



the Accused Product. Such unlawful activities are occurring throughout the United States and, in particular, in this District.

3. As set forth more fully herein, Skil-Care manufactures, sells, and distributes the Accused Product, a protective boot that is confusingly similar in design, appearance, and configuration to a protective boot produced by Sage.

4. Skil-Care's unauthorized use of Sage's trade dress is an effort to trade on the valuable goodwill and reputation associated with Sage's trade dress, and is likely to cause confusion with regard to the affiliation or connection between Skil-Care and Sage, and with regard to the source, sponsorship, or approval of Skil-Care's products, all to Sage's harm and Skil-Care's unjust enrichment. Moreover, Skil-Care's misappropriation of Sage's trade dress is an intentional attempt to pass off its products as Sage's high quality products by deceiving the relevant public, including consumers.

#### **THE PARTIES**

5. Plaintiff Sage is incorporated under the laws of Illinois, and has a place of business at 3909 Three Oaks Road, Cary, Illinois 60013.

6. Sage is the assignee of the '984 patent, a true and correct copy of which is attached as Exhibit A. The '984 patent issued on September 21, 2010, and is directed to a "HEEL ULCER PREVENTION AND CUSHIONING BOOT."

7. For over 35 years, Sage has been providing innovative healthcare products for hospitals, including but not limited to heel ulcer prevention and cushioning boots. Since 1999, Sage's products have been available to consumers for home use and may be purchased at drug stores, discount retailers, or online.

8. Defendant Skil-Care Corporation (“Skil-Care”) is incorporated in New York, having a principal place of business at 29 Wells Avenue, Yonkers, New York 10701-9915.

9. Skil-Care manufactures and distributes restraint-free safety, seating, and positioning products for long-term health care. Skil-Care manufactures, uses, offers for sale, sells, and/or imports heel cushioning products, including without limitation those marketed as the Super Soft Heel Protector, which have been offered for sale and sold within the United States and, in particular, in this District.

10. Skil-Care also sells and distributes the Accused Product through distributor Owens & Minor under the brand Medi-Choice Pressure Relieving Heel Protector.

### **JURISDICTION AND VENUE**

11. This is an action for patent infringement under 35 U.S.C. § 271 and for trade dress infringement under 15 U.S.C. § 1125(a). This Court has subject matter jurisdiction over Sage’s federal claims of patent infringement and trade dress infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over the Defendant for the purposes of this action pursuant to 28 U.S.C. §§ 1391 and 1400 because the Defendant resides in this district or sells and/or offers to sell the accused product in this District.

13. Skil-Care maintains a website at [www.skil-care.com](http://www.skil-care.com). The website contains a page with a description, images, instructions for use, and reorder numbers for the Super Soft Heel Protector product (Exhibit B). The website contains a “Dealer Locator” page that lists eleven (11) “Home Care” dealers of Skil-Care products that service Illinois (Exhibit C) and twelve (12) “Institutional” dealers of Skil-Care products that service Illinois (Exhibit D). The

website also contains a “Representative Locator” page that lists two (2) local Skil-Care Representatives in Chicago, including one servicing area within the District (Exhibit E).

14. Skil-Care also sells and distributes the Accused Product through distributor Owens & Minor under the brand Medi-Choice Pressure Relieving Heel Protector thereby injecting the Accused product into the stream of commerce in this District.

15. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because at least a substantial part of the events giving rise to Sage’s claims occurred in this District and Defendant is subject to personal jurisdiction in this District.

16. A real, immediate, and justiciable controversy exists between Sage and the Defendant relating to the infringement and/or willful infringement of the ‘984 patent and of Sage’s trade dress.

#### **SKIL-CARE’S INFRINGEMENT OF THE ‘984 PATENT**

17. The ‘984 patent issued on September 21, 2010, reciting claims 1-15, each of which is directed to a cushioning boot (claims 1-9) or a foot cushioning boot (claims 10-15).

18. Prior to the issuance of the ‘984 patent, Sage products embodying the claims of the ‘984 patent were marked with language providing reasonable notice that the product embodied features Sage sought a patent to protect.

19. The Accused Product literally infringes at least claim nos. 1-10 and 15 of the ‘984 patent and/or infringes the ‘984 patent under the Doctrine of Equivalents. The Accused Product is a heel cushioning boot which includes a portion that engages the user’s leg and a separate portion that engages the user’s foot. The front portion of the Accused Product is open to allow a user to insert his or her leg into the Protector. A pair of tubes runs parallel with the user’s leg and is disposed within the portion of the boot that engages the user’s leg. The tubes are at least

adjacent to one another. Padding is disposed on top of the tubes such that the padding is disposed between the tubes and the user's leg when the Accused Product is in use.

20. On or about May 21, 2010 Sage notified Skil-Care of the application regarding the invention of the '984 patent and asserted that Skil-Care's Super Soft Heel Protector would infringe the '984 patent upon issuance. Skil-Care acknowledged the imminent issuance of the '984 patent on or about Sept. 14, 2010, but has not discontinued its manufacture and sale of the infringing Super Soft Heel Protector product.

**SAGE'S PROTECTIVE BOOT TRADE DRESS**

21. Since 2006, Sage has manufactured and sold in interstate commerce the Prevalon® Pressure Relieving Heel Protector protective boot shown below (herein "Sage's Protective Boot"):



22. Sage's Protective Boot includes unique, arbitrary, and non-functional characteristics, such as the use of a royal blue color. Sage employs the same royal blue color in other products, such as Sage's turn and position system shown below:



23. The design, appearance, and configuration of Sage's Protective Boot (referred to here as the "Protective Boot Trade Dress") includes, but is not limited to, the above-referenced unique and arbitrary features, individually and in combination with one another.

24. Sage has expended substantial time, effort, and money in advertising, promoting, and marketing Sage's Protective Boot, including the Protective Boot Trade Dress, throughout the United States. For example, Sage promotes its Protective Boot via its website, and in catalogs, brochures, and other promotional items sent each year to customers throughout the United States. Moreover, large national medical supply dealers have promoted Sage's Protective Boot throughout the country on their websites and in their brochures. These promotional items typically include photographs or depictions of Sage's Protective Boot, necessarily including the Protective Boot Trade Dress. Sage's sales of its Protective Boot throughout the United States have been substantial, as measured by geographic scope, unit sales, and/or dollar sales.

25. As a result of Sage's substantial, continuous, and extensive advertising, promotion, and sales of its Protective Boot, the Protective Boot Trade Dress has acquired secondary meaning such that the relevant public, including consumers, is able to identify and distinguish Sage's Protective Boot from those goods offered by other companies because of Sage's Protective Boot Trade Dress. The Protective Boot Trade Dress has acquired exceedingly valuable goodwill and has become widely and favorably accepted and recognized throughout the United States as identifying Sage, or at least a single anonymous source.

**SKIL-CARE'S UNAUTHORIZED COPYING, EXPLOITATION, AND USE  
OF SAGE'S PROTECTIVE BOOT TRADE DRESS**

26. Skil-Care and Sage directly compete with one another in the marketplace for (among other things) protective boots.

27. On information and belief, in approximately early 2010, Skil-Care began advertising, promoting, and offering for sale in interstate commerce the Accused Product, a protective boot that directly competes with Sage's Protective Boot. Skil-Care's new offering is shown below:



28. The design, appearance, and configuration of the Accused Product is confusingly similar to the design, appearance, and configuration of Sage's Protective Boot, including the Protective Boot Trade Dress. For example, the Accused Product employs a virtually identical royal blue color as that employed by Sage's Protective Boot.

29. On information and belief, the purpose of Skil-Care's unauthorized misappropriation and use of Sage's Protective Boot Trade Dress is to unlawfully obtain immediate consumer recognition and appeal for its protective boot by trading on the significant and well-established reputation and goodwill of Sage's Protective Boot Trade Dress. Skil-Care deliberately adopted Sage's Protective Boot Trade Dress knowing and intending that the relevant public, including consumers, would likely be confused, mistaking the Accused Product for Sage's, thereby unfairly diverting sales from Sage to Skil-Care, or at least mistaking there to be an association, connection, and/or affiliation between Sage and Skil-Care and/or their respective products.



**COUNT I: PATENT INFRINGEMENT AGAINST SKIL-CARE CORPORATION**

30. Sage incorporates by reference each of the preceding allegations of paragraphs 1 - 29 above as though stated herein.

31. On information and belief, Skil-Care manufactures, uses, sells, offers to sell and/or imports the Accused Product within the United States.

32. On information and belief, Skil-Care has directly infringed one or more claims of the '984 patent within this District and elsewhere within the United States through its manufacture, use, sale, offer to sell, and/or importation of the Accused Product.

33. On information and belief, Skil-Care has worked in conjunction with at least its sales representatives and distributors to manufacture, use, sell, offer to sell and/or import the Accused Product.

34. The afore-alleged and pleaded acts constitute literal infringement and/or infringement under the doctrine of equivalents.

35. Skil-Care's infringing conduct in the face of actual notification of infringement of the '984 patent is willful and entitles Plaintiff to enhanced damages and attorney's fees.

36. Unless enjoined, Skil-Care's acts will cause Sage irreparable harm, loss, and injury.

**COUNT II: TRADE DRESS INFRINGEMENT IN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. §1125(a)**

37. Sage incorporates by reference each of the preceding allegations of paragraphs 1 - 36 above as though stated herein.

38. The design, appearance, and configuration of the Accused Product are likely to cause confusion, mistake, and/or deception among the relevant public, including consumers, as to the affiliation, connection, or association between Skil-Care and Sage, and/or mislead the

public into thinking that Sage is the origin of, or has sponsored or approved of, the Accused Product, and/or commercial activities. Skil-Care's copying of Sage's trade dress is an intentional attempt to pass off Skil-Care products as Sage products. Skil-Care's aforesaid acts constitute willful infringement of Sage's Trade Dress rights in its Protective Boot, in violation of 15 U.S.C. § 1125(a)(1).

39. Skil-Care's infringement has caused Sage to suffer economic damage, has resulted in unjust enrichment to Skil-Care, and has caused and will continue to cause, unless enjoined by this Court, substantial and irreparable damage and injury to Sage and the public, for which damage and injury Sage has no adequate remedy at law.

**WHEREFORE**, Sage prays that:

- A. United States Patent No. 7,798,984 be adjudged by this Court to be enforceable and not invalid;
- B. Defendant be adjudged by this Court to have infringed U.S. Patent No. 7,798,984;
- C. Defendant be ordered by this Court to account for and pay Sage damages adequate to compensate Sage for the infringement of U.S. Patent No. 7,798,984, including interest under 35 U.S.C. § 284;
- D. A permanent injunction be issued preventing further infringement of U.S. Patent No. 7,798,984 against Defendant, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them;
- E. This case be deemed exceptional and Sage be awarded interests, costs, expenses and reasonable attorney fees for this suit as provided by 35 U.S.C. § 285;
- F. Defendant be adjudged to have infringed Sage's Protective Boot Trade Dress;

G. Defendant, its agents, servants, employees, successors, assigns, and all those controlled by or in active concert or participation with any of them be preliminarily and permanently enjoined from:

(1) using Sage's Protective Boot Trade Dress for Skil-Care's protective boot in any way in connection with its business or products;

(2) using any other design, configuration, or appearance for its protective boot that is confusingly similar to Sage's Protective Boot Trade Dress;

(3) trading on the goodwill associated with Sage's Protective Boot Trade Dress or otherwise unfairly competing, directly or indirectly, with Sage;

H. Defendant be ordered to account for and pay over to Sage all actual damages suffered by Sage and all gains, profits, and advantages derived by Skil-Care from its infringement of Sage's Protective Boot Trade Dress;

I. The Court award Sage increased damages equal to three times the amount of Sage's actual damages caused by Defendant's infringement of Sage's Protective Boot Trade Dress;

J. Defendant be ordered to destroy all merchandise, prototypes, molds, displays, advertisements, packaging, brochures, order forms, price lists, catalogs, and any other materials, whether in paper or electronic form, in its possession or control that bear Sage's Protective Boot Trade Dress, and provide certification of such destruction;

K. Defendant be ordered to compensate Sage for any and all advertising or other expenses necessary to dispel the public confusion caused by Defendant's unlawful acts complained of herein;

L. Defendant be ordered to pay interest, costs, and reasonable attorney fees to Sage under 15 U.S.C. § 1117(a); and

M. Sage be awarded such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Sage demands a trial by jury in this action on all issues triable by jury.

Respectfully Submitted,

Date: March 8, 2011

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