

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

3M COMPANY,

Plaintiff,

v.

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

TAC2 GLOBAL LLC,

Defendant.

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**DECLARATION OF DAVID A. CRIST
IN SUPPORT OF PLAINTIFF 3M COMPANY'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I, David A. Crist, 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 Vice President and Chief Marketing Officer for the Safety and Industrial Business Group at 3M. 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; (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 Company

4. 3M (then, Minnesota Mining and Manufacturing Company) began over 100 years ago as a small-scale mining venture in Northern Minnesota. It has grown into an industry-leading provider of scientific, technical, and marketing innovations throughout the world.

5. 3M's portfolio includes more than 60,000 goods and services, ranging from household and school supplies, to medical devices and equipment. See **Exhibit 1** (*3M History*, 3M Company, available at https://www.3m.com/3M/en_US/company-us/about-3m/history/ (last visited on Apr. 21, 2020).

The 3M Brand and Marks

6. 3M provides goods and services throughout the world under numerous brands, including well-known brands such as: ACE; POST-IT; SCOTCH; NEXCARE; and more. See **Exhibit 2** (*3M Featured Brands*, 3M Company, available at https://www.3m.com/3M/en_US/company-us/our-brands/ (last visited on Apr. 21, 2020).

7. 3M's most famous and widely recognized brand is its eponymous "3M" brand. The 3M brand encompasses products and materials for a wide array of medical devices, supplies, and personal protective equipment ("PPE"), including, for example:

stethoscopes; medical tapes; surgical gowns; blankets; bandages and other wound-care products; and respirators. See **Exhibit 3** (*3M Medical Products*, 3M Company, available at https://www.3m.com/3M/en_US/company-us/all-3m-products/~/All-3M-Products/Health-Care/Medical/?N=5002385+8707795+8707798+8711017+3294857497&rt=r3 (last accessed on Apr. 21, 2020)).

8. 3M-branded products are highly visible throughout numerous hospitals, nursing homes, and other care facilities where patients, care providers, and procurement officers value and rely on the high quality and integrity associated with the 3M brand.

9. 3M employs strict quality-control standards in manufacturing all of its products, including its products used in the fields of healthcare and worker safety. As a result of this commitment to quality, 3M-brand N95 respirators are highly respected and widely used and recommended by medical workers, public-health officials, and throughout the worker safety market.

10. Over the past century, 3M has invested hundreds of millions of dollars in advertising and promoting its 3M-brand products to customers throughout the world (including its 3M-brand N95 respirators) under the standard-character mark “3M” and the 3M design mark  (together, the “3M Marks”). 3M also uses its famous “3M Science. Applied to Life” slogan (the “3M Slogan”) in connection with the promotion of its goods and services.

11. During this period, 3M’s goods and services offered under its 3M Marks, in particular, have been the subject of widespread, unsolicited media coverage and critical acclaim.

12. Products offered by 3M using its 3M Marks have also enjoyed enormous commercial success (including, without limitation, its range of 3M-brand N95 respirators).

13. To strengthen 3M's common-law rights in and to its famous 3M Marks, 3M has obtained numerous federal trademark registrations, including, without limitation: (i) U.S. Trademark Reg. No. 3,398,329, which covers the standard-character 3M mark in Int. Classes 9 and 10 for, inter alia, respirators (the "'329 Registration"); (ii) U.S. Trademark Reg. No. 2,793,534, which covers the 3M design mark in Int. Classes 1, 5, and 10 for, inter alia, respirators (the "'534 Registration"); and (iii) U.S. Trademark Reg. No. 5,469,903, which covers the "3M Science. Applied to Life" slogan in a number of Int. Classes, including Int. Class 9 for facial masks and respirators (the "'903 Registration").

14. I attach hereto as **Exhibit 4** a true and correct copy of the '329 Registration. Pursuant to Section 15 of the Lanham Act, namely, 15 U.S.C. § 1065, on April 2 2014, the United States Patent and Trademark Office (the "PTO") issued a Notice of Acknowledgement of 3M's Declaration of Incontestability of the '329 Registration. See **Exhibit 5**.

15. I attach hereto as **Exhibit 6** a true and correct copy of the '534 Registration. Pursuant to Section 15 of the Lanham Act, namely, 15 U.S.C. § 1065, on December 21, 2009, the PTO issued a Notice of Acknowledgement of 3M's Declaration of Incontestability of the. See **Exhibit 7**.

16. I attach hereto as **Exhibit 8** a true and correct copy of the '903 Registration.

17. The general consuming public associates the 3M Marks uniquely with 3M and recognizes them as identifying 3M as the exclusive source of goods and services

offered under the 3M Marks. Additionally, 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 protecting healthcare personnel and workers from exposure to airborne particles including viruses like COVID-19.

TAC2 Global's Misconduct

18. Defendant TAC2 Global is 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 9**. In the Email, Defendant falsely claimed to be a recently contracted authorized distributor of 3M’s products that otherwise had association or affiliation with 3M and its products, purported to be a distributor of certified 3M-brand, N95 Model 1860 respirators, and offered to sell said respirators. 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 but not limited to the following:

- a. That the Defendant had “further contracted to become a distributor of 3M N95 Masks.”;
- b. That Defendant’s “pricing will remain fixed and transparent to 3M and their agents.”;
- c. That Defendant had a “contract agreement with the 3M Manufacturer”; and
- d. “Every mask we [Defendant] procure will 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”). See Ex. 9. 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”). See Ex. 9.

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. Additionally, 3M has never licensed its 3M Marks or 3M Slogan to TAC2 Global for any purpose. 3M also has never consented to, or authorized or approved, TAC2 Global's use of the 3M Marks or 3M Slogan for any purpose.

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. By falsely holding itself out as a party that is affiliated with or authorized by 3M to sell 3M-branded respirators, and using 3M's trademarks to advance this false representation of affiliation, TAC2 Global is causing immediate, irreparable, and immeasurable harm to 3M's brand and reputation.

27. TAC2 Global is price-gouging by offering to sell purported 3M-brand N95 respirators to Florida for upwards of 400% their 3M single-case U.S. list price. TAC2's price-gouging activity is particularly harmful to 3M at this unprecedented time. That is because TAC2 Global's conduct disrupts the supply of respirators by, among other things, (a) wasting 3M and public resources devoted to identifying fraudulent pricing and inauthentic offers and (b) squandering public and private monies used to pay grossly excessive prices for essential respirators.

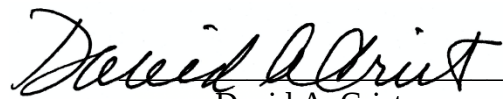
28. TAC2 Global's conduct is also particularly damaging to the 3M brand's reputation in Florida. When customers and government officials observe price-gouging by third parties, particularly those that hold themselves out as affiliated with or authorized by 3M (as TAC2 Global is doing), they will inevitably draw the false impression that this behavior reflects pricing changes by 3M in response to the COVID-19 pandemic. The false impressions are so strong that in this instance, as in others, public officials are complaining to 3M about the unlawful behavior of parties that have no relationship to 3M. These false impressions are harming 3M's reputation and it is unknown how long it may take, if ever, to repair that damage, what measures, if any, will work, and how much those measures

may cost. Under the circumstances, it is impossible to measure the resulting damage to 3M.

29. There are already widespread reports of counterfeit, inferior-quality respirators being sold at grossly inflated prices. And, despite having not increased the prices it charges for its 3M-brand N95 respirators, 3M has already been subject to unfounded public criticism in response to third-party price-gouging.

30. The 3M brand is also irreparably and immeasurably harmed by TAC Global's conduct in that the purported 3M-branded products that TAC2 Global is advertising for sale may not exist and/or are counterfeit. In addition to threatening the credibility of the 3M brand, such conduct results in a diversion of critical public resources, which places lives at risk. These resources include the time spent by public officials to pursue false/fraudulent leads and the money spent to purchase products at inflated prices. Additionally, this waste of resources further diminishes the ability of public officials and procurement officers to investigate and identify other counterfeit and inferior quality supplies as buyers are pressured to place large orders swiftly for essential PPE.

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.


David A. Crist