

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MIDWEST ENDODONTIC)
ASSOCIATES, P.C.,)
a professional corporation,)
)
Plaintiff,)

vs.)

Civil Action No. 1:11-cv-07417

)
JOHN W. PAWLUK, DDS,)
an individual, and)
MIDWEST ENDODONTIC)
ASSOCIATES OF ILLINOIS, P.C.,)
a professional corporation,)
)
Defendants.)

**COMPLAINT FOR SERVICE MARK
INFRINGEMENT AND UNFAIR COMPETITION**

Plaintiff, Midwest Endodontic Associates, P.C., through its undersigned counsel, brings its complaint against defendants, John W. Pawluk, DDS and Midwest Endodontic Associates of Illinois, P.C., alleging as follows:

Parties

1. Plaintiff, Midwest Endodontic Associates, P.C. (hereafter “MEA”) is an Illinois corporation with its principal office at 17W662 Butterfield Road, Oakbrook Terrace, Illinois 60181.

2. Defendant, John W. Pawluk, DDS (hereafter “Pawluk”), is an individual with his residence at 6232 Western Avenue, Willowbrook, Illinois 60527.

3. Defendant, Midwest Endodontic Associates of Illinois, P.C. (hereafter “MEA-Illinois”), is an Illinois corporation which plans to open an office at 1S443 Summit Ave. Ste. 306, Oakbrook Terrace, Illinois 60181.

4. On information and belief, defendant Pawluk incorporated, owns, and directs and controls the activities of defendant MEA-Illinois.

Jurisdiction

5. This Court has jurisdiction over this matter by virtue of the fact that this is a civil action arising under the Trademark Law of the United States, 15 U.S.C. §§ 1051-1127, jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a), and related state law, jurisdiction being conferred in accordance with 28 U.S.C. § 1338(b) and the principles of pendant and ancillary jurisdiction.

Plaintiff And Its Midwest Endodontic Associates Name And Marks

6. Plaintiff MEA is an Illinois corporation whose principal and president is Amarik Singh, DDS.

7. Since prior to the acts of defendants complained of herein, plaintiff adopted and began to use the corporate name “Midwest Endodontic Associates, P.C.” and trade name “Midwest Endodontic Associates” and the service marks MIDWEST ENDODONTIC ASSOCIATES and MEA MIDWEST ENDODONTIC ASSOCIATES (hereafter collectively referred to as “MEA MIDWEST ENDODONTIC ASSOCIATES name and marks”) for dental services.

8. Plaintiff promotes dental services to dentists, who in turn refer patients to plaintiff, and to prospective patients under its MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

9. Beginning in 2010, plaintiff MEA made a substantial investment in the marketing and promotion of the MEA MIDWEST ENDODONTIC ASSOCIATES practice, including establishing a MEA MIDWEST ENDODONTIC ASSOCIATES website, printing and mailing

flyers promoting MEA MIDWEST ENDODONTIC ASSOCIATES services and engaging in many other promotional efforts, such as an educational lecture for dentists.

10. Plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks are valuable assets of plaintiff representing substantial goodwill.

Defendant Pawluk's Association With Plaintiff

11. Defendant, John W. Pawluk, DDS, is a dentist first licensed to practice in Illinois in 2004.

12. In late 2010, plaintiff MEA, through its principal Dr. Singh, and defendant Pawluk began to discuss an arrangement whereby defendant Pawluk would provide dental services for patients referred to plaintiff, and, after a period of time, would have the option to purchase the names, marks, goodwill and other assets of plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES practice.

13. In late 2010, plaintiff MEA and defendant Pawluk entered into an oral agreement, pending a written agreement, for defendant Pawluk to provide dental services to patients at plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES office in Oak Brook Terrace, Illinois, and for plaintiff to pay defendant Pawluk a percentage of the billings collected by plaintiff for each patient treated by defendant Pawluk, minus certain expenses.

14. During 2011, plaintiff MEA paid defendant Pawluk substantial amounts pursuant to the parties' agreement.

15. In August 2011, plaintiff MEA offered defendant Pawluk a written agreement to continue the parties' working arrangement. Plaintiff also provided defendant Pawluk with the option to purchase assets of plaintiff, including the MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

16. Defendant Pawluk rejected plaintiff's proposals and indicated that he no longer intended to purchase plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks, or enter into the aforesaid written agreement.

17. On August 23, 2011, plaintiff terminated its relationship with defendant Pawluk.

Defendants' Willful Adoption of An Infringing Name And Marks

18. On August 25, 2011, two days after termination of his relationship with plaintiff MEA, defendant Pawluk incorporated defendant as "Midwest Endodontic Associates of Illinois, P.C."

19. Beginning no later than August 25, 2011, defendant Pawluk sent out solicitations on which defendants used plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

20. Defendants have announced that they will open a MIDWEST ENDODONTIC ASSOCIATES dental practices office across the street from plaintiff's MIDWEST ENDODONTIC ASSOCIATES practice in Oakbrook Terrace, Illinois.

21. Defendants' MEA MIDWEST ENDODONTIC ASSOCIATES name and marks are a simulation and colorable imitation of plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

22. Defendants' use of the MEA MIDWEST ENDODONTIC ASSOCIATES name and marks is intentional and willful.

23. Defendants' use of the MEA MIDWEST ENDODONTIC ASSOCIATES name and marks is for the purpose of having persons believe that defendants are associated with plaintiff, or are the successor to plaintiff.

24. Defendants' aforesaid acts are likely to cause, and have caused, confusion,

mistake or deception in that persons are likely to believe that defendants' services are plaintiff's services or services that are sponsored or approved by plaintiff or in some way related to plaintiff.

25. On information and belief, defendants have made profits and gains to which they are not entitled through use of defendants' MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

26. Plaintiff has contacted defendant Pawluk and has demanded that defendants discontinue all use of any name or mark confusingly similar to plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks, and defendants through defendant Pawluk have refused to do so.

27. Defendants' aforesaid acts are greatly and irreparably damaging to plaintiff MEA and will continue to damage plaintiff unless restrained by this Court; wherefore plaintiff is without an adequate remedy at law.

Count I – Trademark Infringement

28. Plaintiff MEA repeats and realleges the allegations set forth in paragraphs 1 - 27, *supra*.

29. Defendants' aforesaid acts constitute infringement of plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks in violation of the Trademark Law of the United States (15 U.S.C. §§ 1051-1127) and the common law of the various states, including Illinois.

Count II – Unfair Competition (False Representation)

30. Plaintiff MEA repeats and realleges the allegations set forth in paragraphs 1 - 27, *supra*.

31. Defendants' aforesaid acts constitute unfair competition in violation of 15 U.S.C. § 1125(a) and the common law of the various states, including Illinois.

Count III – Deceptive Trade Practices

32. Plaintiff MEA repeats and realleges the allegations set forth in paragraphs 1 – 27, *supra*.

33. Defendants' aforesaid acts constitute deceptive trade practices, in violation of the Deceptive Trade Practices Act of Illinois, 815 ILCS 510/1 *et. seq.*

Count IV – Consumer Fraud And Deceptive Business Practices

34. Plaintiff MEA repeats and realleges the allegations set forth in paragraphs 1 – 27, *supra*.

35. Defendants' aforesaid acts constitute deceptive business practices, in violation of the Consumer Fraud And Deceptive Business Practices Act of Illinois, 815 ILCS 505/1 *et. seq.*

WHEREFORE, Plaintiff MEA prays that:

1. Defendants, their agents, servants, employees, and attorneys, and any and all persons in active concert or participation with defendants, be enjoined and restrained from using any name or mark which is substantially identical to, confusingly similar to, or a colorable imitation of plaintiff's aforesaid MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

2. Defendants be required to deliver up for destruction, all signage, brochures and other promotional pieces, letterhead, business cards and other materials bearing a colorable imitation of plaintiff's MEA MIDWEST ENDODONTIC ASSOCIATES name and marks.

3. Defendants be required:

(a) to account for and pay over to plaintiff, all gains, profits, enrichments and

advantages derived by defendants from their acts complained of herein;

(b) to pay to plaintiff, three times the amount of all damages incurred by plaintiff by reason of defendants' acts complained of herein; and

(c) to pay to plaintiff the costs of this action and plaintiff's reasonable attorney fees and disbursements incurred herein.

4. Plaintiff have such other and further relief as this Court deems just and equitable.

Respectfully submitted,

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