

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIRACLE DENTISTRY, LLC. D/B/A)
MIRACLE DENTAL CENTER A/K/A)
MIRACLE DENISTRY, a Florida)
Limited Liability Company)

Civil Case No: 0:12cv62548

PLAINTIFF,)

v.)

LAZCANO FAMILY DENTAL, P.A.)
A/K/A MIRACLE SMILE DENTAL, P.A.)
D/B/A MIRACLE SMILE, a Florida)
Corporation,)
and)
MARITZA LAZCANO, an individual,)
DEFENDANTS)

COMPLAINT

COMES NOW, the Plaintiff, MIRACLE DENTISTRY, LLC., D/B/A MIRACLE DENTAL CENTER (hereinafter “Plaintiff” or “Miracle”), a Florida Limited Liability Company, by and through its undersigned counsel, hereby files this complaint and sues Defendants, LAZCANO FAMILY DENTAL, P.A., D/B/A MIRACLE SMILE DENTAL, a Florida Corporation (hereinafter “Defendant” or “Smile”), and MARITZA LAZCANO, an individual (hereinafter “Defendant” or “Maritza”), (collectively, “Defendants”).

NATURE OF THE CASE

1. This is an action for False Designation of Origin and Unfair Competition under The Lanham Act Section 43(a), 15 U.S.C. §1125(a); Common Law Trademark, Service Mark and Trade Name Infringement under FLA. STAT. §§2.01, 495.131, and 495.161;

Dilution under FLA. STAT. §495.151; Intentional and Willful Fraudulent Registration under FLA. STAT. §495.121; Unfair and Deceptive Trade Practices in violation of FLA. STAT. §501.201, et. seq.; Common Law Disparagement of Business Good Will and Reputation; Fraudulent Misrepresentation; Unjust Enrichment; Declaratory Judgment as to Plaintiff's ownership of its trade mark, service mark and trade name; Permanent Injunctive Relief, and Cancellation of Defendant's Florida Trademark under FLA. STAT. §495.101.

2. Plaintiff seeks damages, profits, attorney's fees, costs, permanent injunctive relief, and declaratory relief.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the federal claims contained and well plead herein, pursuant to 28 U.S.C. §§1331 and 1338, to decide questions of federal law arising under The Lanham Act.

4. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. §1367, for all non-federal claims arising under the common law and the laws of the State of Florida as they form part of the same case and controversy as those claims arising under the Lanham Act.

5. This Court has personal jurisdiction over Defendant, Smile, because Smile is a Florida Corporation with its principal place of business located within this Judicial District and is subject to the jurisdiction of this Court.

6. This Court has personal jurisdiction over Defendant, Maritza, because Maritza is a resident of the State of Florida and this judicial district and is subject to the jurisdiction of this Court.

7. Venue is proper in this Southern District of Florida pursuant to 28 U.S.C. §1391(b) and (c), because a substantial part of the events involved in this action occurred in

this District, and the injury to Plaintiff from Defendant's unlawful conduct arose in this District.

PARTIES

8. Plaintiff is a Florida Limited Liability Company with its principal place of business located at 9449 Sheridan Street, Cooper City, Florida 33024.

9. Plaintiff is a full service dental clinic owned and operated by Mayco Dental, P.A., a Florida Corporation and Dora E. Rodriguez, Inc. D.M.D.P.A., a Florida Corporation.

10. In addition to being a full service dental facility, Plaintiff has a section dedicated specifically toward pediatric dentistry.

11. Upon information and belief, Defendant, Smile, is and was at all material times hereto a Florida Corporation with its principal place of business located at 10051 Pines Boulevard, Units C-D, Pembroke Pines, Florida 33024.

12. Upon information and belief, Defendant, Smile, is owned and operated by Defendant, Dr. Maritza Lazcano, an individual residing in the State of Florida and within this Judicial District.

13. Upon information and belief, Defendant, Maritza, an individual, is the single owner and officer of Defendant, Smile.

14. Upon information and belief, Defendant, Smile, does business under many fictitious names and/or assumed names including without limitation, "Lazcano Family Dental, P.A.," *"Miracle Smile, P.A.,"* *"Miracle Smile Dental,"* *"Miracle Smile Dentistry"* and *"Miracle Smile."*

15. Upon information and belief, Defendant, Maritza, an individual, and also the registered agent for Defendant, Smile, has a second office location located at 2708 East Atlantic Boulevard, Pompano Beach, Florida 33062.

16. Upon Information and belief, Defendant, Maritza's second office location located at 2708 East Atlantic Boulevard, Pompano Beach, Florida 33062, is also doing business under many fictitious names and/or assumed names including without limitation, "Lazcano Family Dental, P.A.," "*Miracle Smile, P.A.*," "*Miracle Smile Dental*," "*Miracle Smile Dentistry*" and "*Miracle Smile.*"

17. Upon information and belief, Defendants Smile and Maritza are each the alter ego of the other, and each is the officer, agent, servant, representative, and/or employee of the other, acting in participation with the other, having authority or apparent authority to bind the other.

BACKGROUND AND FACTS

18. Mayco Dental, P.A., joint managing member of Plaintiff was established as a corporation in the State of Florida, county of Broward on October 22, 2004. Mayco Dental filed a fictitious name for "*Miracle Dentistry*" also on October 22, 2004, registration number G04296900186. (attached hereto as Exhibit "A" is a copy of the fictitious name filing for "*Miracle Dentistry*")

19. On May 31, 2005, Mayco Dental, P.A., D/B/A "*Miracle Dentistry*," partnered with Dora E. Rodriguez, D.M.D.P.A. to form "*Miracle Dentistry, LLC.*," as joint owners and operators, document number L05000053456. *Miracle Dentistry, LLC.*'s principal place of business is located at 9449 Sheridan Street, Cooper City, Florida 33024. (attached hereto as Exhibit "B" is a copy of the articles of organization for "*Miracle Dentistry, LLC.*")

20. On February 15, 2006, *Miracle Dentistry, LLC.*, filed a fictitious name with the Florida Division of Corporations for “*Miracle Dental Center,*” registration number G06046900148. The fictitious name was renewed with the Florida Division of Corporations on October 21, 2011, registration number G11000103492. (attached hereto as Exhibit “C” are copies of the 2006 fictitious name filing and the 2011 fictitious name renewal filing).

21. Since its inception in 2005, Plaintiff has made continuous use of the trade names and service marks “*Miracle Dental Center,*” “*Miracle Dentistry,*” and “*Miracle Dental*” in interstate commerce.

22. In 2006, Plaintiff registered the domain name www.miracledentalcenter.com on the world wide web, available to all internet users.

23. Plaintiff was awarded “Florida’s Best in 2007 Gold Award” for its commercial architectural and artistic office design due to its beautiful and creative layout and interior décor. (attached hereto as Exhibit “D” is a picture of Plaintiff’s architectural design award in 2007).

24. Since its inception in 2005, Plaintiff has expended significant sums on advertising and promotions for branding purposes, including without limitation, Yellow Pages’ ads, Yellow Book ads, search engine optimization, and local newspapers/magazines such as ourcityweston.com. Since 2007, Plaintiff has spent a minimum of roughly \$3,000.00 a month on Yellow Pages ads, Yellow Book ads, and AT&T ads amounting to approximately \$216,000.00 to date. Such expenditures do not include the significant sums Plaintiff has spent on circulars, flyers and other forms of advertisement.

25. Due to Plaintiff’s beautiful design and great reputation, Patterson Dental, a large dental supply company, uses Plaintiff’s facility as a showcase for new dental clients.

26. Plaintiff is a network provider for numerous national insurance companies. Due to Plaintiff being a network provider for said insurance companies, many of Plaintiff's patients are non-Florida residents.

27. Due to Plaintiff's outstanding reputation and goodwill associated with its facility, business structure, and business methods, members of Plaintiff's management team have been asked to hold numerous lectures at Nova Southeastern University's College of Dental Medicine on various topics such as the business of dentistry and building a brand name for your dental business.

28. Plaintiff has additionally differentiated itself from competition through its section dedicated exclusively toward pediatrics.

29. Ultra Structures, Inc., the construction company that built Plaintiff's facility uses Plaintiff's facility as a showcase for new dental practices. In addition, Ultra Structures, Inc., has a picture of Plaintiff's facility on its business cards due to Plaintiff's award winning design. (Attached hereto as Exhibit "E" is a copy of Ultra Structures, Inc.'s business card showcasing Plaintiff's facility).

30. Plaintiff has also spent significant amounts of money on flyers and circulars to be sent throughout the local community. (Attached hereto as Exhibit "F" are some examples of flyers and circulars made by Plaintiff).

31. *Miracle Dental Center*, *Miracle Dentistry*, and *Miracle Dental* are arbitrary marks that have become famous in the local community and with distinctive secondary meaning. Its brand represents its services, its award winning facility, its management, its employees and all of its distinguished independent contractors working as surgeons and specialists.

32. Upon information and belief, there is no record on the Florida Department of State Division of Corporation of any other use of the trade name “*Miracle*” in association with dental medicine prior to Plaintiff’s first use, nor is it believed that there are any registered trademarks for “*Miracle Dental Center*” or “*Miracle Dentistry*” on file through the TESS search engine at the USPTO.

33. Upon Information and belief, Defendant, Maritza, filed a fictitious name with the Florida Division of Corporations for “*Miracle Smile,*” on April 12, 2011, registration number G11000036121. At such time, Maritza’s mailing address was 2708 East Atlantic Boulevard, Pompano Beach, Florida 33026. (attached hereto as Exhibit “G” is a copy of the fictitious name filing for Defendant)

34. Upon information and belief, Defendant, Maritza, incorporated Defendant, “*Miracle Smile Dental, P.A.,*” on September 30, 2011, document number P11000085966. Its principal place of business is believed to be 10051 Pines Boulevard, Units C-D, Pembroke Pines, Florida 33024. (attached hereto as Exhibit “H” is a copy of Defendant’s articles of incorporation).

35. Defendant Smile’s Pembroke Pines location is within a three mile radius of Plaintiff’s location and within the same zip code causing actual consumer confusion.

36. Many insurance companies list both Plaintiff and Defendant simultaneously when the search word is “*miracle*” in the insurance company’s providers list. (Attached hereto as Exhibit “I” is a screen shot of insurance listings).

37. Defendants own and operate a facebook page for “*Miracle Smile Dental*” with the URL being www.facebook.com/miracle.smiledental. (attached hereto as Exhibit “J” is a screen shot of Defendants facebook page).

38. Upon information and belief, Defendants have their receptionists use the same or substantially similar greeting as Plaintiff when answering the phone, to wit: "Thank you for calling *Miracle*."

39. In October of 2012, Dr. Dora E. Rodriguez, managing member of Plaintiff, had \$739.50 removed from her Wells Fargo business account in the name of Defendant. The creditor, Patterson Dental, confused Plaintiff's company with that of the Defendant.

40. In November of 2012, a long time family friend of Plaintiff's management attempted to sign up for Plaintiff's services through his insurance company and inadvertently signed up for Defendants' services due to the substantial similarity of Defendants' name. This was one of many examples of actual consumer confusion known to Plaintiff.

41. At the time of Defendants first actual use of the trade name, Plaintiff had already gained exclusive rights to such use in that particular trade and in that geographic region under the common law. Under well established Florida law, rights are acquired under the notion "first in time, first in right." Through Plaintiff's significant marketing efforts and exclusive use of the trade names, trademarks and service marks, "*Miracle Dental*," "*Miracle Dentistry*," and "*Miracle Dental Center*" for a continuous period of seven years prior to Defendants' first use of the mark, Plaintiff has acquired secondary meaning in the marks within the local community.

42. Plaintiff has experienced a significant loss of its good will and potential business due to consumer confusion.

43. On October 23, 2012, Plaintiff hired Attorney, Mark Booth, Florida Bar number 829005, to send a notice of infringement and cease and desist letter to Defendant, Smile, at its principal place of business, mail return receipt number 7010-0290-0003-6232-4841 and to

Defendant, Maritza at her primary address, mail return receipt number 7010-0290-0003-6232-4858. These letters demanded the Defendants to immediately stop the use of Plaintiff's mark and trade name, placing Defendants on notice of their unauthorized use and infringement and threatening suit. Mr. Booth's letter to Defendants demanded that they completely cease and desist any further use of the names "*Miracle Smile*," "*Miracle Dental Smile*" and "*Miracle Dental*" or any similar use within ten days of the date of the letter also informing Defendants of the date of Plaintiff's first use of the service mark and trade name. (attached hereto as Exhibit "K" is a copy of Plaintiff's first demand letter to Defendants).

44. Plaintiff did not receive any response from Defendants within the ten day period.

45. Due to no response, Plaintiff hired the undersigned counsel to send a second cease and desist letter to Defendants demanding their immediate name change and to stop their infringing use of Plaintiff's mark and trade name. This second demand letter was sent on November 13, 2012. Defendants received this second letter on November 14, 2012, Defendant, Smile, return receipt number:7011-2970-0002-6711-7915, Defendant, Maritza, return receipt number: 7011-2970-0002-6711-7915. This second letter of demand informed Defendants, Smile and Maritza, of multiple causes of action arising from their unauthorized use of Plaintiff's trade name and service mark and or unauthorized use of a confusingly similar mark, including but not limited to, statutory violations, common law violations, and federal violations under the Lanham Act, as well as the ramifications of continued willful infringement. (attached hereto as Exhibit "L" is a copy of Plaintiff's second demand letter to Defendants).

46. Upon information and belief, on November 13, 2012, and after receiving actual notice of its infringing use of Plaintiff's mark and trade name through Mr. Booth's first letter

of demand, Defendants filed a Florida Trademark Application with the Florida Department of State for "*Miracle Smile Dental*," alleging specifically, "*Miracle Smile Dental* & design of the word in Olive-Green font, preceded by faint grey symbol representing a left-bracket, first letter of each word is capitalized," for a mark used in connection with "Dental and Orthodontic Services," document number T1200000118. The application was for class 44 with a disclaimer for the word "Dental." (attached hereto as Exhibit "M" is a copy of Defendants' Trademark application).

47. Upon information and belief, Defendants' Florida Trademark Application was signed and notarized by Defendant, Maritza, on November 5, 2012 and filed on November 13, 2012 at 9:34 A.M. Defendants list the mark's first use as of September 30th 2011 and listed its current and exclusive use on "business cards, appointment cards, stationary, flyers, journal and newspaper advertisements, brochures, websites, signs." Defendants further alleged "the words '*Miracle Smile Dental*' is the name used for the dental practice and printed on all company letterhead, documents and advertisements pertaining to dental & orthodontic services." The application was stamped by Examiner "N. Causseaux" on November 19, 2012. (see Exhibit "M" attached hereto).

48. Upon Defendant, Maritza signing personally for Defendant Smile on the Florida Trademark Application's signature and notarization box, Defendants alleged as follows: "I, Maritza Lazcano, being sworn, depose and say that I am the owner and the applicant herein, or that I am authorized to sign on behalf of the owner and applicant herein, and to the best of my knowledge no other person except a related company has registered this mark in this state or has the right to use such mark in Florida either in the identical form thereof or in such near resemblance as to be likely, when applied to the goods or services of such other person to

cause confusion, to cause mistake or to deceive. I make this affidavit and verification on my/the applicant's behalf. I further acknowledge that I have read the application and know the contents thereof and that the facts stated herein are true and correct... signed 'Maritza Lazcano, President/owner of Miracle Smile Dental, P.A..'" (See Exhibit "M" attached hereto).

49. At the time of filing a sworn affidavit with the Florida Department of State, Defendants had actual knowledge that their use of "*Miracle Smile Dental*," "*Miracle Smile*," and "*Miracle Dental*" was unauthorized and infringing upon Plaintiff's right in the mark and trade name. When Defendants swore to their exclusive right in the name and denied knowledge of confusingly similar marks in preexistence, it was a violation of FLA. STAT. §§495.021(f) and 495.031(d). Pursuant to FLA. STAT. §495.121, "any person who shall for herself or himself, or on behalf of any other person, procure the filing or registration of any mark with the Department of State under the provisions hereof, by KNOWINGLY MAKING ANY FALSE OR FRAUDULENT REPRESENTATION OR DECLARATION, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, and for punitive damages or exemplary damages, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction."

50. On November 19, 2012, the undersigned counsel for Plaintiff received Defendants' first correspondence in identical packages sent through fax and certified mail. Included in the packages was the following: A) A letter dated November 9th, 2012, stating that due to the similarity in Plaintiff's name, Defendants do not wish to keep "*Miracle Smile Dental, P.A.*" as their corporate legal name, and that Defendants have preceded to change the

name immediately. This letter also stated that Defendants did not wish to dispute Plaintiff's rightful ownership in the mark and that Defendants specifically requested that the name change be sent to "all companies, insurance companies, advertising companies, stationary, radio commercials, licenses and permits and patients of Defendants." Please note that the date of this letter, November 9th, 2012, is prior to Defendants' filing of a trademark application on November 13th, 2012. B) A letter sent by Defendants to the undersigned counsel Dated November 16, 2012, acknowledging the letter dated November 9th, 2012, and stating that Defendants are waiting for all the companies associated with Defendant to update their name change. C) a copy of a letter allegedly sent to Defendants' patients stating the Defendants' name change from "*Miracle Smile Dental, P.A.*," to "Lazcano Family Dental." (attached hereto as Exhibit "N" are the letters received by the undersigned counsel on November 19th, 2012).

51. Upon information and belief, all letters referenced in paragraph 50 were signed and acknowledged by Defendant, Maritza, personally.

52. On November 19th, 2012, Defendants filed an amendment to their articles of incorporation changing the legal entity name from "*Miracle Smile Dental, P.A.*," to "Lazcano Family Dental, P.A.," stating that the amended name change was adopted by Defendants on November 15th, 2012. (attached hereto as Exhibit "O").

53. Upon receiving the letter from Defendants referenced in paragraph 50 and acknowledging Plaintiff's rightful ownership in the mark as well as Defendants' willingness to immediately cease use of the name "*Miracle*" in association with the practice of dental medicine, Plaintiff's refrained from filing suit. However, Defendants' mere changing of its corporate name proved to be nothing more than an attempt to buy time in filing its fraudulent

trademark application with the state of Florida for "*Miracle Smile Dental.*" Defendants' fraudulent representations were relied upon by Plaintiff to Plaintiff's legal detriment, to wit: Defendants were issued a Florida trademark for the name "*Miracle Smile Dental.*" Defendants' statements in the letters mentioned in paragraph 50 herein proved to be intentionally and maliciously untruthful and in bad faith. Similarly, Defendants' sworn affidavit accompanying its Florida Trademark Application were intentionally and willingly untruthful and in bad faith. (see Exhibit "M" attached hereto).

54. While still under the impression that Defendants would completely cease their unauthorized use of Plaintiff's marks, the undersigned counsel sent a letter requesting confirmation of Defendants compliance via first class mail and email on November 27, 2012. Defendants did not respond. (Attached hereto as Exhibit "P" are copies of the letter of confirmation sent to Defendants and the accompanying emails).

55. Upon information and belief, Defendants have continued their unauthorized use of the name "*Miracle Smile Dental*" notwithstanding their corporate name change amendment to their articles of incorporation causing continued actual consumer confusion to the detriment of Plaintiff's good will and business reputation. At some time in early December, 2012, Plaintiff's management noticed that the sign on Defendants' business location still said "*Miracle Smile Dental.*" Upon learning of Defendants' failure to actually stop using the name, the undersigned counsel inquired further on the Florida Department of State web page and learned of Defendants' Trademark Application referenced in paragraph 46.

56. Attached hereto as Exhibit "Q" is a screen shot taken December 19th 2012 from yellow pages.com showing both Plaintiff's and Defendant's appearance in the search results for "*Miracle Dental*."

COUNT I

FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION UNDER

SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. §1125(A)

57. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 56, as if fully set forth herein.

58. This is a cause of action for false designation of origin and unfair competition under *15 U.S.C. §1125(a)*.

59. Plaintiff's first use of the marks in issue was in 2004, six years before Defendants' first use.

60. To date, Plaintiff has made continuous use of the marks in issue in interstate commerce and registered the mark as an internet domain name in 2005, to wit: www.miracledentalcenter.com.

61. Plaintiff has made significant efforts and spent literally hundreds of thousands of dollars on advertising for purposes of building its trademark, service mark, and trade name.

62. Plaintiff was the exclusive user of "*Miracle*" in association with practice of dental medicine in the state of Florida until Defendants unauthorized used beginning in 2011.

63. Plaintiff's marks are arbitrary and have secondary meaning within the local community.

64. Through Defendants' use of *Miracle Smile Dental*, *Miracle Smile*, and/or *Miracle Dental*, Defendants have caused, and if not enjoined will continue to cause, consumers in this

judicial district and elsewhere to be confused, mistaken, or deceived as to the source of origin of the services and products offered by Defendants in that consumers, potential consumers, and insurance companies, are likely to believe and have actually believed that such services and products provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected with Plaintiff and Plaintiff's *Miracle Dental Center* mark in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

65. Plaintiff has met the requirements of successfully claiming a cause of action under 15 U.S.C. §1125(a) by establishing its first use in the mark in 2004 and registering a domain name on the world wide web for www.miracledentalcenter.com in 2006 and making continuous use of the mark in interstate commerce.

66. Plaintiff has acquired exclusive rights within the state of Florida to the *Miracle Dental Center*, *Miracle Dental*, and *Miracle Dentistry* marks. In Plaintiff's geographic area of doing business, the *Miracle Dental Center*, *Miracle Dental*, and *Miracle Dentistry* trade names and service marks are of great and incalculable value and have become universally associated in the local public mind with the products and services of the very highest quality and reputation finding their source in *Miracle Dental Center*.

67. Defendants' willful and unauthorized misuse of Plaintiff's *Miracle Dental* mark has damaged Plaintiff in an amount to be determined at trial. Furthermore, Defendants intentionally and willfully misrepresented themselves to Plaintiff in stating that they would cease all use of Plaintiff's mark in a letter dated November 9th 2012. Subsequent to the date of said letter, Defendants, with actual knowledge of Plaintiff's prior ownership in the mark, fraudulently filed a trademark application with the State of Florida with malicious intent to deceive the State of Florida in Defendants' ownership in the mark.

68. Defendants' unauthorized and intentional use of Plaintiff's mark is in commerce within the meaning of the Lanham Act and Florida Statutes. Specifically, Defendants use the *Miracle Smile*, *Miracle Smile Dental*, and *Miracle Dental* mark in advertisements, social media pages, and interstate insurance listings.

69. Such willful and unauthorized misuse of Plaintiff's *Miracle Dental* mark has also caused Plaintiff to suffer irreparable harm, and Plaintiff will continue to be irreparably harmed unless and until Defendants' unlawful conduct is enjoined. For purposes of enjoining Defendants' willful and unauthorized use of Plaintiff's mark, Plaintiff has no adequate remedy at law.

70. Pursuant to *15 U.S.C. §1117*, Plaintiff is entitled to recover all of Defendants' profits, Plaintiff's damages, and the costs associated with this action. The intentional nature of Defendants' unlawful conduct also renders this an "exceptional case," entitling Plaintiff to enhanced damages and an award of attorney fees under *15 U.S.C. §1117(a)*.

COUNT II

COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR

COMPETITION UNDER FLA. STAT. §§2.01, 495.131 and 495.161

71. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 70, as if fully set forth herein.

72. This cause of action is for common law trademark infringement and unfair competition under FLA. STAT. §§2.01, 495.131 and 495.161.

73. Plaintiff alleges that Defendants have intentionally advertised and offered for sale Defendants' services in the practice of dental medicine, using a mark confusingly similar to Plaintiff's *Miracle Dental Center*, *Miracle Dental*, and *Miracle Dentistry* marks so as to

confuse and deceive clients, potential clients, insurance companies, and the community at large, as to the origin and/or affiliation of Defendants' services, based upon the merit, reputation, and good will of Plaintiff and its services and products.

74. Defendants' unauthorized and willful use of Plaintiff's mark enable Defendants to compete unfairly with Plaintiff by palming off Defendants' services as those of Plaintiff or otherwise competing unfairly, all to Plaintiff's and the public's irreparable damage.

75. Defendants' acts have irreparably harmed Plaintiff's reputation, severely damaged Plaintiff's good will, and upon information and belief, have diverted business and career opportunities from Plaintiff.

76. Defendant's aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer great and irreparable injury. Plaintiff has no adequate remedy at law.

77. Defendants' use of the mark or trade name "*Miracle Smile Dental*," "*Miracle Smile*," and/or "*Miracle Dental*" is substantially similar to Plaintiff's mark and trade name, "*Miracle Dental*," "*Miracle Dentistry*," and "*Miracle Dental Center*," and has caused actual consumer confusion. Defendants unauthorized use of Plaintiff's mark or confusingly similar mark to that of Plaintiff's is done within similar marketing and distribution channels and within the same geographic area.

78. After receiving actual notice of Defendants' infringing use, Defendants misrepresented themselves to Plaintiff by stating they would no longer use the name. After Plaintiff relied on such untruthful representations, Defendant willfully filed a Florida

Trademark application for the mark “*Miracle Smile Dental*,” constituting intentional and willful infringement as well as willful fraudulent filing pursuant to FLA. STAT. §495.121.

79. Defendants’ aforesaid actions are willful, wanton and contumacious and as a result thereof, Plaintiff is entitled to an award of punitive damages and attorney fees in addition to any other relief this Court deems just and proper.

COUNT III

TRADEMARK DILUTION UNDER FLA. STAT. §495.151 et seq.

80. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 79, as if fully set forth herein.

81. This cause of action is for trademark dilution and injury to business reputation pursuant to Florida’s Anti-Dilution Statute, FLA. STAT. §495.151.

82. Until Defendants’ unauthorized use of “*Miracle Smile Dental*,” Plaintiff has been the exclusive user of the word “*Miracle*” in association with the practice of dental medicine throughout the state of Florida. Plaintiff’s first use of the “*Miracle Dental*,” “*Miracle Dentistry*,” “*Miracle Dental Center*” mark was in 2004, seven years before Defendants first use.

83. Plaintiff’s have been located at its primary business location since 2005 under the name “*Miracle Dental Center, LLC.*,” continuously doing business as “*Miracle Dental Center*,” and under the internet domain name, www.miracledentalcenter.com.

84. Plaintiff’s employees have conducted numerous speaking engagements in association with the name “*Miracle Dental Center*.”

85. Plaintiff’s award winning facility has been used as the showcase for multiple new dental practices by both construction companies and dental instrument manufacturers.

86. Plaintiff has expended significant sums in building its good will and reputation.

87. Plaintiff's mark is arbitrary and therefore inherently distinctive and has simultaneously acquired secondary meaning within the geographic scope of its business operation. Plaintiff's exclusive and continuous use of the marks *Miracle Dentistry*, *Miracle Dental*, and *Miracle Dental Center*, in both intrastate and interstate commerce arouse a certain quality of services, pricing, and products in the minds of the local community in addition to the mark's association with Plaintiff's award winning facility.

88. Defendants' actions as described above have caused and will continue to cause injury to Plaintiff's business reputation and dilution of the distinctive quality of the *Miracle Dental Center* marks as defined in FLA. STAT. §495.151.

89. As a direct and proximate result of Defendants unauthorized use of a confusingly similar mark, Plaintiff has suffered irreparable damages in monetary amounts to be determined at trial.

90. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' actions unless this Court enjoins Defendants from such business practices.

COUNT IV

FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT UNDER FLA. STAT. §§501.201 TO 501.213

91. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 90, as if fully set forth herein.

92. Defendants' activities of willfully infringing on Plaintiff's mark after receiving actual notice of their infringement, fraudulently misrepresenting themselves to Plaintiff and

to Plaintiff's detriment, and fraudulently claiming ownership and first use in the mark for purposes of obtaining a Florida Trademark constitute unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practice in the conduct of trade or business or commerce in violation of FLA. STAT. §501.201, *et seq.*

93. Defendants knew or should have known that their actions were unlawful and would damage Plaintiff. Specifically, Defendants misrepresented themselves to both the Plaintiff and the State of Florida for purposes of obtaining an unfair competitive advantage.

94. As a direct and proximate result of Defendants' unlawful actions, Plaintiff has been damaged in an amount to be determined at trial.

95. Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees and costs for Defendants' violation of the Florida Deceptive and Unfair Trade Practices Act as well as any other relief this Court deems just and proper.

96. Damages will continue to accrue unless or until Defendants' improper conduct is permanently enjoined.

97. Plaintiff has no adequate remedy at law.

COUNT V

DECLARATORY JUDGMENT AS TO MIRACLE DENTAL SERVICE MARKS

AND TRADE NAMES

98. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 97, as if fully set forth herein.

99. Based on the facts set forth in the foregoing allegations, an actual controversy has arisen and now exists between the parties as to the ownership and right to use the "*Miracle*

Dental” marks and any other deviations that are closely related or substantially similar as well as the entitlement to registration of said marks.

100. Plaintiff, as the first and exclusive user of this inherently distinctive mark in association with the practice of dental medicine and dental services falling under Florida Trademark Class 44, is the owner of the *Miracle Dental* service marks and trade names within the state of Florida and specifically within this Judicial District which is Plaintiff’s primary area of operation.

101. Although Defendants, Smile and Maritza, and not Plaintiff have applied for registration of the mark or a substantially similar mark, Defendants’ conduct was done with the specific intent to deceive and defraud both Plaintiff and the State of Florida. Prior to filing its trademark application, Defendants received a cease and desist letter from Plaintiff and even acknowledged Plaintiff’s right to exclusive use of the word “*Miracle*” in association with both Plaintiff’s and Defendants’ businesses. With such actual knowledge, Defendants proceeded to willfully file a sworn affidavit stating that Defendants’ had no knowledge of their infringing use and that the first time the word “*Miracle*” was used in commerce in connection with dental medicine was in September of 2011. At such time, Defendants’ also had actual knowledge of Plaintiff’s first use and continued use since 2004.

102. Under the circumstances, a judicial declaration is necessary and appropriate at this time so that the parties and others may determine their rights and duties under the laws at issue.

103. Plaintiff therefore seeks a declaration from this Court that it is the owner of the *Miracle Dental/Miracle Dentistry/Miracle Dental Center* marks, service marks, and trade names.

COUNT VI

CANCELLATION OF DEFENDANTS' MIRACLE SMILE DENTAL MARK,

SERVICE MARK, AND TRADENAME APPLICATIONS

104. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 103, as if fully set forth herein.

105. This action is pursuant to FLA. STAT. §495.101 which regards the cancellation of a mark or application for a mark for purposes of, in relevant part, a registrant not being the owner of the mark, the registrant being granted the mark improperly, the registration being obtained fraudulently, and the mark being so similar to that of another as to be likely to cause confusion or mistake.

106. Defendants' trademark application was executed and sworn by Defendant, Maritza, with the specific intent to defraud and/or deceive the State of Florida, to wit: Defendant Maritza swore she was the owner of the mark and no one has the right to use such mark in Florida in the identical form or in such near resemblance as to be likely to cause confusion, to cause mistake, or to deceive. Defendants' oath was signed and notarized after having received a cease and desist letter from Plaintiff and is therefore intentionally and willfully fraudulent in violation of FLA. STAT. §§501.2075 and 495.121 amongst other violations. Furthermore, Defendants use of "*Miracle Smile*," "*Miracle Smile Dental*," or "*Miracle Dental*" is confusingly similar to Plaintiff's exclusive rights in its mark as previously alleged herein. Defendants' trademark application number is T12000001118.

107. Defendants' applications should be cancelled because Plaintiff is the first user, Plaintiff has the exclusive right to use its marks, "*Miracle Dental Center*," "*Miracle Dental*," and "*Miracle Dentistry*" under the common laws of Florida, Defendants

applications are confusingly similar to Plaintiff's marks, and Defendants' trademark application was the product of intentional and willful misrepresentation.

108. Upon information and belief, Defendant, Maritza knew at the time she submitted these applications that she was submitting fraudulent specimens in addition to her fraudulent misrepresentations.

109. This Court has the authority to determine the right of registration of a trademark and service mark and to order the cancellation of a mark or application for a mark per Florida Statutes §495.101 and under Section 37 of the Lanham Act, 15 U.S.C. §1119 and 15 U.S.C. §1064.

110. Plaintiff as the first user and rightful owner of the *Miracle Dental* mark therefore seeks cancellation of Defendants' mark and or Defendants' application for its mark, registration number T12000001118, for fraud upon the State of Florida and pursuant to the above mentioned Court's authority and because Plaintiff is the senior user of the mark.

COUNT VII

INTENTIONAL AND WILLFUL FRAUDULENT REGISTRATION UNDER

FLA. STAT. §121 AND FRAUDULENT MISREPRESENTATION

111. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 110, as if fully set forth herein.

112. FLA. STAT. §495.121 states that any person who shall for herself or himself, or on behalf of any other person, procure the filing or registration of any mark with the Department of State, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained

in consequence of such filing or registration, and for punitive or exemplary damages, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

113. As previously alleged and stated herein, Defendants made material representations to Plaintiff stating that they would immediately cease the use of a confusingly similar name as that of Plaintiff's and acknowledged Plaintiff's exclusive rights in the name. Defendants statements were intentionally and willfully made to induce Plaintiff to refrain from filing suit and were known by Defendants' to be false.

114. Defendants filed and obtained a trademark registration as a consequence of Plaintiff's reliance on Defendants' representations. Plaintiff continues to suffer damages as a result of Defendants false representations.

115. The specific amount of Plaintiff's damages is to be determined at trial.

116. Pursuant to FLA. STAT. §495.141 and in addition to the other rights and remedies alleged and requested herein, Plaintiff requests this court to grant an award of damages, permanent injunctive relief, costs and reasonable attorneys fees.

COUNT VIII

UNJUST ENRICHMENT

117. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 116, as if fully set forth herein.

118. Due to Defendants continued unauthorized use of Plaintiff's mark or a confusingly similar mark to that owned by Plaintiff, and Defendants' fraudulent trademark application with the Florida Department of State, Defendants have been unjustly enriched to the detriment of Plaintiff.

119. Due to Defendants' unjust enrichment, Defendant requests all profits derived from Defendants' above referenced unlawful actions in addition to costs and reasonable attorney fees and any other award this Court deems just and fair.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

120. That this Court declare that Plaintiff is the owner of the service marks and trade names "*Miracle Dental Center*," "*Miracle Dental*," and "*Miracle Dentistry*" in association of Florida trademark class 44 and in association of the practice of dental medicine.

121. That this Court order the cancellation of Defendants' trademark application and/or registration with the State of Florida, registration number T12000001118.

122. That this Court will adjudge that Defendants have competed unfairly with Plaintiff in violation of Plaintiff's common law rights and in violation of Plaintiff's rights under the Lanham Act Section 43(a), *15 U.S.C. §1125(a)*.

123. That this Court permanently enjoin Defendants use of "*Miracle*" in any form of advertising, business, promotion, listing, online database, letterhead, or any other use of any kind in existence now or in the future.

124. That this Court order the cancellation of all Defendants' profiles on all online social networks and other websites on which Defendants use the name "*Miracle*" in association with the practice of dental medicine, as part of the URL, profile name and/ or mentioned anywhere on same in association with either Defendant.

125. That each Defendant, and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, be permanently enjoined and restrained:

- a. From infringing the *Miracle Dental Center* service mark and trade mark, and any variation thereof;
 - b. From otherwise competing unfairly with Plaintiff;
126. That Defendants provide an accounting to Plaintiff of all gains, profits, and advantages derived from their unlawful activities.
127. That Defendants pay all actual damages incurred by Plaintiff as a result of their unlawful conduct; such amount to be determined at trial.
128. That Defendants be directed to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which the Defendants have complied with the injunction.
129. That this Court grant Plaintiff relief in the form of an award of costs, actual damages, consequential damages, incidental damages, and punitive damages; treble damages for claims arising under the Lanham Act; together with reasonable attorney's fees, by virtue of the exceptional circumstances of this case and/or because of Defendant's willful and fraudulent conduct.
130. That this Court grant Plaintiff such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Dated: December 20, 2012

Respectfully submitted,

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