

Generated on: This page was generated by TSDR on 2016-10-07 16:26:43 EDT

Mark: FIBERLOCK

FIBERLOCK

US Serial Number: 86769992

Application Filing Date: Sep. 28, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: An Office action continuing a final refusal to register has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Oct. 05, 2016

Mark Information

Mark Literal Elements: FIBERLOCK

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Allograft tissue and bone for use in connection with processed cellular bone matrix containing stem cells for use in the treatment of musculoskeletal defects

International Class(es): 010 - Primary Class

U.S Class(es): 026, 039, 044

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 2010

Use in Commerce: Feb. 2010

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Blackstone Medical, Inc.

Owner Address: 3451 Plano Parkway
Lewisville, TEXAS UNITED STATES 75056

Legal Entity Type: CORPORATION

State or Country MASSACHUSETTS
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jacqueline M. Lesser

Docket Number: 104701.00076

Attorney Primary BHIPDocket@bakerlaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent JACQUELINE M LESSER
Name/Address: BAKER & HOSTETLER
2929 ARCH STREET
FLOOR 12
PHILADELPHIA, PENNSYLVANIA UNITED STATES 19104-2891

Phone: 215.568.3100

Fax: 215.568.3439

Correspondent e-mail: BHIPDocket@bakerlaw.com
jlesser@bakerlaw.com jmbarr@bakerlaw.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|---|-------------------|
| Oct. 05, 2016 | NOTIFICATION OF ACTION DENYING REQ FOR RECON E-MAILED | |
| Oct. 05, 2016 | ACTION DENYING REQ FOR RECON E-MAILED | |
| Oct. 05, 2016 | ACTION CONTINUING FINAL - COMPLETED | 82425 |
| Oct. 03, 2016 | TEAS REQUEST FOR RECONSIDERATION RECEIVED | |
| Oct. 03, 2016 | EX PARTE APPEAL-INSTITUTED | 769992 |
| Oct. 03, 2016 | JURISDICTION RESTORED TO EXAMINING ATTORNEY | 769992 |
| Oct. 03, 2016 | EXPARTE APPEAL RECEIVED AT TTAB | |
| Apr. 01, 2016 | NOTIFICATION OF FINAL REFUSAL EMAILED | |
| Apr. 01, 2016 | FINAL REFUSAL E-MAILED | |
| Apr. 01, 2016 | FINAL REFUSAL WRITTEN | 82425 |
| Mar. 29, 2016 | TEAS/EMAIL CORRESPONDENCE ENTERED | 88889 |
| Mar. 28, 2016 | CORRESPONDENCE RECEIVED IN LAW OFFICE | 88889 |
| Mar. 28, 2016 | TEAS RESPONSE TO OFFICE ACTION RECEIVED | |
| Jan. 21, 2016 | NOTIFICATION OF NON-FINAL ACTION E-MAILED | 6325 |
| Jan. 21, 2016 | NON-FINAL ACTION E-MAILED | 6325 |
| Jan. 21, 2016 | NON-FINAL ACTION WRITTEN | 82425 |
| Jan. 18, 2016 | ASSIGNED TO EXAMINER | 82425 |
| Oct. 01, 2015 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Oct. 01, 2015 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: POVARCHUK, REBECCA JOY

Law Office LAW OFFICE 115
Assigned:

File Location

Current Location: TMO LAW OFFICE 115 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Oct. 05, 2016

Proceedings

Summary

Number of 1
Proceedings:

Type of Proceeding: Exparte Appeal

Proceeding Number: [86769992](#)**Filing Date:** Oct 03, 2016**Status:** Pending**Status Date:** Oct 03, 2016**Interlocutory Attorney:****Plaintiff(s)****Name:** Blackstone Medical, Inc.**Correspondent Address:** JACQUELINE M LESSER
BAKER & HOSTETLER
2929 ARCH STREET, FLOOR 12
PHILADELPHIA PA UNITED STATES , 19104-2891**Correspondent e-mail:** BHIPDocket@bakerlaw.com , jlesser@bakerlaw.com , jmbarr@bakerlaw.com**Associated marks**

| Mark | Application Status | Serial Number | Registration Number |
|-----------|----------------------------------|--------------------------|---------------------|
| FIBERLOCK | Action Continuing Final - Mailed | 86769992 | |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|------------------------------------|--------------|----------|
| 1 | APPEAL TO BOARD | Oct 03, 2016 | |
| 2 | Appeal Acknowledged; Case Remanded | Oct 03, 2016 | |
| 3 | INSTITUTED | Oct 03, 2016 | |
| 4 | RECON DENIED | Oct 06, 2016 | |

Request for Reconsideration after Final Action

The table below presents the data as entered.

| Input Field | Entered |
|---|--|
| SERIAL NUMBER | 86769992 |
| LAW OFFICE ASSIGNED | LAW OFFICE 115 |
| MARK SECTION | |
| MARK | http://tmng-al.uspto.gov/resting2/api/img/86769992/large |
| LITERAL ELEMENT | FIBERLOCK |
| STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| MARK STATEMENT | The mark consists of standard characters, without claim to any particular font style, size or color. |
| ARGUMENT(S) | |
| <p>Applicant respectfully disagrees with the Trademark Examining Attorney's rejection of the specimen of use. An appropriate specimen of use is used on or in connection with the product in a manner which identifies the product with the owner of the mark. With respect to a medical product such as the allograft product that provided by the Applicant, the end user is a patient who does not see the product with packaging. The end user's association of the product with the relevant trademark is through use of brochures and flyers such as those provided by the Applicant as its use specimen. That specimen is made available to the end user customer in her doctor's office, and is the most appropriate means for the customer to associate the mark with the product. The end user consumer is thus educated about the product that she has purchased as part of an invoiced medical procedure.</p> <p>The specimen constitutes a display used in connection with the goods. A display need not be in close proximity to the actual product, but need to be associated with the goods offered for sale. With medical implant products, literature that displays the product with the mark is the most effective and best means of associating the product with the mark in the minds of a consumer. Just like a traditional table talker display used to promote a beverage product, the specimen of use originally submitted with Applicant's application serves as a display associated with the mark.</p> <p>It is respectfully requested that the mark be allowed to proceed to publication</p> | |
| EVIDENCE SECTION | |
| EVIDENCE FILE NAME(S) | |
| ORIGINAL PDF FILE | evi_10807621-20161003131957779062_.609719881_1.PDF |
| CONVERTED PDF FILE(S) (3 pages) | \\TICRS\EXPORT17\IMAGEOUT17\867\699\86769992\xml1\RFR0002.JPG |
| | \\TICRS\EXPORT17\IMAGEOUT17\867\699\86769992\xml1\RFR0003.JPG |
| | \\TICRS\EXPORT17\IMAGEOUT17\867\699\86769992\xml1\RFR0004.JPG |
| ORIGINAL PDF FILE | evi_10807621-20161003131957779062_.609718275_1.PDF |
| CONVERTED PDF FILE(S) (2 pages) | \\TICRS\EXPORT17\IMAGEOUT17\867\699\86769992\xml1\RFR0005.JPG |
| | \\TICRS\EXPORT17\IMAGEOUT17\867\699\86769992\xml1\RFR0006.JPG |
| DESCRIPTION OF EVIDENCE FILE | Attached hereto is the Declaration of Terri Riley affirming that the specimen of use is a display associated with the product. Attachment "A" is an exhibit to the |

| | |
|---|--|
| | Declaration of Terri Riley. |
| GOODS AND/OR SERVICES SECTION (current) | |
| INTERNATIONAL CLASS | 010 |
| DESCRIPTION | |
| Allograft tissue and bone for use in connection with processed cellular bone matrix containing stem cells for use in the treatment of musculoskeletal defects | |
| FILING BASIS | Section 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 02/00/2010 |
| FIRST USE IN COMMERCE DATE | At least as early as 02/00/2010 |
| GOODS AND/OR SERVICES SECTION (proposed) | |
| INTERNATIONAL CLASS | 010 |
| DESCRIPTION | |
| Allograft tissue and bone for use in connection with processed cellular bone matrix containing stem cells for use in the treatment of musculoskeletal defects | |
| FILING BASIS | Section 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 02/00/2010 |
| FIRST USE IN COMMERCE DATE | At least as early as 02/00/2010 |
| SIGNATURE SECTION | |
| DECLARATION SIGNATURE | /Jacqueline M. Lesser/ |
| SIGNATORY'S NAME | Jacqueline M. Lesser |
| SIGNATORY'S POSITION | Attorney of record, PA bar member |
| SIGNATORY'S PHONE NUMBER | 215.564.2155 |
| DATE SIGNED | 10/03/2016 |
| RESPONSE SIGNATURE | /Jacqueline M. Lesser/ |
| SIGNATORY'S NAME | Jacqueline M. Lesser |
| SIGNATORY'S POSITION | Attorney of record, PA bar member |
| SIGNATORY'S PHONE NUMBER | 215.564.2155 |
| DATE SIGNED | 10/03/2016 |
| AUTHORIZED SIGNATORY | YES |
| CONCURRENT APPEAL NOTICE FILED | NO |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Mon Oct 03 14:14:21 EDT 2016 |
| TEAS STAMP | USPTO/RFR-XX.XX.XX.XX-201 61003141421015261-8676999 2-570bdb2adcffd5c80461d2f ea2cba8b85a9b8fefc23cab52 ae5b33418817510-N/A-N/A-2 0161003131957779062 |

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86769992** FIBERLOCK(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86769992/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant respectfully disagrees with the Trademark Examining Attorney's rejection of the specimen of use. An appropriate specimen of use is used on or in connection with the product in a manner which identifies the product with the owner of the mark. With respect to a medical product such as the allograft product that provided by the Applicant, the end user is a patient who does not see the product with packaging. The end user's association of the product with the relevant trademark is through use of brochures and flyers such as those provided by the Applicant as its use specimen. That specimen is made available to the end user customer in her doctor's office, and is the most appropriate means for the customer to associate the mark with the product. The end user consumer is thus educated about the product that she has purchased as part of an invoiced medical procedure.

The specimen constitutes a display used in connection with the goods. A display need not be in close proximity to the actual product, but need to be associated with the goods offered for sale. With medical implant products, literature that displays the product with the mark is the most effective and best means of associating the product with the mark in the minds of a consumer. Just like a traditional table talker display used to promote a beverage product, the specimen of use originally submitted with Applicant's application serves as a display associated with the mark.

It is respectfully requested that the mark be allowed to proceed to publication

EVIDENCE

Evidence in the nature of Attached hereto is the Declaration of Terri Riley affirming that the specimen of use is a display associated with the product. Attachment "A" is an exhibit to the Declaration of Terri Riley. has been attached.

Original PDF file:

[evi_10807621-20161003131957779062_.609719881_1.PDF](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_10807621-20161003131957779062_.609718275_1.PDF](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 010 for Allograft tissue and bone for use in connection with processed cellular bone matrix containing stem cells for use in the treatment of musculoskeletal defects

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 02/00/2010 and first used in commerce at least as early as 02/00/2010 , and is now in use in such commerce.

Proposed: Class 010 for Allograft tissue and bone for use in connection with processed cellular bone matrix containing stem cells for use in the treatment of musculoskeletal defects

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 02/00/2010 and first used in commerce at least as early as 02/00/2010 , and is now in use in such commerce.

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU: If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; **for a collective trademark, collective service mark, collective membership mark application, or certification mark application**, the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; **for a certification mark application**, the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a)

COLLECTIVE/CERTIFICATION MARK APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: **for a trademark or service mark application**, the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; **for a collective trademark, collective service mark, collective membership mark, or certification mark application**, the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; **for a certification mark application**, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

Signature: /Jacqueline M. Lesser/ Date: 10/03/2016
Signatory's Name: Jacqueline M. Lesser
Signatory's Position: Attorney of record, PA bar member
Signatory's Phone Number: 215.564.2155

Request for Reconsideration Signature

Signature: /Jacqueline M. Lesser/ Date: 10/03/2016
Signatory's Name: Jacqueline M. Lesser
Signatory's Position: Attorney of record, PA bar member

Signatory's Phone Number: 215.564.2155

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86769992

Internet Transmission Date: Mon Oct 03 14:14:21 EDT 2016

TEAS Stamp: USPTO/RFR-XX.XX.XX.XX-201610031414210152

61-86769992-570bdb2adcffd5c80461d2fea2cb

a8b85a9b8fetc23cab52ae5b33418817510-N/A-

N/A-20161003131957779062

ATTACHMENT A

Trinity ELITE[®] with FIBERLOCK[™] is Filling Voids in Oral Maxillofacial

Trinity ELITE[®] is the only viable allograft engineered with FiberLock technology, which improves handling and makes Trinity ELITE easy to mold and shape. FiberLock technology also helps Trinity ELITE stay precisely where it is implanted.



Trinity ELITE has been used in cases* such as:

- Tumor and cyst resection in the mandible
- Reconstruction of the mandible
- Lefort 1 osteotomy
- Cleft palate repair



OSTEOCONDUCTIVE ◀ OSTEOINDUCTIVE ◀ OSTEOGENIC

*Data on File



Trinity ELITE[®] with FIBERLOCK[™]

EXCEPTIONAL HANDLING AND STAYING POWER. LOCKED IN.

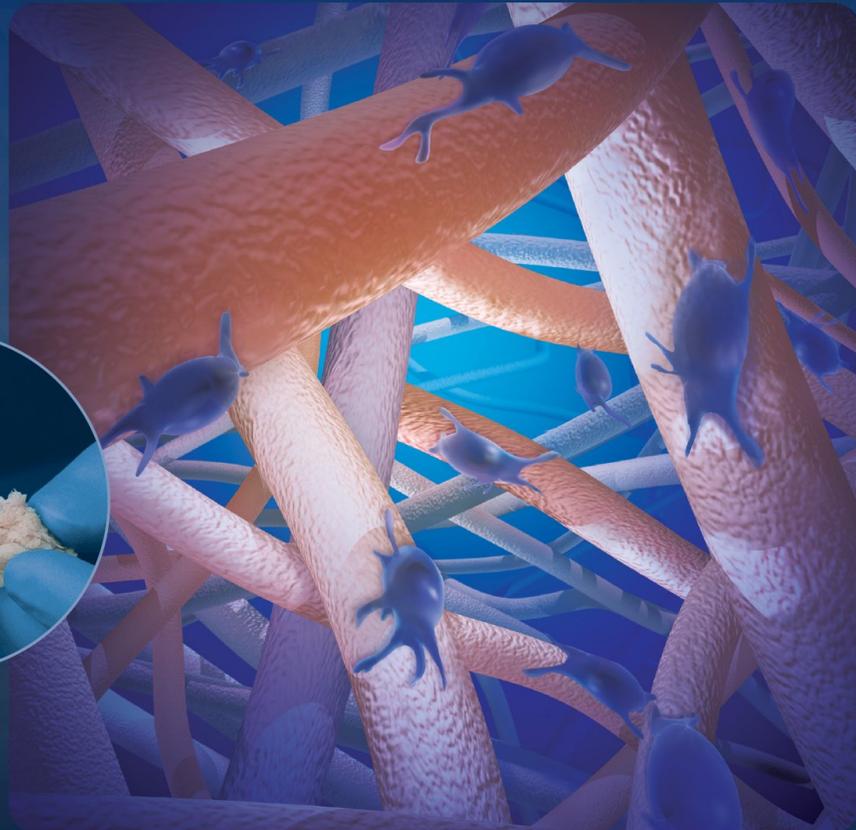


FiberLock technology

- Acts as a scaffold to provide bone-to-bone contact for graft containment
- Withstands blood flow once implanted and resists washing away
- Interlocking fibers deliver versatile moldability and exceptional handling with no carrier added



FiberLock is a proprietary process that provides interlocking technology for improved handling. Using advanced engineering, FiberLock not only provides exceptional handling, it stays in place once implanted.



www.orthofix.com
1.800.535.4492
1.800.946.9008 (MTF)

MTF Musculoskeletal
Transplant
Foundation


ORTHOFIX[®]

TT-1618 © Orthofix Holdings, Inc. 9/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Trademark Application of :
Blackstone Medical Group :
Serial No.: 86/769,992 :
Filed: September 28, 2015 :
For: FIBERLOCK : Law Office 109

DECLARATION OF TERRI RILEY

I Terri Riley do hereby declare that:

1. I am the Senior Director of Marketing for Biologics, Orthofix, Inc., responsible for the marketing of the products for Blackstone Medical, Inc., I am involved in all marketing that is associated with products of Blackstone Medical, Inc., including the FIBERLOCK product. I make the following statements based on my personal and professional knowledge and the records of my company.
2. FIBERLOCK is a trademark that identifies a process that is associated with our TRINITY product line. The FIBERLOCK mark is used in connection with the product and our marketing materials clearly identify the product which is distributed. Our materials using the FIBERLOCK mark are associated with the display of the product in a manner that is traditional in the medical products industry.
3. Consumers in the medical industry, namely surgeons and hospital purchasing personnel associate the FIBERLOCK brand with the products of Blackstone Medical, Inc., and with particular products sold under the TRINITY mark. End users of the products are patients of orthopedists and receive products associated with the FIBERLOCK mark during a

surgical procedure. However, because of the nature of the product, it would be impossible to put the FIBERLOCK brand name on the packaging for the product. The

4. The FIBERLOCK mark is clearly associated with the product and our literature clearly makes apparent that the mark is associated with a particular product offered for sale. The brochures and other literature are placed in the offices, waiting rooms and medical facilities and serve the function of a POS display for the product. The mark appears with a picture of the product, and our literature also is presented with contact and ordering information from sales personnel (is this correct).

5. Medical personnel, when viewing this literature are induced to make a purchase.

I, Terri Riley, declare under penalty of perjury that the foregoing statements are true and correct.

Dated: October 3, 2016

A handwritten signature in black ink, appearing to read "Terri Riley". The signature is written in a cursive style with a prominent loop at the end.