

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION**

**ABIRA MEDICAL LABORATORIES,
LLC d/b/a GENESIS DIAGNOSTICS,**

Plaintiff

VS.

**MEDICAL DIAGNOSTIC
LABORATORIES, LLC,**

Defendant

CIVIL ACTION NO. _____

**PLAINTIFF'S ORIGINAL COMPLAINT AND APPLICATION
FOR PRELIMINARY AND PERMANENT INJUNCTION**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW, Abira Medical Laboratories, LLC d/b/a Genesis Diagnostics, the Plaintiff herein (“Genesis” or “Plaintiff”), who files this Original Complaint and Application for Preliminary and Permanent Injunction against Defendant Medical Diagnostic Laboratories, LLC (“MDL” or “Defendant”), and in support thereof, would respectfully show unto the Court as follows:

1.

STATEMENT OF THE CASE

1.1 This lawsuit is an action brought by the Plaintiff against the Defendant for Trademark infringement in violation of the Trademark Laws of the United States, 15 U.S.C. §§ 1051 et seq. and 15 U.S.C. §1114, as well as unfair competition under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

2.

JURISDICTION and VENUE

2.1 This Court has jurisdiction over the parties and subject matter jurisdiction over the controversy in question pursuant to the provisions of 15 U.S.C. §1051 et seq., 15 U.S.C. §1121, as well as 28 U.S.C. §§ 1331, 1338 & 1367.

2.2 A substantial part of the events or omissions giving rise to the claims brought by Plaintiff herein occurred in the Eastern District of Pennsylvania, and/or a substantial part of property that is the subject of this action is situated in said District. Hence, venue is appropriate herein by virtue of 28 U.S.C.A. §1391(b).

3.

THE PARTIES

3.1 Plaintiff is a foreign limited liability company authorized to conduct business in the Commonwealth of Pennsylvania. It holds a medical laboratory testing license issued by the Commonwealth of Pennsylvania, and it maintains its principal place of business at 900 Town Center Drive, Suite H50, Langhorne, PA 19047.

3.2 Defendant is a foreign limited liability company authorized to conduct business in the Commonwealth of Pennsylvania. It holds a medical laboratory testing license issued by the Commonwealth of Pennsylvania, and it maintains its principal place of business at 2439 Kuser Road, Hamilton Township, N.J. 08690. Its Chief Executive Officer and Founder is Eli Mordechai, Ph.D. The Defendant may be served with summons and complaint by and through Dr. Mordechai, who is located at 2439 Kuser Road, Hamilton Township, N.J. 08690, or wherever he may be found.

4.

FACTUAL BACKGROUND

4.1 Plaintiff is a clinical medical laboratory based in Langhorne, Pennsylvania. It holds a Pennsylvania medical laboratory license, and it provides clinical laboratory, pharmacy, and addiction rehabilitation services to numerous medical service providers located throughout the country. As part of its business model, the Plaintiff can perform laboratory testing services at its facilities in Langhorne, Pennsylvania, or it can establish a laboratory facility on the premises of a hospital and provide on-site clinical laboratory, pharmacy, genetics, and addiction rehabilitation testing services on an in-patient or out-patient basis for the hospital's patients (the "Laboratory Testing Services"). Those Laboratory Testing Services, whether they are performed in Pennsylvania or on-site, are normally billed directly to the patient, or a patient's third-party insurer, or to Medicare/Medicaid.

4.2 The Plaintiff owns the federally registered trademark **GENESIS DIAGNOSTICS®** (the "Word Mark") (U.S. Registration No. 4865466) which it uses in connection with its Laboratory Testing Services business. A copy of the GENESIS DIAGNOSTICS® registration certificate is attached hereto as Exhibit 1. More specifically, the Laboratory Testing Services include biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for purpose of providing information to medical service providers for the diagnosis, prevention, or treatment of any disease or impairment of human beings.

4.3 On February 6, 2020, Plaintiff filed a new trademark application, U.S. Appl. Ser. No. 88/787323, containing the literal elements GENESIS DIAGNOSTICS along with an image

of a crescent moon, which opens to the right with a structure of double-stranded DNA contained inside the moon, with the word "GENESIS" to the right of the image and the word "DIAGNOSTICS" underneath "GENESIS" (the "Stylized Mark"). Plaintiff's first use of the Stylized Mark in commerce was at least as early as April 14, 2015.

4.4 In December of 2018, Ms. Janna Liebmann, presented herself as a salesperson for Defendant MDL, a division of "Genesis Diagnostics", to a phlebotomist at the DeRosa medical practice in Chandler, Arizona, a client to whom Plaintiff provides Laboratory Testing Services. A true and correct copy of the business card presented to DeRosa medical practice during Ms. Liebmann's sales call is attached hereto and incorporated herein for all purposes as Exhibit "2."

4.5 On December 21, 2018 the Defendant was placed on notice by the Plaintiff and requested to immediately cease and desist in its use of the service mark reflected in Exhibit 2 that wrongfully interfered with Plaintiff's Mark. On January 15, 2019, Ms. Susan Case, the Chief Legal Officer for Defendant sent a letter to Plaintiff acknowledging the improper usurpation of Plaintiff's Mark, and also acknowledging that corrective action had been taken to remove any reference to "Genesis Diagnostics" from the Defendant's website, literature, and business documents. A true and correct copy of Ms. Case's January 15, 2019 correspondence is attached hereto and incorporated herein for all purposes as Exhibit "3."

4.6 Plaintiff had hoped that the corrective action reflected within Exhibit 3 would be the end of the matter; however, such was not to be. In June of 2020, Plaintiff found that Defendant was continuing to interfere with both its registered Word Mark and Stylized Mark (collectively "Plaintiff's Marks"). On June 11, 2020 Plaintiff sent a letter to Ms. Case outlining Plaintiff's pending application for its Stylized Mark. A true and correct copy of Plaintiff's June 11, 2020 correspondence is attached hereto and incorporated herein for all purposes as Exhibit

“4.” As reflected within Exhibit 4, Plaintiff’s pending application for its Stylized Mark was suspended by the USPTO due to Defendant’s application for a competing trademark comprising the literal elements “Genesis Clinical Diagnostics,” and “a division of Genesis Clinical Diagnostics.” On information and belief, Plaintiff submits that Defendant wrongfully placed the “Genesis Clinical Diagnostics,” and “a division of Genesis Clinical Diagnostics” marks into the stream of commerce by publishing those marks on its website, thereby causing a likelihood of confusion as to the source of Plaintiff’s Marks

4.7 Plaintiff has not at any time expressly, impliedly or in any other way sanctioned, consented, approved, authorized or acquiesced to the use of its Word Mark, Stylized Mark, or any confusing variation or formatives thereof, in connection with Defendant’s advertising and sale of goods and services. However, because Defendant’s infringing activities are in the field of laboratory testing services, customers and prospective customers of Plaintiff are, and will continue to be, confused as to whether Plaintiff had consented, approved, authorized or acquiesced to Defendant’s use of Plaintiff’s Word Mark, Stylized Mark, or any confusing variation thereof, in connection with Defendant’s services.

4.8 Plaintiff has no control over the quality of Defendant’s services, and the reputation and goodwill of Plaintiff are likely to be irreparably injured by such uncontrolled use of its Mark, and infringement upon its common law and applied-for new Stylized Mark. Upon information and belief, the aforementioned activities of Defendant have or will cause considerable irreparable injury to Plaintiff and its business reputation and goodwill. Unless restrained and enjoined by this Court, these activities will continue to cause irreparable harm to Plaintiff, and Plaintiff will have no adequate remedy at law.

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