

S-096323

No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**IMPLANT DIRECT, LLC**

PLAINTIFF

AND

**ADELE FUSSI**

DEFENDANT

**WRIT OF SUMMONS**

NAME AND ADDRESS OF PLAINTIFF:

Implant Direct, LLC  
c/o Taylor Jordan Chafetz  
1010 – 777 Hornby Street,  
Vancouver, B.C. V6Z 1S4

NAME AND ADDRESS OF DEFENDANT:

Adele Fussi  
2774 Silvertree Court,  
Abbotsford, British Columbia  
V2S 5N6

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

**TO THE DEFENDANT: ADELE FUSSI**

TAKE NOTICE that this action has been commenced against you by the Plaintiff for the claims set out in this Writ.

IF YOU INTEND TO DEFEND THIS ACTION, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery, which is set out in this Writ;
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the "Appearance" and Statement of Defence. You may obtain a form of Appearance at the Registry.

**JUDGMENT MAY BE TAKEN AGAINST YOU IF**

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

**TIME FOR APPEARANCE**

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person, after service, shall be 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

(or, if the time for appearance has been set by order of the court, within that time.)

**TIME FOR DEFENCE**

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1) The address of the registry is:

800 Smithe Street, Vancouver, B.C.

(2) The ADDRESS FOR DELIVERY is:

c/o TAYLOR JORDAN CHAFETZ  
Barristers & Solicitors  
1010 - 777 Hornby Street  
Vancouver, B.C.  
V6Z 1S4

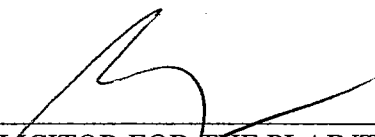
Fax number for delivery: (604) 683-2798

(3) The name and office address of the plaintiff's solicitor is:

Rodney Sieg  
TAYLOR JORDAN CHAFETZ  
Barristers & Solicitors  
1010 - 777 Hornby Street  
Vancouver, B.C.  
V6Z 1S4

The Plaintiff's claim is as set out in the attached Statement of Claim.

Dated: August 28, 2009

  
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SOLICITOR FOR THE PLAINTIFF

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**IMPLANT DIRECT, LLC**

PLAINTIFF

AND

**ADELE FUSSI**

DEFENDANT

**STATEMENT OF CLAIM**

1. The Plaintiff is a limited liability company, duly incorporated pursuant to the laws of the State of California, United States of America.
2. The Defendant, Adele Fussi, is an ex-employee of the Plaintiff and resides at 2774 Silvertree Court, Abbotsford, British Columbia.
3. The Defendant was employed by the Plaintiff as the Plaintiff's Director of Operations, Canada, from April 10, 2006 until June 26, 2009 when the Defendant resigned her employment with the Plaintiff. At the time of her resignation the Defendant alleged that she had been constructively dismissed due to an alleged demotion and change in remuneration. The Plaintiff expressly denies that the Defendant was constructively dismissed as alleged or at all.
4. As the Director of Operations for Canada the Defendant held a management role in the Plaintiff, had access to confidential information belonging to the Plaintiff ("Confidential Information") and exercised a degree of control over the business of the Plaintiff which made the Plaintiff vulnerable to the decisions of the Defendant. Due to the position the Defendant held with the Plaintiff the Defendant owed the Plaintiff a fiduciary duty.
5. Further, and in the alternative, it was an express or implied term of the Defendant's contract of employment with the Plaintiff ("Contract of Employment") that the Defendant owed the Plaintiff a duty of good faith and fidelity.

6. Further, and in the alternative, it was an express or implied term of the Contract of Employment that the Defendant would keep confidential the Confidential Information of the Plaintiff including all records, knowledge and information that the Defendant might from time to time acquire in the course of her employment with the Plaintiff and that the Defendant would not make use of the Confidential Information other than in the furtherance of the interests of the Plaintiff.

7. The Plaintiff's Confidential Information which was communicated to the Defendant in the course of the Defendant's employment with the Plaintiff was and continues to be the exclusive property and trade secret of the Plaintiff and was communicated to the Defendant in confidence for the limited purpose of enabling the Defendant to further the interests of the Plaintiff, namely, to enable the Defendant to carry out her employment and fiduciary duties to the Plaintiff.

8. Further, and in the alternative, the Defendant owes and continues to owe a duty of trust and confidence to the Plaintiff with respect to the Confidential Information and the Defendant is not entitled to use the Confidential Information, or any part thereof, without the prior consent of the Plaintiff for any purpose other than that for which it was supplied to the Defendant.

9. On or about July 20, 2009 the Defendant commenced employment with a company known as Nobel Biocare. Nobel Biocare is a direct competitor of the Plaintiff.

10. Both the Plaintiff and Nobel Biocare carry on business throughout North America and other parts of the world and both are in the business of the design, manufacture and sale of dental implant products.

11. In breach of the Defendant's fiduciary duty or duty of good faith and fair dealing, duty of confidentiality and duty of trust and confidence (together the 'Duties') to the Plaintiff, or any of them, the Defendant unlawfully removed Confidential Information of the Plaintiff from the possession of the Plaintiff without the consent of the Plaintiff. Further, the Defendant unlawfully removed such Confidential Information for the purpose of unlawfully disclosing that Confidential Information, or portions thereof, to others and of unlawfully making use of the Confidential Information all of which was done without the consent of the Plaintiff.

12. Further, in breach of the Defendant's Duties, the Defendant unlawfully delivered the Plaintiff's Confidential Information to Nobel Biocare and the Defendant has and intends to unlawfully make use of the Plaintiff's Confidential Information in the employ of Nobel Biocare both for the Plaintiff's own benefit and for the benefit of Nobel Biocare.

13. Further, on or about August 21, 2009 at a trade show held in Vancouver, British Columbia, the Defendant, while working at the Nobel Biocare booth, told customers and

prospective customers of the Plaintiff that Health Canada was going to “shut down” the Plaintiff, or words to that effect, because the Defendant had informed Health Canada of a packaging problem with the Plaintiff’s product. The Defendant further told customers and potential customers of the Plaintiff that the Defendant had been concerned about such problems when she was in the employ of the Plaintiff and that the Defendant had quit her job because of this issue.

14. The Defendant knew that the statements set out in paragraph 13 were false and defamatory and were calculated to disparage the Plaintiff and its products.

15. As a result of the Defendant’s defamation the Plaintiff has been greatly injured in its character, credit and reputation in the community and the marketplace, the reputation of its products has been greatly injured and the Plaintiff has been held up to public scandal, ridicule and contempt.

16. The Defendant knew or ought to have known that the plain meaning and innuendo of the words were defamatory of the Plaintiff and its products and that the words, their meaning and innuendo were untrue.

17. The Defendant acted out of malice toward the Plaintiff and with the deliberate intention of discrediting the reputation of the Plaintiff and the reputation of the Plaintiff’s products and holding the Plaintiff and its products up to public scandal, ridicule and contempt. The conduct of the Defendant entitles the Plaintiff to punitive damages.

18. Further, the statements set out in paragraph 13 were made by the Defendant in order to take away customers and business from the Plaintiff and injure its trade reputation. As a result of the injurious falsehood of the Defendant, the Plaintiff has suffered and continues to suffer irreparable harm and the Plaintiff is entitled to injunctive relief against the Defendant preventing the Defendant from making the false statements.

19. As a result of injurious falsehood committed by the Defendant, the Plaintiff has suffered damages, including loss of business, reputation and good will.

20. Further, the Defendant uttered the defamatory statements and injurious falsehoods set out in paragraph 13 to unlawfully interfere with the Plaintiff’s business relationships with its customers with the intent to cause harm to the Plaintiff.

21. Further, in breach of the Defendant’s Duties, the Defendant has unlawfully used, and will continue to unlawfully use, the Plaintiff’s Confidential Information, or portions thereof, and the Defendant has threatened to make further unlawful use of the Plaintiff’s Confidential Information and property to cause damage to the Plaintiff.


22. The Defendant's breach of her Duties, or any of them, defamatory comments, injurious falsehoods and unlawful interference with the Plaintiff's economic interests has caused and continues to cause, the Plaintiff damage, loss and irreparable harm.

WHEREFORE the Plaintiff claims against the Defendant:

- (a) An injunction restraining the Defendant by herself, her servants, or agents or otherwise, from using the Confidential Information of the Plaintiff, or any part thereof, or otherwise exploiting the Confidential Information or any part thereof;
- (b) An Order for delivery up to the Plaintiff of any confidential data, documents, samples, work product in the possession of the Defendant, by themselves, their servants, agents or otherwise;
- (c) An accounting of all monies, profits or any other benefit obtained, made or received by the Defendant;
- (d) Payment of the amount found to be due to the Plaintiff on taking the account;
- (e) General damages;
- (f) Special damages;
- (g) Aggravated damages;
- (h) Interim, temporary, interlocutory and permanent injunctions as necessary to give effect to the relief sought;
- (i) Interest pursuant to the *Court Order Interest Act*;
- (j) Costs; and
- (k) Such further and other relief as to this Honourable Court may seem just.

Place of trial: Vancouver, British Columbia

DATED at Vancouver, British Columbia, on August 28, 2009.

  
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Solicitor for Plaintiff  
Rodney Sieg

This WRIT OF SUMMONS WITH STATEMENT OF CLAIM ATTACHED is filed by Rodney Sieg, of the firm of Taylor Jordan Chafetz, solicitors for the Plaintiff, whose place of business and address for delivery is 1010 - 777 Hornby Street, Vancouver, B. C., V6Z 1S4, telephone: 604-683-2223.

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**WRIT OF SUMMONS with attached  
STATEMENT OF CLAIM**

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TAYLOR JORDAN CHAFETZ  
Barristers and Solicitors  
#1010 - 777 Hornby Street  
Vancouver, B.C. V6Z 1S4  
Telephone: 604-683-2223  
Facsimile: 604-683-2798