

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**THE MALHOTRA CENTER FOR
PLASTIC SURGERY, P.C., a
Michigan professional corporation,**

Plaintiff,

v.

**ANN ARBOR CENTER FOR
PLASTIC SURGERY, P.C., a
Michigan corporation,**

Defendant.

Case No. _____

Hon. _____

COMPLAINT

Plaintiff The Malhotra Center for Plastic Surgery, P.C. DBA Ann Arbor Plastic Surgery (“Plaintiff” or “The Malhotra Center”) hereby files this Complaint against Defendant Ann Arbor Center for Plastic Surgery, P.C. (“Defendant”) requesting damages and injunctive relief, and in support thereof alleges as follows:

PRELIMINARY STATEMENT

1. Defendant has unlawfully and willfully adopted and used the designation ANN ARBOR CENTER OF PLASTIC SURGERY, and variants thereof, to promote its plastic surgery services, despite Plaintiff’s long-standing prior rights in the almost identical trademark ANN ARBOR PLASTIC SURGERY for identical services. Plaintiff has been compelled to bring this action for federal and state common law trademark infringement, false advertising, federal and state unfair

competition, violation of the Anti-Cybersquatting Consumer Protection Act, and unjust enrichment, because Plaintiff has priority of use of the mark ANN ARBOR PLASTIC SURGERY, and because of the likelihood of confusion in the relevant market between Plaintiff's mark and Defendant's infringing use of Plaintiff's marks, as well as the instances of actual confusion that have occurred in a short period of time. Plaintiff alerted Defendant to this concern and Plaintiff's rights in the mark ANN ARBOR PLASTIC SURGERY shortly after learning of Defendant's infringing uses of this mark, but Defendant continues to offer and sell services under the mark ANN ARBOR CENTER FOR PLASTIC SURGERY, and similar variants thereof, thereby willfully infringing Plaintiff's rights in the mark ANN ARBOR PLASTIC SURGERY with potential harm to Plaintiff's reputation, potential customers, products, and services.

2. This is a civil action for violation of the Anti-Cybersquatting Consumer Protection Act; common law trademark infringement, use of false designations of origin in commerce, false advertisement, and unfair competition, arising under Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a); violation of the Michigan Consumer Protection Act, M.C.L. § 445.901 *et seq.*; and trademark infringement, unfair competition, and unjust enrichment under Michigan common law.

3. The Malhotra Center brings this action to protect one of its most valuable assets, namely, the goodwill and consumer recognition The Malhotra Center has developed in the trademark ANN ARBOR PLASTIC SURGERY.

4. Plaintiff seeks injunctive and monetary relief.

THE PARTIES

5. Plaintiff The Malhotra Center for Plastic Surgery, P.C. (“Plaintiff”) is a Michigan professional corporation with its principal place of business at 2320 Washtenaw, Suite A, Ann Arbor, Michigan, 48104.

6. Upon information and belief, Defendant Ann Arbor Center for Plastic Surgery, P.C. (“Defendant”), is a Michigan professional corporation, and may be served through its registered agent and President, Richard J. Beil, MD, at the company’s registered business address, 5333 McAuley Drive, Suite 5001, Ypsilanti, Michigan, 48197.

JURISDICTION AND VENUE

7. This action arises under the Lanham Act, 15 U.S.C. § 1125(a). This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 (actions arising under the Federal Trademark Act), and 28 U.S.C. §§ 1331 (federal question), 1338(a) (acts of Congress relating to trademarks), and 1338(b) (pendent unfair competition claims). The Court has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over Defendant because Defendant is a Michigan Professional Corporation that transacts, solicits, and does business in Michigan; because a substantial part of the relevant events occurred in this District, because Defendant has infringed Plaintiff's federally protected trademark in this District; and because Defendant continues to infringe Plaintiff's trademark in this District.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because at least a substantial part of the events or omissions giving rise to the claims occurred in this District.

FACTUAL BACKGROUND

10. For over ten years, The Malhotra Center has provided services to patients including cosmetic and plastic surgery services; providing medical aesthetic procedures, namely, treating the skin with dermal fillers and botulinum toxin; providing cosmetic skin care services, namely, facials, chemical peels, micro dermabrasion, micro needling treatment services, cosmetic laser treatment; and providing other cosmetic services, namely, laser hair removal, laser peels, liposuction, cellulite treatments, body contouring treatments, injectable filler treatments, photo therapy, and skin care under the trademark ANN ARBOR PLASTIC SURGERY (referred to as the "Malhotra Center Services").

11. The Malhotra Center is the owner of the mark ANN ARBOR PLASTIC SURGERY in the United States for use with The Malhotra Center Services.

12. The Malhotra Center began use in commerce of the ANN ARBOR PLASTIC SURGERY mark in the United States at least as early as January 2015. The Malhotra Center is also the owner of a federal trademark application for ANN ARBOR PLASTIC SURGERY (“Plaintiff’s Mark” or “ANN ARBOR PLASTIC SURGERY Mark”), U.S. Trademark Application No. 97/353,408 for cosmetic and plastic surgery and related services, as indicated by the attached at Exhibit 1. The Malhotra Center has devoted significant marketing, advertising, and financial resources to developing and establishing in the minds of consumers that ANN ARBOR PLASTIC SURGERY signifies The Malhotra Center’s Services, including through use and promotion of Plaintiff’s Mark on its website at www.annarborplasticsurgery.com. As a result of these efforts, the ANN ARBOR PLASTIC SURGERY Mark is widely recognized by the consuming public as a designation of source for The Malhotra Center’s Services and has acquired distinctiveness and secondary meaning. The Malhotra Center has promoted the ANN ARBOR PLASTIC SURGERY Mark to customers and prospective customers nationwide, as illustrated on its website at Exhibit 2.

13. The Malhotra Center has used the ANN ARBOR PLASTIC SURGERY Mark exclusively and extensively in connection with The Malhotra

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