

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Maxx Orthopedics, Inc.	:	
	:	
Plaintiff,	:	
	:	
v.	:	No.: _____
	:	
Steve V. Nguyen, M.D., and	:	
Steve V. Nguyen, M.D., P.A.,	:	
	:	
Defendants.	:	

COMPLAINT

Maxx Orthopedics, Inc., a Pennsylvania corporation, by way of Complaint against Steve V. Nguyen, M.D. and Steve V. Nguyen, M.D., P.A., on knowledge as to Maxx Orthopedics, Inc. and otherwise on information and belief, alleges as follows:

Nature of the Action

1. This is a civil action for trademark infringement, false designation of origin, and cyberpiracy under the trademark laws of the United States including 15 U.S.C. sections 1114, 1116, 1117, 1125(a) and 1125(d); and common law trademark infringement and unfair competition.

Jurisdiction

2. Subject matter jurisdiction over this action is proper in this court under 15 U.S.C. section 1121 and 28 U.S.C. sections 1331, 1338 and 1367(a), and over the related state claims under the doctrine of supplemental jurisdiction.

Venue

3. Venue is proper in this district under 28 U.S.C. section 1391.

The Parties

4. Plaintiff, Maxx Orthopedics, Inc. (“Maxx Orthopedics”), is a Pennsylvania corporation having a place of business at 531 Plymouth Road, Suite 526, Plymouth Meeting, Pennsylvania 19462.

5. On information and belief, Steve V. Nguyen, M.D., P.A., is a Florida corporation having a place of business at 7350 Sand Lake Commons, Medplex B, Suite 2205, Orlando, Florida 32819.

6. On information and belief, Steve V. Nguyen, M.D. is an individual having a residence at 3120 Downs Cove Road, Windermere, Florida 34786.

Statement of Facts Common to All Counts

7. Since 2006, Maxx Orthopedics has been in the business of designing, manufacturing, and marketing orthopedic joint implants and instrumentation used by surgeons during orthopedic implant surgery. An examples of one of Maxx Orthopedics’ current products catalogue is shown in Exhibit 1.

8. Maxx Orthopedics markets and sells its implants and surgical instrumentation throughout the United States and in foreign countries.

9. Since at least as early as October 2007, Maxx Orthopedics has used the trademark FREEDOM in commerce to advertise, promote and sell its orthopedic joint implants and surgical instrumentation, and to identify and distinguish its goods from the goods of other companies.

10. On May 27, 2008, Maxx Orthopedics was awarded U.S. Trademark Registration No. 3,435,708 (“the ‘708 Registration”), which grants Maxx Orthopedics the exclusive right to use the mark FREEDOM, or any confusingly similar mark (colorable imitations), in connection with “orthopedic joint implants; medical and surgical instrumentation used in orthopedic transplant and implant surgery”, and in connection with related goods. A copy of the ‘708 Registration is shown in Exhibit 2.

11. For the past 6 years, Maxx Orthopedics has continuously used and heavily promoted its mark FREEDOM in the United States including the medical community and orthopedic industry.

12. Through Maxx Orthopedics’ substantial marketing and advertising efforts, the mark FREEDOM has become well-known throughout the United States, including Pennsylvania, and throughout the medical community and orthopedic industry, and is recognized as a trademark of Maxx Orthopedics.

13. The mark FREEDOM, and the extensive recognition and goodwill symbolized by the mark FREEDOM, are extremely valuable assets of Maxx Orthopedics.

14. The mark FREEDOM represents Maxx Orthopedics’ reputation as a manufacturer of top-quality orthopedic implants and surgical instrumentation.

15. Since at least as early as December 2007, Maxx Orthopedics has used the trademark FREEDOM KNEE in commerce to advertise, promote and sell its orthopedic joint implants and surgical instrumentation, and to identify and distinguish its goods from the goods of other companies.

16. On June 17, 2008, Maxx Orthopedics was awarded U.S. Trademark Registration No. 3,449,377 (“the ‘377 Registration”), which grants Maxx Orthopedics the exclusive right to use

the mark FREEDOM KNEE, or any confusingly similar mark (colorable imitations), in connection with “orthopedic joint implants; medical and surgical instrumentation used in orthopedic transplant and implant surgery”, and in connection with related goods. A copy of the ‘377 Registration is shown in Exhibit 3.

17. For the past 6 years, Maxx Orthopedics has continuously used and heavily promoted its mark FREEDOM KNEE in the United States including the medical community and orthopedic industry.

18. Through Maxx Orthopedics’ substantial marketing and advertising efforts, the mark FREEDOM KNEE has become well-known throughout the United States, including Pennsylvania, and throughout the medical community and orthopedic industry, and is recognized as a trademark of Maxx Orthopedics.

19. The mark FREEDOM KNEE, and the extensive recognition and goodwill symbolized by the mark FREEDOM KNEE, are extremely valuable assets of Maxx Orthopedics.

20. The mark FREEDOM KNEE represents Maxx Orthopedics’ reputation as a manufacturer of top-quality orthopedic implants and surgical instrumentation.

21. Since at least as early as August 2009, Maxx Orthopedics has used the trademark FREEDOM TOTAL KNEE in commerce to advertise, promote and sell its orthopedic joint implants and surgical instrumentation, and to identify and distinguish its goods from the goods of other companies.

22. On June 7, 2011, Maxx Orthopedics was awarded U.S. Trademark Registration No. 3,974,302 (“the ‘302 Registration”), which grants Maxx Orthopedics the exclusive right to use the mark FREEDOM TOTAL KNEE, or any confusingly similar mark (colorable imitations), in connection with “orthopedic joint implants; medical and surgical instrumentation used in

orthopedic transplant and implant surgery”, and in connection with related goods. A copy of the ‘302 Registration is shown in Exhibit 4.

23. For the past 5 years, Maxx Orthopedics has continuously used and heavily promoted its mark FREEDOM TOTAL KNEE in the United States including the medical community and orthopedic industry.

24. Through Maxx Orthopedics’ substantial marketing and advertising efforts, the mark FREEDOM TOTAL KNEE has become well-known throughout the United States, including Pennsylvania, and throughout the medical community and orthopedic industry, and is recognized as a trademark of Maxx Orthopedics.

25. The mark FREEDOM TOTAL KNEE, and the extensive recognition and goodwill symbolized by the mark FREEDOM TOTAL KNEE, are extremely valuable assets of Maxx Orthopedics.

26. The mark FREEDOM TOTAL KNEE represents Maxx Orthopedics’ reputation as a manufacturer of top-quality orthopedic implants and surgical instrumentation.

27. The marks FREEDOM, FREEDOM KNEE and FREEDOM TOTAL KNEE are hereinafter referred to as Maxx Orthopedics’ “FREEDOM Marks”.

28. Maxx Orthopedics recently discovered that defendants are using the marks FREEDOM, FREEDOM KNEE, FREEDOM KNEE REPLACEMENT, FREEDOM HIP, and FREEDOM HIP REPLACEMENT (the “Infringing Marks”) in interstate commerce in connection with orthopedic and reconstructive surgical services for, among things, knee replacement surgery.

29. Defendants are using the Infringing Marks FREEDOM, FREEDOM KNEE and FREEDOM KNEE REPLACEMENT on their internet website, www.freedom-knee.com, to sell,

offer for sale, distribute and advertise their services to patients and potential patients throughout the United States including the Eastern District of Pennsylvania.

30. Defendants' website www.freedom-knee.com is interactive and has enabled patients and potential patients throughout the United States, including the Eastern District of Pennsylvania, to submit their contact information and receive directly from defendants' brochures and other informational packets relating to defendants orthopedic and reconstructive surgical services.

31. Screenshots of selected pages of defendants' Internet Web site www.freedom-knee.com are shown in Exhibit 5.

32. Defendants are using the Infringing Marks FREEDOM, FREEDOM HIP and FREEDOM HIP REPLACEMENT on their internet website, www.freedom-hip.com, to sell, offer for sale, distribute and advertise their services to patients and potential patients throughout the United States including the Eastern District of Pennsylvania.

33. Defendants' website www.freedom-hip.com is interactive and has enabled patients and potential patients throughout the United States, including the Eastern District of Pennsylvania, to submit their contact information and receive directly from defendants' brochures and other informational packets relating to defendants' orthopedic and reconstructive surgical services.

34. Screenshots of selected pages of defendants' Internet Web site www.freedom-hip.com are shown in Exhibit 6.

35. Defendants are using the Infringing Marks FREEDOM, FREEDOM KNEE and FREEDOM KNEE REPLACEMENT on their internet website, www.freedom-joint.com, to sell,

offer for sale, distribute and advertise their services to patients and potential patients throughout the United States including the Eastern District of Pennsylvania.

36. Defendants' website www.freedom-joint.com is interactive and enables patients and potential patients throughout the United States, including the Eastern District of Pennsylvania, to submit their contact information and receive directly from defendants brochures and other informational packets relating to defendants' orthopedic and reconstructive surgical services.

37. Screenshots of selected pages of defendants' Internet Web site www.freedom-joint.com are shown in Exhibit 7.

38. Defendants' Web sites are written in hypertext markup language ("HTML"), and include encoded words, phrases and other material that are recognized (searched) by Internet search engines.

39. Defendants are using the Infringing Marks in the HTML code of their Web sites as a metatag or searchable text so that web portals, search engines and/or directories will direct Web traffic to defendants' Web sites.

40. The associated HTML code from defendants' Web sites showing the Infringing Marks as a metatag or searchable text is also shown in Exhibits 5-7.

41. Defendants' use of the Infringing Marks as a metatag and/or searchable text in the HTML code of their Web sites is intended to draw customers and potential customers from Maxx Orthopedics' Web site and to direct said customers to defendants' Web site.

42. Defendants are also using the Infringing Marks in promotional videos posted to third-party internet websites. For example, defendants posted two promotional videos on www.youtube.com and identified themselves as "Freedom Knee." Defendants' videos also

promote and direct prospective patients to defendants' infringing website, www.freedom-knee.com.

43. Defendants are using the legal designation ® in connection with the marks FREEDOM KNEE and FREEDOM HIP.

44. Defendants do not, in fact, own a federal trade registration for the mark FREEDOM KNEE or FREEDOM HIP.

45. On information and belief, defendants were aware of Maxx Orthopedics' FREEDOM Marks at the time defendants adopted and began using the Infringing Marks.

46. On information and belief, defendants were aware of Maxx Orthopedics' ownership of the '708 and '377 and '302 Registrations for the FREEDOM Marks at the time defendants adopted and began using the Infringing Marks.

47. Defendants' use of the legal designation ® in connection with the marks FREEDOM KNEE and FREEDOM HIP is intended to deceive the public into believing that defendants are the owners of U.S. federal registrations for the mark FREEDOM KNEE and FREEDOM HIP.

48. Defendants' activities are without authority, license or permission from Maxx Orthopedics.

49. U.S. trademark registration no. 3,435,708 for the mark FREEDOM is currently active and in force.

50. U.S. trademark registration no. 3,435,708 for the mark FREEDOM is *prima facie* evidence of Maxx Orthopedics' ownership of the mark FREEDOM under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

51. U.S. trademark registration no. 3,435,708 for the mark FREEDOM is *prima facie* evidence of Maxx Orthopedics' exclusive right to use the mark FREEDOM in connection with orthopedic joint implants and medical and surgical instrumentation used in orthopedic transplant and implant surgery under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

52. U.S. trademark registration no. 3,435,708 for the mark FREEDOM is *prima facie* evidence of the validity of the mark FREEDOM under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

53. U.S. trademark registration no. 3,449,377 for the mark FREEDOM KNEE is currently active and in force.

54. U.S. trademark registration no. 3,449,377 for the mark FREEDOM KNEE is *prima facie* evidence of Maxx Orthopedics' ownership of the mark FREEDOM KNEE under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

55. U.S. trademark registration no. 3,449,377 for the mark FREEDOM KNEE is *prima facie* evidence of Maxx Orthopedics' exclusive right to use the mark FREEDOM KNEE in connection with orthopedic joint implants and medical and surgical instrumentation used in orthopedic transplant and implant surgery under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

56. U.S. trademark registration no. 3,449,377 for the mark FREEDOM KNEE is *prima facie* evidence of the validity of the mark FREEDOM KNEE under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

57. U.S. trademark registration no. 3,974,302 for the mark FREEDOM TOTAL KNEE is currently active and in force.

58. U.S. trademark registration no. 3,974,302 for the mark FREEDOM TOTAL KNEE is *prima facie* evidence of Maxx Orthopedics' ownership of the mark FREEDOM TOTAL KNEE under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

59. U.S. trademark registration no. 3,974,302 for the mark FREEDOM TOTAL KNEE is *prima facie* evidence of Maxx Orthopedics' exclusive right to use the mark FREEDOM TOTAL KNEE in connection with orthopedic joint implants and medical and surgical instrumentation used in orthopedic transplant and implant surgery under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

60. U.S. trademark registration no. 3,974,302 for the mark FREEDOM TOTAL KNEE is *prima facie* evidence of the validity of the mark FREEDOM TOTAL KNEE under Section 33 of the Lanham Act. 15 U.S.C. § 1115.

Count I
Federal Trademark Infringement Under the Lanham Act

61. The allegations of paragraphs 1-60, inclusive, are repeated and incorporated herein by reference.

62. Defendants' acts constitute trademark infringement under Section 32 of the Lanham Act. 15 U.S.C. § 1114.

63. Defendants' use of the Infringing Marks in connection with selling, offering for sale, distributing and advertising in connection with orthopedic and reconstructive surgical services is likely to cause confusion, or to cause mistake, or to deceive the public regarding the source of their services.

64. Defendants, by their infringing use of the Infringing Marks, have made profits to which they are not entitled in law or in equity.

65. Defendants' acts have been willful and/or with a wanton and reckless disregard for Maxx Orthopedics' rights.

66. Maxx Orthopedics has sustained irreparable harm to its business, reputation, and goodwill, and, unless defendants are enjoined and restrained by this court, defendants will continue in the activities alleged herein and as a result thereof, Maxx Orthopedics will continue to sustain irreparable harm to its business, reputation and goodwill.

67. Maxx Orthopedics has no adequate remedy at law.

Count II
False Designation of Origin Under the Lanham Act

68. The allegations of paragraphs 1-67, inclusive, are repeated and incorporated herein by reference.

69. Defendants' acts constitute false designation of origin in violation of Section 43(a)(1)(A) of the Lanham Act. 15 U.S.C. § 1125(a)(1)(A).

70. Defendants' use of the Infringing Marks in connection with orthopedic and reconstructive surgical services is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of defendant with Maxx Orthopedics, or as to the origin, sponsorship, or approval of defendants' services by Maxx Orthopedics.

71. Defendants, by their unfair use of the Infringing Marks, have made profits to which they are not entitled in law or in equity.

72. Defendants' acts have been willful and/or with a wanton and reckless disregard for Maxx Orthopedics' rights.

73. Maxx Orthopedics has sustained irreparable harm to its business, reputation, and goodwill, and, unless defendants are enjoined and restrained by this court, defendants will

continue in the activities alleged herein and as a result thereof, Maxx Orthopedics will continue to sustain irreparable harm to its business, reputation and goodwill.

74. Maxx Orthopedics has no adequate remedy at law.

Count III
Common Law Trademark Infringement and Unfair Competition

75. The allegations of paragraphs 1-74, inclusive, are repeated and incorporated herein by reference.

76. Defendants' use of the Infringing Marks in connection with orthopedic and reconstructive surgical services constitutes common law trademark infringement and common law unfair competition.

77. Defendants' use of the Infringing Marks in connection with orthopedic and reconstructive surgical services is likely to cause confusion among consumers as to source, sponsorship or affiliation of defendants' services.

78. Defendants' use of the legal designation ® in connection with FREEDOM KNEE and FREEDOM HIP is being done with the intent, purpose and effect of procuring an unfair competitive advantage over Maxx Orthopedics by misappropriating the valuable goodwill developed by Maxx Orthopedics in its marks.

79. By its unfair use of the Infringing Marks and/or legal designation ®, defendants have made profits to which they are not entitled in law or in equity.

80. Defendants' acts have been willful and/or with a wanton and reckless disregard for Maxx Orthopedics' rights.

81. Maxx Orthopedics has sustained irreparable harm to its business, reputation, and goodwill, and, unless defendants are enjoined and restrained by this court, defendants will

continue in the activities alleged herein and as a result thereof, Maxx Orthopedics will continue to sustain irreparable harm to its business, reputation and goodwill.

82. Maxx Orthopedics has no adequate remedy at law.

Count IV – Cyberpiracy

83. The allegations of paragraphs 1-82, inclusive, are repeated and incorporated herein by reference.

84. Defendants' registration and use of the domain names www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com in connection with orthopedic and reconstructive surgical services constitutes cyberpiracy in violation of Section 43(d)(1) of the Lanham Act. 15 U.S.C. § 1125(d)(1).

85. Defendants' FREEDOM Marks were distinctive at the time the defendants registered the domain names www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com.

86. The domain names www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com are confusingly identical to and/or confusingly similar to Maxx Orthopedics' FREEDOM Marks.

87. Defendants have registered and used the domain names www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com with full knowledge of and with the intent to profit from Maxx Orthopedics' FREEDOM Marks.

88. By their use of the domain names www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com, the defendants have made profits to which they are not entitled in law or in equity.

89. Defendants' acts have been willful and/or with a wanton and reckless disregard for Maxx Orthopedics' rights.

90. Maxx Orthopedics has sustained irreparable harm to its business, reputation, and goodwill, and, unless defendants are enjoined and restrained by this court, defendants will continue in the activities alleged herein and as a result thereof, Maxx Orthopedics will continue to sustain irreparable harm to its business, reputation and goodwill.

91. Maxx Orthopedics has no adequate remedy at law.

WHEREFORE, Maxx Orthopedics prays for:

1) an award of damages for infringement of Maxx Orthopedics' FREEDOM Marks including defendants' profits, and that such award be trebled due to defendants' willful and deliberate conduct;

2) an Order preliminarily and permanently enjoining defendants from the following:

a. Using the FREEDOM Marks, and any marks confusingly similar to the FREEDOM Marks (the "Enjoined Marks"), in any manner in connection with the sale, offer of sale, promotion, display or exhibition of the following goods and services: orthopedic and reconstructive surgical and rehabilitative services; orthopedic joint implants; medical and surgical instrumentation used in orthopedic transplant and implant surgery; and related goods and services (the "Enjoined Goods and Services")

b. Publishing, circulating, distributing, selling, merchandising or using in any manner any labels, signs, prints, boxes, packages, wrappers, receptacles, advertisements, posters, circulars, brochures, handbills, catalogs, publicity releases, magazines, stationery, newspapers, booklets, books, pamphlets, photographs, films, audio recordings, video recordings, T-shirts, and

any other items in the possession and/or control of defendants using the Enjoined Marks in connection with the Enjoined Goods and Services; and

c. Using the Enjoined Marks as a domain name, or any portion thereof, metatag, hyperlink, portal keyword, searchable text, sponsored link, sponsored site or other item associated with any Web site including www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com or in any manner in connection with any of defendants' Web sites;

3) an Order commanding the defendants to:

a) contact all media whatsoever publishing or advertising defendants' services using the Enjoined Marks, and require that said advertisement or publication be corrected consistent with the terms of this Order;

b) provide Maxx Orthopedics written verification and supporting correspondence or other evidence showing that defendants have taken sufficient steps to correct advertising, including providing to Maxx Orthopedics a listing of all media containing advertisements for the defendants' services using the Enjoined Marks and each company contacted by defendants in connection therewith;

c) contact each search engine identified in Exhibit 7 and instruct each search engine to delete the Enjoined Marks as a portal keyword, indexed word/term and/or link for any of defendants' Web sites;

d) transfer the domain names www.freedom-knee.com, www.freedom-hip.com and www.freedom-joint.com to Maxx Orthopedics;

e) terminate any contractual relationship with any search engine or Web site wherein defendants are an advertiser, sponsored listing or sponsored link in connection with the Enjoined Terms;

f) provide Maxx Orthopedics copies of all correspondence and other evidence showing that defendants have contacted each of said search engines or Web sites in Exhibit 7 in accordance with the terms of this provision.

g) provide Maxx Orthopedics with a list of all retailers, distributors, catalogs, or resellers of any kind (collectively "resellers") that have sold, offered for sale, promoted, displayed or exhibited defendants' orthopedic and reconstructive surgical services using the Enjoined Terms; and,

h) adopt a new designation for their orthopedic and reconstructive surgical services that does not include the Enjoined Marks.

4) an award of costs and disbursements;

5) an award of attorneys fees;

6) punitive damages due to the willful, wanton and malicious conduct of defendants;

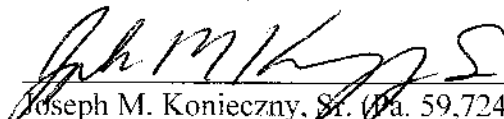
and,

7) such other and further relief as the court may deem just and proper.

Respectfully submitted,

Ryder, Lu, Mazzeo & Konieczny LLC

Date: February 29, 2012



Joseph M. Konieczny, Sr. (Pa. 59,724)
Plymouth Woods Office Center
531 Plymouth Road, Suite 526
Plymouth Meeting, PA 19462
610-940-1962(voice)
610-940-1963 (fax)
jkonieczny@ryderlu.com

Attorneys for Maxx Orthopedics Inc.