

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

GUIDANCE ENDODONTICS, LLC,  
a New Mexico Limited Liability Company,

Plaintiff,

No. 08-CV-1101

vs.

DENTSPLY INTERNATIONAL, INC.  
a Delaware Business Corporation, and  
TULSA DENTAL PRODUCTS, LLC,  
a Delaware Limited Liability Company,

Defendants.

**VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL**

Guidance Endodontics, LLC (“Plaintiff” or “Guidance”), by its attorneys, Modrall, Sperling, Roehl Harris & Sisk, P.A. (John J. Kelly), and Olshan, Grundman, Frome, Rosenzweig & Wolosky LLP, (Kyle C. Bisceglie)<sup>1</sup>, for its Complaint, alleges as follows:

**Nature of the Case**

1. Guidance brings this action seeking injunctive and other relief as a result of the breach and anticipatory repudiation of an exclusive Manufacturing and Supply Agreement (“Supply Agreement”) by and between Plaintiff and Defendants Dentsply International, Inc. (“Dentsply”) and Tulsa Dental Products, LLC (“TDP”) (collectively, the “Defendants”), pursuant to which Guidance must purchase and Defendants must manufacture and supply all of Guidance’s requirements for endodontic products. Recently, Defendants ceased to supply

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<sup>1</sup> Plaintiff’s motion to permit Mr. Bisceglie to be admitted *pro hac vice* has been filed with the court.

products to Guidance without good cause or justification. As a result of Defendants' non-performance, Guidance will be forced out of business within weeks. Defendants occupy a dual role as both Guidance's exclusive supplier and competitor in the market for endodontic products. Upon information and belief, Defendants are engaging in the course of conduct described herein in an effort to harass, harm, sanction and eliminate a successful competitor.

### **The Parties**

2. Plaintiff Guidance is a New Mexico limited liability company with a principal place of business at 7510 Montgomery Boulevard NE, Suite 205, Albuquerque, New Mexico.

3. Defendant Dentsply is a Delaware corporation, having a place of business at 221 West Philadelphia Street, York, Pennsylvania.

4. Defendant TDP is a Delaware limited liability company and a wholly-owned subsidiary of defendant Dentsply. Its place of business is at 5100 East Skelly Drive, Tulsa, Oklahoma. It has a manufacturing plant at 608 Rolling Hills Drive, Johnson City, Tennessee.

### **Jurisdiction and Venue**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a). The action is between citizens of different States, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is appropriate in this District pursuant to 28 U.S.C. §1391(a)(2). This is the District in which a substantial part of the events or omissions giving rise to the claims asserted herein occurred.

### **Factual Allegations**

A. Background of Guidance and its CEO, Dr. Charles J. Goodis, DDS

7. In or about September 2004, Dr. Charles J. Goodis, DDS, founded Guidance. Dr. Goodis is a full-time practicing endodontist who has resided and practiced endodontic dentistry in Albuquerque, New Mexico for 12 years.

8. As an undergraduate, Dr. Goodis majored in mechanical engineering. In 1991 he received a DDS from the University of Michigan. From 1991-1993, he was a commissioned officer in the United States Public Health Service and served at the Fort Berthold Indian Reservation as Chief Dental Officer. Thereafter, he attended the University of Minnesota from 1993-1994 and received his General Practice Dental Hospital Residency Certificate treating medically compromised patients. He then attended the University of Connecticut from 1994-1996 and received his Endodontic Specialty Certificate.

9. Endodontists specialize in root canal therapy and root canal surgery, and use their special training and experience in treating difficult cases that are referred to them by general dentists. Endodontists use three basic types of products in their practice: files, obturators, and ovens.

10. Using his background in mechanical engineering and experience as a practicing endodontist, Dr. Goodis wanted to develop a better line of endodontic root canal instruments and root canal filling obturators to make the endodontic root canal procedure safer, easier, and more comfortable.

11. Dr. Goodis first came up with the idea to develop a new line of endodontic products in 2000, and developed his first root canal instrument prototype in 2003. After one year and testing thousands of root canal instrument prototypes, a final file design was determined and Guidance was launched in 2004.

12. Guidance's initial manufacturer was Micro-Mega, a French firm with offices in France, Switzerland, and Germany.

13. Guidance is a small, young and promising start-up that offers superior products at lower prices than Defendants.

14. Guidance is wholly owned and financed by Dr. Goodis, and all research and development was paid for by Dr. Goodis. His investment to date is approximately \$7 million.

15. In addition to Dr. Goodis, who serves as Guidance's CEO, Guidance has three full-time employees, only one of which, John Ferone, works in the field as a sales representative.

16. Guidance's initial product line consisted of the V-Taper NiTi Rotary File ("V-Taper File") and a similar file made of stainless steel.

17. Guidance currently has a new file under development called the V2 04 Taper File ("V2 File"), which is the next generation of the original V-Taper File. Many of Guidance's customers have indicated that they eagerly await the launch of the V2 File.

18. Guidance also has developed the EndoTaper 06 NiTi Rotary Files ("EndoTaper File"). Pursuant to the Supply Agreement, Plaintiff also sells its customers (i) the OneFill Obturation System ("OneFill Obturator"); and (ii) the Guidance Obturator Oven (the instruments and products described in ¶¶ 17-18 are collectively referred to as the "Guidance Products").

19. In only four years, Guidance has already acquired approximately 5,400 customers. Guidance attained these Customers without the extensive use of targeted mailings; however, once Guidance starts regularly mailing advertising materials and samples directly to dentists and endodontists, Guidance will obtain a significant number of additional customers.

20. In addition, as one of two endodontists in the country commissioned by the American Dental Association to speak at conventions and trade shows around the country, Dr.

**VERIFICATION**

Dr. Charles J. Goodis, CEO of Guidance Endodontics, LLC, being first duly sworn upon his oath, deposes and states that he has read the Verified Complaint and Demand for Jury Trial and affirmatively states that it is true and correct to the best of his knowledge and belief.

**/s/ Charles J. Goodis**  
Dr. Charles J. Goodis, CEO  
Guidance Endodontics, LLC

SUBSCRIBED AND SWORN to before me on this 21<sup>st</sup> day of November, 2008, by Dr. Charles J. Goodis, CEO of Guidance Endodontics, LLC.

**/s/ Amanda Bustamante**  
Notary Public

My Commission Expires:

4/29/2011

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