

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

3M COMPANY,

Plaintiff,

v.

Case No.: No. 8:20-cv-1003-T-35CPT

TAC2 GLOBAL LLC,

Defendant.

_____ /

DECLARATION OF CHARLES STOBIE
IN SUPPORT OF PLAINTIFF 3M COMPANY'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

I, Charles Stobie, pursuant to 28 U.S.C. § 1746 and upon penalty of perjury, declare as follows:

1. I am a resident of the State of Minnesota; over the age of 18; and competent to make this declaration. I could and would testify as to the matters set forth herein, if called upon to do so.

2. I am a Marketing Technologies and Digital Experience Director at 3M. Until very recently, I served as Global Marketing Operations Leader for 3M's Personal Safety Division. The information set forth herein is based on my personal knowledge obtained through the course of my duties at 3M, which include, among other things, 3M's: (i) brand-development and marketing efforts for 3M's Personal Safety Division; (ii) trademark policies; (iii) sales and pricing guidelines; and (iv) efforts to assist in the battle against COVID-19. The information set forth herein is also based on my review of records

and documents (including electronic records) maintained in the regular course of 3M's business, and the complaint in this lawsuit.

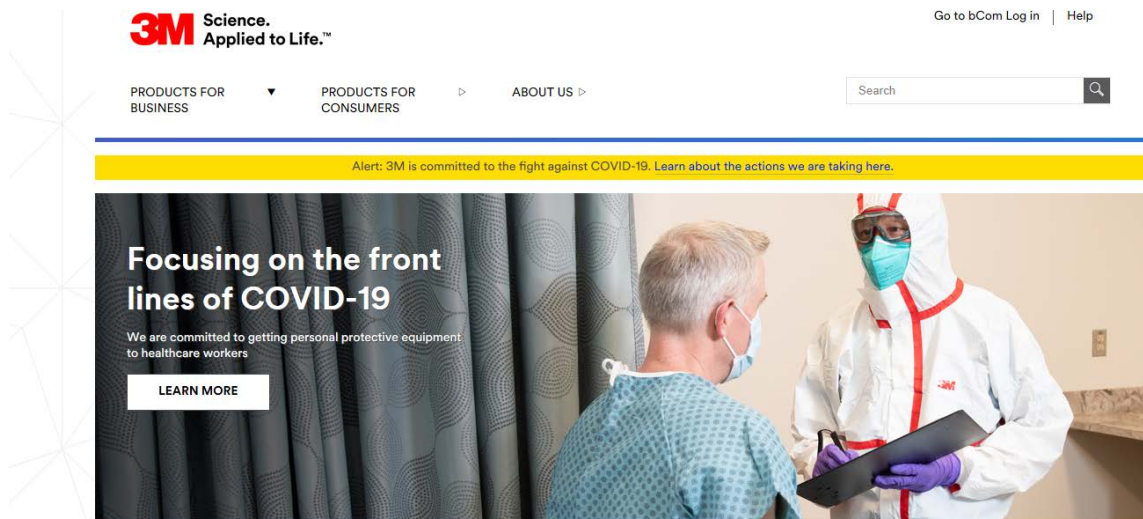
3. I submit this declaration in support of 3M Company's motion for a temporary restraining order and preliminary injunction against Defendant TAC2 Global, LLC ("TAC2 Global" or "TAC2") in the above-referenced action.

3M's Efforts In the Battle Against the COVID-19 Public Health Crisis

4. For decades, 3M has been a leading provider of personal protective equipment ("PPE") for healthcare professionals, industry workers and the public. This PPE includes N95 respirators, of which 3M is a leading manufacturer.

5. 3M's N95-rated filtering facepiece respirators have a filtration efficiency of at least 95% against non-oily particles when tested using the U.S. National Institute for Occupational Safety and Health criteria.

6. As a leading provider of PPE, 3M is "committed to getting personal protective equipment to healthcare workers":



7. Among the PPE that 3M is providing to the heroic individuals on the front lines of the battle against COVID-19 are 3M-brand N95 respirators.

8. Since the outbreak of COVID-19 in early 2020, 3M has doubled its global output rate of filtering facepiece respirators, such as N95 respirators, to 1.1 billion per year, to seek to ensure that adequate supply is available to governments and healthcare personnel, as well as to workers in other critical industries, including food, energy and pharmaceutical. *See Exhibit 1 (3M Outlines Latest Actions on COVID-19 Response*, 3M Company, available at <https://news.3m.com/press-release/company-english/3m-outlines-latest-actions-covid-19-response> (March 31, 2020)).

9. 3M is currently producing 35 million of its 3M-brand N95 respirators each month in the United States. *See Ex. 1; see also Exhibit 2 (3M and Trump Administration Announce Plan to Import 166.5 million Additional Respirators into the United States Over the Next Three Months*, 3M Company, available at <https://news.3m.com/blog/3m-stories/3m-and-trump-administration-announce-plan-import-1665-million-additional-respirators> (Apr. 6, 2020)). Approximately 90% of these respirators are now distributed for use by healthcare workers. *See Ex. 1; see also Exhibit 3 (Helping the world respond to COVID-19*, 3M Company, available at https://www.3m.com/3M/en_US/company-us/coronavirus/ (last accessed Apr. 21, 2020)).

10. In the last seven days of March 2020, alone, 3M sent 10 million of its 3M-brand respirators to healthcare facilities around the United States. *See Ex. 1.* Over the course of the next three months, 3M expects to import 166.5 million of its 3M-brand respirators to the United States. *See Ex. 2.*

11. To help meet the growing demand for respirators during COVID-19, 3M has invested the resources needed to double its current global production of 1.1 billion 3M-brand respirators, such as N95 respirators, a year to 2 billion respirators a year within the next 12 months. See Exs. 1, 3.

12. At the same time, 3M has **not** increased the prices that it charges for 3M-brand N95 respirators as a result of the COVID-19 pandemic. See, e.g., Ex. 3 (“We have not increased the prices we charge for 3M respirators in this crisis”).

13. 3M has received public commendation and praise for its contributions to the COVID-19 pandemic response, particularly with respect to its production of 3M-brand N95 respirators. Based on the public commendation and praise, and widespread media coverage of 3M-brand N95 respirators during the COVID-19 pandemic, the public is more aware now than ever that 3M manufactures N95 respirators and other PPE that is essential to helping protect healthcare personnel and workers by reducing exposure to airborne particles including those that may contain biological material such as viruses like COVID-19.

3M’s Efforts to Deter Price Gouging and Counterfeiting in Response to the Pandemic

14. In an effort to thwart third-party price-gouging, counterfeiting, and outright fraud in relation to 3M-brand N95 respirators, 3M has worked closely with law enforcement, retail partners, and others. For example, on March 24, 2020, 3M’s Chief Executive Officer, Mike Roman, sent a letter to U.S. Attorney General William Barr, and the President of the National Governors’ Association, Larry Hogan of Maryland, to offer 3M’s partnership in combatting price-gouging. See **Exhibit 4** (*3M Supports Efforts to Curb*

Pandemic Profiteers, 3M Company, available at <https://news.3m.com/press-release/company-english/3m-supports-efforts-curb-pandemic-profiteers> (March 24, 2020)).

15. In addition, 3M has (a) posted the single-case U.S. list price for several of its 3M-brand N95 respirators on its website so that customers can more readily identify price-gouging (see **Exhibit 5** (*Fraudulent Activity, Price Gouging, and Counterfeit Products*, 3M Company, available at <https://multimedia.3m.com/mws/media/1803670O/fraudulent-activity-price-gouging-and-counterfeit-products.pdf> (Apr. 8, 2020))); (b) created a form on its website through which customers can report suspected incidents of price-gouging and counterfeiting (see **Exhibit 6** (*3M COVID-19 Anti-Fraud, Anti-Price Gouging, and Anti-Counterfeiting Reporting*, 3M Company, available at <https://engage.3m.com/covidfraud> (last accessed on Apr. 21, 2020))); and (c) established a fraud “hotline” that customers can call to report suspect incidents of price-gouging and counterfeiting (see Ex. 3 at p. 3 (“Call the fraud hotline.”)).

16. Collectively, the goal of these efforts is to help protect the public from inappropriate, counterfeit, and/or inferior products and outrageous and unwarranted price inflation. 3M also actively investigates and acts on complaints in order to protect the goodwill and reputation of the 3M brand, as well as to protect customers and healthcare workers who rely upon the availability and proven quality of authentic 3M-brand N95 respirators.

TAC2 Global's Misconduct

17. Unfortunately, and notwithstanding 3M's efforts, opportunistic third parties throughout the United States have sought to exploit the increased demand for the 3M-brand N95 respirators by, upon information and belief, offering to sell them for exorbitant prices, selling counterfeit versions of them, and accepting money for 3M-brand N95 respirators that they do not possess or are not authorized to sell.

18. Defendant TAC2 Global is an example of a third party undertaking unlawful actions – in this District – seeking to exploit the 3M brand and prey on unwitting customers and governmental agencies in the midst of the COVID-19 public health emergency.

19. On or about April 14, 2020, Defendant sent an email titled *Tac2 Global – N95 Masks and Sanitizer* (the “Email”) to the Logistics Section Support Director (“LSSD”) of the Florida Department of Management Services (“DMS”) Emergency Operations Center (“EOC”). See **Exhibit 7**. In the Email, Defendant falsely claimed to be a distributor of certified 3M-brand, N95 Model 1860 respirators and offered to sell them. In the Email, Defendant included an itemized quote (the “Quote”) addressed to the DMS' Division of State Purchases which offered to sell five to ten million 3M-brand, N95 Model 1860 respirators for \$5.50 each and various sizes of bottled hand sanitizer at highly inflated prices. The Quote also contains a reference to the 3M-brand, N95 Model 1860 respirators that Defendant purportedly had for sale in the form “3MTM”.

20. The Quote further contains a series of false and misleading claims involving 3M including that the Defendant had “further contracted to become a distributor of 3M N95 Masks”; that Defendant's “pricing will remain fixed and transparent to 3M and their

agents”; that Defendant had a “contract agreement with the 3M Manufacturer”; and that every mask Defendant would procure would “also be inspected and certified by 3M agents prior to leaving the manufacturing facility, and we are obligated to offer these masks CIF.”

21. The Email also contains a purported certificate from the INSPEC organization that attests to the quality of the masks Defendant is selling (the “Certificate”). The Certificate does not show in any way that the masks Defendant offers are affiliated with 3M or safe to use. Finally, the Email includes attachments containing specifications of the hand sanitizer and screenshots of Florida business registrations (the “Attachments”).

22. Defendant’s use of the 3M mark and invocation of 3M’s name in the Quote and the inclusion of the Certificate and Attachments were intended to mislead the EOC into believing that Defendant was an authorized distributor of Plaintiff’s products and/or otherwise had an association or affiliation with Plaintiff and its products. Under the guise of appearing affiliated with 3M, Defendant attempted to deceive consumers into purchasing masks at highly inflated prices. Defendant is not, and never has been, an authorized distributor or vendor of 3M’s products. Defendant also does not have, and has never had, an association or affiliation with Plaintiff.

23. These statements that imply 3M’s involvement are false and likely to mislead and/or deceive a consumer into believing that Defendant is an authorized distributor of 3M products and/or has an association or affiliation with 3M. Defendant’s quote of \$5.50 per 3M-brand, N95 Model 1860 respirator is more than quadruple 3M’s suggested list price of \$1.27 per respirator.

24. For purposes of clarity, TAC2 Global is not authorized to solicit purchase orders from customers for submission to 3M for approval. Nor is TAC2 Global authorized to state how, where, or in what quantity such orders would be filled. The Email and Quote do not accurately describe how 3M fills N95 orders. Indeed, 3M fills orders for its N95 respirators by accepting purchase orders from 3M's authorized distributors and wholesalers and, to a lesser extent, directly from the government. 3M does not accept purchase orders from unauthorized resellers.

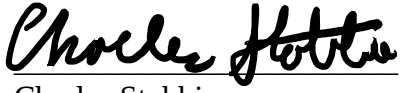
25. Turning back to TAC2 Global's April 14, 2020 email, the day after receiving the email, the EOC contacted 3M for verification. Although that potential sale was averted, there is nothing to prevent TAC2 Global from making similar offers to other government or healthcare entities around the United States, causing irreparable harm to the 3M brand and putting the public at risk. Accordingly, 3M commenced this lawsuit against TAC2 Global on April 30, 2020.

TAC2 Global's Misconduct Is Causing Immediate and Irreparable Harm to 3M—Especially in This District

26. Despite 3M's increased production of respirators, demand still exceeds the supply in cities that have been hit hard by the COVID-19 pandemic. Thus, city officials are resorting to extreme measures to procure PPE, including respirators. 3M is working to assist these public servants. As a result of Defendant's actions, 3M's brand and reputation has been negatively and irreparably impacted. Defendant has exploited the increased demand for Plaintiff's 3M-brand N95 respirators by offering to sell them for exorbitant prices and selling counterfeit or non-existent versions of them. Consumers that are privy to these kinds of scams have lost trust in the security associated with the 3M Marks and

brand. This has negatively impacted 3M's reputation in the global community and in turn irreparably harmed the company.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 4th day of May, 2020.


Charles Stobbie

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