

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

HCR HEALTHCARE, LLC,

Plaintiff,

v.

HEARTLAND PHARMACEUTICALS, LLC,

Defendant.

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**COMPLAINT**

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Plaintiff HCR Healthcare, LLC, by counsel, John R. Mann of Kennedy Childs, P.C., for its Complaint against Defendant Heartland Pharmaceuticals, LLC, hereby alleges and avers pursuant to Fed.R.Civ.P. 8 and 12 as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is an action for trademark infringement, false designation of origin, false representation and description, and dilution in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and 1125(c), all of which are predicated upon Defendant's actions which have occurred in this District.

2. Plaintiff HCR Healthcare, LLC is a Delaware limited liability company with its principal place of business at 333 North Summit Street, Toledo, Ohio 43604. Plaintiff and its affiliates (HCR) operate health care facilities nationwide, including Heartland Pharmacy of Illinois, and Heartland Pharmacy of Pennsylvania.

3. Defendant Heartland Pharmaceuticals is a Colorado limited liability company with its principal place of business at 3950 Holly Street, Denver, Colorado 80207.

4. This court has jurisdiction pursuant to 15 U.S.C. §§ 1114(a), 1121, 1125(a) and 1125(c) and 28 U.S.C. § 1331.

5. Venue is founded on 28 U.S.C. §§ 1391 (b) and (c) in that the claims arose in this District and Defendant is doing business in this District.

6. This action arises from Defendant's use of the name HEARTLAND in connection with its promotion, marketing and delivery of health care services, namely pharmacy services, in direct infringement of Plaintiff's HEARTLAND marks and its federal registrations therefor, as more fully set forth below.

7. Defendant operates in this district, and is using Plaintiff's registered HEARTLAND trademark in connection with its marketing and delivery of health care services, namely pharmacy services, *i.e.*, dispensing medical marijuana, in this District.

**COUNT I - INFRINGEMENT OF PLAINTIFF'S REGISTERED SERVICE MARKS  
PLAINTIFF'S USE AND REGISTRATION**

8. Plaintiff repeats and realleges the allegations contained in ¶¶ 1 through 7, inclusive, as though fully set forth herein.

9. HCR is and has been engaged in providing a wide range of health care services using numerous service marks which prominently incorporate its HEARTLAND mark (see, e.g., U.S. Trademark Registration No. 1,300,002 (HEARTLAND), Reg. No. 3,026,062 (HEARTLAND and design), Reg. No. 3,299,315 (HEARTLAND HOSPICE HOUSE), Reg. No. 3,470,607 (HEARTLAND CARING HEARTS CAMP), Reg. No.

3,603,830 (HEARTLAND ENRICHING LIFE), and Reg. No. 3,709,181/182 (HEARTLAND CARE PARTNERS) (collectively "the Heartland Marks"). See Exhibit A.

10. Plaintiff's U.S. Registration No. 1,300,002 (HEARTLAND) is incontestable pursuant to 15 U.S.C. § 1065. This registration is valid and subsisting, uncanceled, and unrevoked.

11. Plaintiff's U.S. Registration No. 3,026,062 (HEARTLAND and design) is valid and subsisting, uncanceled, and unrevoked.

12. Plaintiff's U.S. Registration No. 3,299,315 (HEARTLAND HOSPICE HOUSE) is valid and subsisting, uncanceled, and unrevoked.

13. Plaintiff's U.S. Registration No. 3,470,607 (HEARTLAND CARING HEARTS CAMP) is valid and subsisting, uncanceled, and unrevoked.

14. Plaintiff's U.S. Registration No. 3,603,830 (HEARTLAND ENRICHING LIFE) is valid and subsisting, uncanceled, and unrevoked.

15. Plaintiff's U.S. Registration Nos. 3,709,181/182 (HEARTLAND CARE PARTNERS) are valid and subsisting, uncanceled, and unrevoked.

16. Since at least as early as December 11, 1975, HCR (or its predecessors) began using its Heartland Marks in connection with providing health care services in the United States. This use has been continuous to the present day.

17. HCR has used its Heartland Marks extensively and continuously in interstate commerce for more than 35 years and has acquired considerable goodwill and wide-scale recognition for its marks. Consequently, the public has come to associate "HEARTLAND" with HCR and its services.

18. Plaintiff and its affiliates provide health care services through a network of more than 500 health care facilities and offices throughout the United States, including operations within Colorado.

19. Plaintiff's HEARTLAND mark is used on a wide variety of materials including informational brochures, pamphlets, and web pages in conjunction with Plaintiff's health care services provided within Plaintiff's network of facilities in the United States.

20. Plaintiff's valued reputation and hard-earned goodwill depends upon its ability to unambiguously identify itself within the healthcare industry under its well-established family of HEARTLAND trademarks.

21. As a result of Plaintiff's extensive and continuous use of the family of HEARTLAND marks in connection with providing high-quality health care services throughout the United States, the HEARTLAND marks have come to be exclusively associated with Plaintiff's high-quality services throughout the United States.

#### **DEFENDANT'S INFRINGING USE**

22. Defendant has been engaged and is currently engaged in the business of providing health care services, namely pharmacy services, *i.e.*, dispensing medical marijuana.

23. Plaintiff previously notified Defendant of Plaintiff's longstanding rights to its HEARTLAND trademark, and advised Defendant of the conflict created by Defendant's use of the HEARTLAND mark.

24. Defendant continues to infringe Plaintiff's trademark despite having actual and constructive knowledge of Plaintiff's superior rights.

25. Defendant's use of HEARTLAND in providing health care services, namely pharmacy services, is likely to cause confusion among the public and within the health care industry, with Plaintiff's services offered under the HEARTLAND family of marks.

26. Defendant does not have a license or Plaintiff's consent to use Plaintiff's HEARTLAND trademark.

27. Defendant's use of HEARTLAND is likely to:

- a. cause confusion, mistake and/or deception; and/or
- b. give the false and misleading impression that:
  - i. the services offered or provided by Defendant and Plaintiff originate with or are under the control of a single source or are backed or endorsed by a single source; or
  - ii. Defendant is a subsidiary of or licensed by, or in some way associated with, connected or related to Plaintiff; and/or
- c. lead to the passing off of Defendant's services as Plaintiff's; and/or
- d. injure Plaintiff's business reputation and/or dilute the distinctive quality of the family of HEARTLAND marks, and/or tarnish, cheapen, degrade, or dilute the quality image associated with the family of HEARTLAND marks, thereby destroying the trading value and goodwill attached to these marks.

28. Defendant's acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 *et seq.*

## **COUNT II - FALSE DESIGNATION OF ORIGIN**

29. Plaintiff realleges the allegations set forth in ¶¶ 1 through 28, inclusive, as if fully set forth herein.

30. Defendant's marketing, promotion, and provision of health care services, namely pharmacy services, *i.e.*, dispensing medical marijuana, under Plaintiff's HEARTLAND trademark constitutes the use of false designations of origin and false descriptions or representations tending to falsely describe and/or represent Defendant's services as those of Plaintiff.

31. Upon information and belief, Defendant has, with knowledge of the falsity of the designations of origin, descriptions, and/or representations, used Plaintiff's HEARTLAND marks in connection with Defendant's services.

32. Plaintiff believes that it has already been damaged and it is likely to continue to be damaged by the use of such false designations of origin, descriptions, and/or representations, all in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

## **COUNT III - DILUTION UNDER THE LANHAM ACT**

33. Plaintiff repeats and realleges the allegations contained in ¶¶ 1 through 32, inclusive, as though fully set forth herein.

34. Plaintiff's family of HEARTLAND marks, as set forth previously herein, is famous and distinctive, and has been used throughout the United States for more than 35 years in the health care industry. The relevant consuming public associates and identifies Plaintiff's HEARTLAND marks, when used in connection with its services, exclusively with Plaintiff and its affiliates.

35. Any dilution or blurring of the identity and exclusivity of Plaintiff's HEARTLAND marks among the health care recipients, medical professionals who refer patients to Plaintiff, and the public at large, is detrimental to Plaintiff's hard-earned reputation and valuable goodwill, and its ability to market its services.

36. Defendant's adoption and use of HEARTLAND in connection with the marketing, promotion, and delivery of health care services, namely pharmacy services, infringes Plaintiff's HEARTLAND marks, and such conduct dilutes the distinctive quality of Plaintiff's HEARTLAND marks by diminishing Plaintiff's ability to identify and distinguish its services, in violation of 15 U.S.C. § 1125(c).

37. Plaintiff has complied with all applicable conditions precedent prior to bringing this action.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays:

- A. That the Court declare that Defendant has violated §§ 32(a) and 43(a) of the Lanham Act;
- B. That the Defendant, its officers, agents, sales representatives, servants, employees, associates, subsidiaries, affiliates, franchisees, attorneys, successors and assigns, and all persons acting by, through, under or in active concert or participation with any of them be preliminarily and permanently enjoined from:
  - 1. Using the name HEARTLAND either standing alone or in combination with any other word or words in connection with the marketing,

promotion, and delivery of any health care related services, including pharmacy services;

2. Using any name or mark confusingly similar to HEARTLAND to identify itself or its services while marketing, promoting, or providing health care services, namely pharmacy services, anywhere in the United States;
3. Engaging in any course of conduct likely to cause confusion, deception, or mistake, or injure Plaintiff's business reputation or dilute the distinctive quality of the family of HEARTLAND marks;
4. Engaging in any course of conduct likely to enable Defendant to benefit from the valuable goodwill and hard-earned reputation established in Plaintiff's family of HEARTLAND marks; and
5. Engaging in any course of conduct calculated or likely to mislead the public into believing that Defendant's services are the same as or equivalent to Plaintiff's services;

- C. That all promotional literature, labels, packaging, advertisements, letterhead, websites, and all printed material, and all means used for publication and distribution thereof in the custody or under the control of Defendant and bearing the HEARTLAND name be destroyed in accordance with 15 U.S.C. § 1118;
- D. That Plaintiff recovers from the Defendant the cost of this suit and reasonable attorney fees as permitted by law;



- E. That Defendant be required to account to Plaintiff for all profits realized by it from the services bearing the HEARTLAND name and for all damages sustained by Plaintiff on account of the infringement and unfair competition set forth above, and that said damages be trebled;
- F. That Plaintiff be awarded punitive damages for Defendant's acts of willful and deliberate infringement and unfair competition;
- G. That Defendant make a full report to this court of their compliance with the foregoing within 40 days of the judgment herein; and
- H. That Plaintiff has such other and further relief as this court may deem just and proper.

Respectfully submitted this 25th day of May, 2012,

KENNEDY CHILDS P.C.

s/ John R. Mann

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