use by emergency medical, police and fire personnel and other civilians).

#### **A. Plaintiff's Marks**

8. Plaintiff owns the COMBAT APPLICATION TOURNIQUET trademark, and is the owner of multiple common law trademarks and federal registrations, including but not limited to, U.S. Trademark Registration No. 3,863,064, registered on October 19, 2010, for COMBAT APPLICATION TOURNIQUET for medical devices, namely, tourniquets for constricting or compressing the flow of blood, and U.S. Trademark Registration No. 3,075,355, registered on April 4, 2006, for C-A-T (stylized) for a one-handed tourniquet medical device (collectively, the "COMBAT APPLICATION TOURNIQUET Marks" or "Marks"). True and correct copies of these registrations are attached hereto as Exhibit A and are incorporated by reference in their entirety.

9. Plaintiff and/or its licensees have been using the COMBAT APPLICATION TOURNIQUET Marks in connection with emergency medical devices in the U.S. since at least as early as 2004. Plaintiff and/or its licensees have expended substantial time, money, and effort to

promote and advertise its goods in the U.S. and throughout the world in connection with its COMBAT APPLICATION TOURNIQUET Marks. Phil Durango and/or its licensees have extensively promoted its medical devices in print advertising and on websites, such as combattourniquet.com. As a result of the longstanding use, promotion and advertising, the COMBAT APPLICATION TOURNIQUET Marks have acquired substantial goodwill and are assets of significant value to Plaintiff.

10. Plaintiff has acquired strong common law rights, based at least in part on its licensees' continuous and uninterrupted use of its Marks in commerce in connection with the advertising and sale of its tourniquets. Based on the substantially exclusive, continuous and uninterrupted use of the Marks for many years in interstate commerce, relevant consumers have come to associate the distinctive Marks exclusively with Plaintiff and or its products.

11. Plaintiff's Registrations constitute *prima facie* evidence of Plaintiff's ownership rights in and to the Marks.

**B. Plaintiff's '067 Patent**

12. In addition to its extensive common law and federal trademark rights, Plaintiff has protected its proprietary technology by seeking and receiving various U.S. patents that cover its tourniquet technology. For example, Plaintiff owns all rights, title and interest to U.S. Patent No. 7,842,067, entitled "TOURNIQUET AND METHOD OF USE" ("the '067 Patent"), which was duly and legally issued by the United States Patent and Trademark Office on November 30, 2010. A true and correct copy of the '067 Patent has been attached hereto as Exhibit B and is incorporated by

reference in its entirety. Plaintiff is entitled to sue for past and future infringement of the '067 Patent.

13. The '067 Patent is valid and enforceable.

14. Plaintiff's tourniquets are covered by at least one or more claims of the '067 Patent and as such, have been marked in accordance with 35 U.S.C. §287 with respect to the '067 Patent.

**C. Defendant's Infringing and Other Tortious Conduct**

15. Upon information and belief, Defendant is a product development company that has a focus on military applications. On one of its websites, pdthree.com, Defendant touts that it allegedly "reinvents" existing concepts that resonate within the marketplace. However, rather than trying to differentiate itself in the marketplace, Defendant has embarked on a campaign to merely free ride off of Plaintiff's goodwill and intellectual property by manufacturing, advertising and selling a copycat product under the mark, IMPROVED COMBAT TOURNIQUET ("Accused Product").

16. Upon information and belief, Defendant knew of Plaintiff's tourniquet product and its superior rights prior to the introduction of Defendant's IMPROVED COMBAT TOURNIQUET and went to great lengths to create confusion between the parties' products. Upon information and belief, Defendant first used its IMPROVED COMBAT TOURNIQUET mark in commerce, without Plaintiff's authorization, long after Plaintiff had acquired its strong federal and common law rights in and to Plaintiff's Marks.

17. Upon information and belief, Defendant knowingly adopted a confusing similar name, IMPROVED COMBAT TOURNIQUET (reproduced below), for its product with the text

IMPROVED wording being intentionally displayed in a significantly smaller and less visible font, and in a less visible, muted grey color so as not to draw attention to it:



Defendant's use of IMPROVED in connection with almost an identical mark to Plaintiff's suggests that Defendant's tourniquet is simply a newer version of Plaintiff's COMBAT APPLICATION TOURNIQUET. (A true and correct copy of a portion of Defendant's pdthree.com website depicting Defendant's use of its IMPROVED COMBAT TOURNIQUET mark has been attached hereto as Exhibit C and is incorporated by reference in its entirety.)

18. Defendant even adopted the same black color scheme and configuration for its tourniquet as well as a short acronym for its product ("ICT") (mimicking Plaintiff's C-A-T<sup>®</sup> mark) in a further attempt to confuse consumers. (*Id.*)

19. Indeed, Defendant baldly touts its prior knowledge of Plaintiff's tourniquet as evidenced by the comparison sheet supplied on Defendant's website. A true and correct copy of a portion of Defendant's website depicting this comparison chart has been attached hereto as Exhibit D and is incorporated by reference in its entirety.

20. Upon information and belief, in October of 2012, Defendant changed the focus of its website to create the impression that Plaintiff was affiliated with, sponsored and/or authorized Defendant's tourniquet. Defendant changed from a multi-product home page to a page solely

targeted at promoting a single product, Defendant's tourniquet, in an effort to mimic Plaintiff's licensee's website where only Plaintiff's COMBAT APPLICATION TOURNIQUET is marketed for sale. Upon information and belief, Defendant even adopted a confusingly similar domain (*i.e.*, improvedcombattourniquet.com) to Plaintiff's licensee's domain, combattourniquet.com, to divert consumers to Defendant's site. Defendant also offers consumers the ability to download a government report (*i.e.*, the NAVSEA report) that tested Plaintiff's product. Tellingly, the NAVSEA report does not refer to Defendant's tourniquet. Defendant appears to have engaged in a pattern of deceptive activity designed to cause consumer confusion and divert consumers from purchasing Plaintiff's products.

21. Upon information and belief, Defendant is currently or is in the process of marketing and selling its tourniquets through the same types of distribution channels as Plaintiff's products are sold and to the same types of consumers.

22. Defendant's actions are likely to cause confusion or mistake, or to deceive the public as to the source and quality of Defendant's products. Consumers may also experience initial interest confusion if the consumer is seeking Plaintiff's tourniquet and is lured to Defendant's product due to Defendant's prominent use of its confusingly similar IMPROVED COMBAT TOURNIQUET mark.

23. Defendant's continued unauthorized use of the IMPROVED COMBAT TOURNIQUET mark will deceive the relevant purchasing public as to the source or origin of Defendant's products.

24. On information and belief, Defendant's actions have been motivated exclusively by financial gain, have been taken with full knowledge of Plaintiff's superior legal rights, and are

without regard to the public policy right of consumers to be free of confusion as to the source and origin of products and services.

25. Defendant was put on notice of its infringing use of Plaintiff's Marks and infringement of the '067 Patent as early as November 8, 2012, when Plaintiff's counsel sent a cease and desist letter demanding that all such infringing use immediately cease. A true and correct copy of the cease and desist letter is attached as Exhibit E hereto and is incorporated by reference in its entirety.

26. Despite actual notice through Plaintiff's cease and desist letter, Defendant has continued to willfully infringe upon Plaintiff's superior rights. Defendant's continued infringing use of Plaintiff's Marks evidences a wrongful intent to trade upon Plaintiff's goodwill and reputation.

27. Defendant's continued use of Plaintiff's Marks will continue to cause, at a minimum, reputation type damage to Plaintiff for which there is no adequate remedy at law.

**IV. FIRST CLAIM FOR RELIEF**  
**(Infringement Under Section 32(1) of the Lanham Act)**

28. Plaintiff incorporates paragraphs 1 through 27 above as though fully set forth herein.

29. Defendant's unauthorized advertisement, promotion, display, shipment, offering for sale, sale, and/or distribution of IMPROVED COMBAT TOURNIQUET as a mark on or in connection with the Accused Product as aforesaid constitute use in commerce and are likely to cause confusion, deception, and/or mistake by creating the false and misleading impression that the Accused Product emanates from, is connected with, or otherwise is sponsored, endorsed or approved by the Plaintiff, in violation of § 32(1) of the U.S. Trademark Act, 15 U.S.C. § 1114(1).

30. Defendant's willful and deliberate infringement of Plaintiff's Marks as aforesaid has



caused and continues to cause irreparable harm to Plaintiff.

31. Unless restrained and enjoined by this Court, Defendant will persist in its infringement of Plaintiff's Marks, thereby causing Plaintiff further irreparable harm.

32. Plaintiff has or will suffer commercial harm, such as the loss of certain long-term or high-volume contracts, such loss causing severe economic harm to the extent of permanently and irreparably damaging Plaintiff's business and Plaintiff has no adequate remedy at law.

**V. SECOND CLAIM FOR RELIEF**  
**(Infringement Under Section 43(a) of the Lanham Act)**

33. Plaintiff incorporates paragraphs 1 through 32 above as though fully set forth herein.

34. Defendant's unauthorized use of IMPROVED COMBAT TOURNIQUET as a mark in connection with the offering, advertising, promoting, distribution and/or sale of Defendant's products in U.S. commerce is likely to cause confusion or mistake, to deceive relevant consumers as to the origin, sponsorship, association of approval of the goods provided by Defendant or to cause confusion or mistake or to deceive relevant consumers that Defendant is connected or otherwise associated with Plaintiff in violation of § 43(a) of the U.S. Trademark Act, 15 U.S.C. § 1125(a).

35. Defendant's willful and deliberate unfair competition as aforesaid has caused and continues to cause commercial and irreparable harm to Plaintiff.

36. Unless restrained and enjoined by this Court, Defendant will persist in its unfair competition, thereby causing Plaintiff further irreparable harm.

37. Plaintiff has or will suffer commercial harm, such as the loss of certain long-term or high-volume contracts, such loss causing severe economic harm to the extent of permanently and irreparably damaging Plaintiff's business and Plaintiff has no adequate remedy at law.

**VI. THIRD CLAIM FOR RELIEF**  
**(Colorado Common Law Trademark Infringement)**

38. Plaintiff incorporates paragraphs 1 through 37 above as though fully set forth herein.

39. Defendant's use of the IMPROVED COMBAT TOURNIQUET mark in connection with the offering, advertising, promotion and/or provision of Defendant's goods is a colorable imitation of Plaintiff's COMBAT APPLICATION TOURNIQUET mark.

40. Such unauthorized use by Defendant is likely to cause confusion, mistake and/or deception of relevant consumers and as such, constitutes trademark infringement in violation of Colorado common law.

41. Upon information and belief, the aforesaid conduct was undertaken willfully by Defendant with full knowledge of Plaintiff's use of its COMBAT APPLICATION TOURNIQUET mark and with the intention of causing confusion, mistake, or deception.

42. Defendant's willful and deliberate trademark infringement as aforesaid has caused and continues to cause commercial and irreparable harm to Plaintiff.

43. Unless restrained and enjoined by this Court, Defendant will persist in its acts of trademark infringement, thereby causing Plaintiff further irreparable harm.

44. Plaintiff has or will suffer commercial harm, such as the loss of certain long-term or high-volume contracts, such loss causing severe economic harm to the extent of permanently and irreparably damaging Plaintiff's business and Plaintiff has no adequate remedy at law.

**VII. FOURTH CLAIM FOR RELIEF**  
**(Unfair Competition in Violation of Colorado Common Law)**

45. Plaintiff incorporates paragraphs 1 through 44 above as though fully set forth herein.

46. Defendant has falsely represented the source of its goods. Defendant's advertisement, promotion, display, shipment, offering for sale, sale, and/or distribution of the IMPROVED COMBAT TOURNIQUET mark in connection with the Accused Product in commerce in Colorado as aforesaid are likely to cause confusion or deceive the public as to the source of their products and constitute unfair competition in violation of Colorado common law.

47. Defendant has misappropriated Plaintiff's valuable goodwill and public recognition of its COMBAT APPLICATION TOURNIQUET mark, which has been developed over a long period of time by Plaintiff, and Defendant has unlawfully benefited and been unjustly enriched by such activities.

48. Defendant's willful and deliberate unfair competition as aforesaid has caused and continues to cause commercial and irreparable harm to Plaintiff.

49. Unless restrained and enjoined by this Court, Defendant will persist in its acts of unfair competition, thereby causing Plaintiff further irreparable harm.

50. Plaintiff has or will suffer commercial harm, such as the loss of certain long-term or high-volume contracts, such loss causing severe economic harm to the extent of permanently and irreparably damaging Plaintiff's business and Plaintiff has no adequate remedy at law.

**VIII. FIFTH CLAIM FOR RELIEF**  
**(Deceptive Trade Practices in Violation of Colorado Statutory Law)**

51. Plaintiff incorporates paragraphs 1 through 50 above as though fully set forth herein.

52. By Defendant's action described above, Plaintiff has engaged in deceptive trade practices, as defined by the Colorado Consumer Protection Act, C.R.S. §§ 6-1-105(1)(a),(b),(c) and/or (e).

53. Upon information and belief, Defendant's wrongful and deceptive activities have a significant impact upon the public as actual or potential consumers.

54. Defendant's wrongful actions were committed with willful and wanton disregard of the laws of the state of Colorado and Plaintiff's superior rights.

55. As a result of Defendant's unlawful actions, Plaintiff has or will suffer commercial harm, such as the loss of certain long-term or high-volume contracts, such loss causing severe economic harm to the extent of permanently and irreparably damaging Plaintiff's business and Plaintiff has no adequate remedy at law.

**VIII. SIXTH CLAIM FOR RELIEF**  
**(Direct and Indirect Infringement of the '067 Patent)**

56. Plaintiff incorporates Paragraphs 1 through 55 as though fully set forth herein.

57. Defendant has infringed one or more claims of the '067 Patent, both directly and under the doctrine of equivalents, by manufacturing, importing, selling, and/or offering to sell the Accused Product in the U.S. without Plaintiff's authorization, in violation of U.S.C. § 271(a).

58. As noted above, Plaintiff notified Defendant that Defendant's activities infringe one or more claims of the '067 Patent. Despite this notice, Defendant has failed to cease its direct and indirect infringement of the '067 Patent. Defendant has also had constructive notice of the '067 Patent based upon the continuous marking of products covered thereby by Plaintiff's licensees.

59. Defendant offers instructions to consumers how to use the Accused Product to apply a radial compressive force to restrict the flow of blood in a limb. A true and correct copy of Defendant's instructions for its Accused Product is attached hereto as Exhibit F and is incorporated herein by reference in its entirety.

60. With knowledge of Plaintiff's '067 Patent, Defendant has actively induced others to infringe one or more claims of Plaintiff's '067 Patent by the manufacture, offering to sell, sale and/or use of the Accused Product in violation of 35 U.S.C. § 271(b).

61. Defendant's actions in manufacturing and/or offering to sell or selling the Accused Product within the United States, knowing that the Accused Product is especially made or especially adapted for use in infringing one or more claims of the '067 Patent and is not a staple article or commodity of commerce suitable for any substantial non-infringing use, constitutes contributory infringement of the '067 Patent in violation of 35 U.S.C. § 271(c).

62. Defendant's infringement of the '067 Patent is willful and in wanton disregard of Plaintiff's patent rights.

63. Plaintiff has been damaged by Defendant's infringement of the '067 Patent and Plaintiff will suffer additional irreparable injury and impairment of the value of its patent rights unless Defendant is enjoined by this Court.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Phil Durango, LLC prays for judgment in its favor and against Defendant PSR Group as follows:

A. That PSR Group, its agents, servants, officers, directors, shareholders, members, employees, attorneys, privies, representatives, successors and assigns, parent and subsidiary corporations or other related entities, and any and all persons in active concert or participation with any of them, be temporarily, preliminarily and permanently enjoined from:

1. infringing and/or inducing others to infringe and/or contributing to the

infringement of the '067 Patent;

2. any further use of Plaintiff's Marks or any other mark which is confusingly similar thereto in connection with the advertising or sale of the Accused Product or any other tourniquets;

3. directly or indirectly using Plaintiff's Marks or any confusingly similar mark, either alone or in combination with other marks, symbols or trade dress;

4. performing any action or using any name, mark, symbol or slogan which is likely to cause confusion or mistake, or to deceive or otherwise mislead the trade and/or the public into believing that Plaintiff and Defendant are one and the same, or in some way connected, or that Plaintiff is the sponsor of Defendant or that Defendant is in some manner affiliated or associated with, or under the supervision or control of, Plaintiff, or that Defendant's products originate with Plaintiff, or are connected or offered with the approval, consent, authorization, or under the supervision of Plaintiff;

5. filing or aiding a third party to file any registration of any name, mark, symbol or slogan with any private, federal, or state agency, which is likely to cause confusion or mistake, or to deceive the trade and/or the public into believing that Plaintiff and Defendant are one and the same, or in some way connected, or that Plaintiff is the sponsor of Defendant, or that Defendant is in some manner affiliated or associated with, or under the supervision or control of, Plaintiff, or that Defendant's products originate with Plaintiff, or are connected or offered with the approval, consent, authorization, or under the supervision of Plaintiff, including, but not limited to state and federal trademark applications and domain name

registrations;

6. manufacturing, marketing or selling any product or material containing or utilizing Plaintiff's intellectual property; or

7. any other conduct constituting unfair competition with Plaintiff.

B. That Defendant be ordered to file with the Court and serve on Plaintiff within thirty (30) days after the entry of an injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendant complied with any ordered injunction;

C. That Defendant be ordered to deliver up to Plaintiff for destruction, or certify destruction of, all products and promotional materials that contain Plaintiff's Marks or any confusingly similar mark, used in connection with the manufacture, marketing or sale of tourniquets;

D. That Defendant pay to Plaintiff a sum sufficient to cover the cost of corrective advertising necessary to alleviate any existing confusion resulting from Defendant's unauthorized use of its IMPROVED COMBAT TOURNIQUET mark;

E. That Defendant be ordered to transfer to Plaintiff any and all domain names registered by Defendant which are confusingly similar to the Marks owned by Plaintiff;

F. That Plaintiff be awarded damages, in an amount to be determined at trial, for all infringing activities, but in no event, less than a reasonable royalty;

G. That Defendant be ordered pursuant to 15 U.S.C. § 1117(a) and Colorado common law, to pay to Plaintiff all of its profits from the sale of goods under the IMPROVED COMBAT TOURNIQUET mark, and such profits be enhanced on the basis of its willful infringement of Plaintiff's Marks and willful unfair competition;

H. That Defendant be found to have directly and indirectly infringed Plaintiff's '067 Patent and its infringement be deemed willful;

I. That Defendant be found to have willfully infringed Plaintiff's COMBAT APPLICATION TOURNIQUET mark;

J. That Plaintiff be awarded all of its damages due to Defendant's infringement of Plaintiff's rights and these damages be trebled by reason of the willful, wanton, and deliberate nature of Defendant's infringement pursuant to 35 U.S.C. § 284.

K. That Plaintiff be awarded its attorneys' fees and costs and expenses (including expert fees), as this is an exceptional case under 35 U.S.C. § 285.

L. That Plaintiff be awarded pre-judgment and post-judgment interest; and

M. Such other relief as the Court deems just and appropriate.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Date: November 21, 2012

Respectfully submitted,

By: s/Scott R. Bialecki  
Scott R. Bialecki  
Fox Rothschild LLP  
Tabor Center  
1200 17<sup>th</sup> Street, Suite 975  
Denver, CO 80202  
Telephone: (303) 446-3851  
Fax: (303) 446-3841  
E-mail: [sbialecki@foxrothschild.com](mailto:sbialecki@foxrothschild.com)

*Attorneys for Plaintiff Phil Durango, LLC*