

2017-40743 / Court: 113

NO. _____

HOUSTON BAR ASSOCIATION and
HOUSTON BAR FOUNDATION,

Plaintiffs,

vs.

WALSH & PADILLA, PLLC,

Defendant.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFFS' VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY
RESTRAINING ORDER, AND APPLICATION FOR TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiffs Houston Bar Association ("HBA") and Houston Bar Foundation ("HBF") (collectively, "Plaintiffs") file this Original Petition, Application for Temporary Restraining Order, and Application for Temporary Injunction against Defendant Walsh & Padilla, PLLC ("Walsh & Padilla") and in support thereof, would respectfully show the Court the following:

INTRODUCTION

1. This case requires the Court's immediate intervention to protect the status quo and prevent irreparable harm. Walsh & Padilla is a fictitious Houston law firm that has set up a sham website in an effort to defraud elderly individuals in the United States and Canada. To accomplish this nefarious purpose, Walsh & Padilla has stolen the identity and images of several actual, practicing attorneys and claimed to be credentialed by HBA and HBF. Plaintiffs bring claims for libel, trademark infringement, and invasion of privacy by misappropriation of name or likeness and respectfully request a Temporary Restraining Order and Temporary Injunction ordering Walsh & Padilla, its agents, employees, or anyone acting in concert with it—including

any server or webhosting company—to immediately take down its website. Unless this Court immediately restrains and enjoins Walsh & Padilla from operating its sham website, Plaintiffs will suffer irreparable loss of goodwill and injury to their reputation and Walsh & Padilla will continue to defraud elderly individuals throughout North America.

DISCOVERY LEVEL 2

2. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

CLAIM FOR RELIEF

3. Plaintiffs seek monetary relief of \$100,000 or less and non-monetary relief pursuant to Texas Rule of Civil Procedure 47(c)(2).

PARTIES

4. Plaintiff Houston Bar Association is a domestic nonprofit corporation with its principal place of business at 111 Bagby, FLB 200, Houston, Texas, 77002.

5. Plaintiff Houston Bar Foundation is a domestic nonprofit corporation with its principal place of business at 1001 Fannin Street, Suite 1300, Houston, Texas, 77002.

6. Defendant Walsh & Padilla is a domestic professional limited liability corporation with its principal place of business at 11 Greenway Plaza, Suite 1401, Houston, Texas, 77046. Walsh & Padilla may be served with process via Jonathan Walsh, 11 Greenway Plaza, Suite 1401, Houston, Texas, 77046. Plaintiffs request the issuance of citation to Walsh & Padilla.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this lawsuit because the amount in controversy is within the jurisdictional limits of this Court. Venue is proper in Harris County pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) and § 15.002(a)(3).

FACTS

8. Walsh & Padilla operates a website at the URL of walshpadillalaw.com. **Exhibit A, Walsh & Padilla Home Page.** The website holds out Walsh & Padilla as a Houston-based estate planning and probate law firm. But no such law firm exists.
9. On its website, Walsh & Padilla features the pictures of seven “attorneys”—Jonathan Walsh, Andrew Padilla, Millicent Cardy, Vincent Mills, Carol Price, Lisa Wilson, and a second Jonathan Walsh. **Exhibit B, Walsh & Padilla Attorney Pages.** None of these are actual attorneys who work for Walsh & Padilla. There is no member of the Texas Bar by the names of Jonathan Walsh, Andrew Padilla, Millicent Cardy, Vincent Mills, or Carol Price.
10. Furthermore, the images of Walsh, Padilla, Cardy, Mills, Price, and Wilson are real images of actual attorneys that were stolen from the websites of other law firms. The images used for Jonathan Walsh are of Curt Langley, a Partner at Jackson Walker LLP and William Hayes, a Partner at Hayes & Wilson PLLC. The images used for Andrew Padilla, Millicent Cardy, Vincent Mills, and Carol Price are actually images of Frederick Allen, Martha Bernard, Derek Weisbender, and Karen Lee—all attorneys at Allen Matkins LLP, a Los Angeles-based real estate law firm. And the image used for Lisa Wilson is of an attorney named Lisa Wilson, but Ms. Wilson is a Partner at Hayes & Wilson PLLC and has no affiliation with any entity named Walsh & Padilla.
11. Additionally, the entire Walsh & Padilla website is a carbon copy of the website for Hayes & Wilson LLP. The attorney biographies, articles, resources, and other content have been duplicated verbatim, and the design is identical. **Exhibit C, Hayes & Wilson Home Page.**

12. Walsh & Padilla also purports to be a member of the Houston Bar Association and Houston Bar Foundation. **Exhibit A, Walsh & Padilla Home Page.** Neither organization has a member by that name.

13. Walsh & Padilla is operating this sham law firm website in an effort to defraud elderly individuals. The real attorneys who have had their images stolen for use on the website were contacted by a Canadian attorney, who informed them the website is used in conjunction with a postal and email scam. Walsh & Padilla has mailed letters and sent emails to elderly individuals that claim Walsh & Padilla will help them recover unclaimed life insurance proceeds in other countries if they provide identifying and financial information.

14. Plaintiffs will be irreparably harmed by their false association with Walsh & Padilla unless this Court orders the website be taken down. Without such an order, elderly individuals entrapped in this scam will assume that the Houston Bar Association and Houston Bar Foundation—as well as the real attorneys who have had their images misappropriated—endorse and support the actions of Walsh & Padilla. Consequently, Plaintiffs file this Original Petition, Application for Temporary Restraining Order, and Application for Temporary Injunction to avoid the imminent harm to their reputation that would be caused by the continued false association between Plaintiffs and Walsh & Padilla.

CAUSES OF ACTION

I. LIBEL

15. The preceding paragraphs are incorporated as fully set forth herein.

16. Walsh & Padilla published a statement of fact on its website; namely, that Walsh & Padilla was a member of HBA and HBF. **Exhibit A, Walsh & Padilla Home Page.**

17. This statement, through inclusion of the HBA and HBF logos and use of their names, referred to Plaintiffs.

18. This statement is false and defamatory. Walsh & Padilla is not a member of HBA or HBF. Additionally, individuals who view the website will assume HBA and HBF support the illegal and fraudulent actions of Walsh & Padilla.

19. Walsh & Padilla made this statement in a negligent manner.

20. Plaintiffs have suffered an actual injury to their reputation via Walsh & Padilla's statements.

II. TRADEMARK INFRINGEMENT

21. The preceding paragraphs are incorporated as fully set forth herein.

22. The HBA and HBF logos and names are eligible for trademark protection.

23. HBA and HBF are senior users of the names and logos. HBA was established to serve the legal profession and community of Harris County, Texas, in 1870. HBF was established in 1982 as the charitable arm of HBA.

24. There is a likelihood of confusion caused by Walsh & Padilla's use of Plaintiffs' names and logos—Walsh & Padilla uses carbon copies of both logos on its website. Indeed, Walsh & Padilla uses the marks to specifically cause consumers to think it is endorsed by HBA and HBF.

Exhibit A, Walsh & Padilla Home Page.

III. INVASION OF PRIVACY BY APPROPRIATION OF NAME OR LIKENESS

25. The preceding paragraphs are incorporated as fully set forth herein.

26. Walsh & Padilla appropriated Plaintiffs' names and likeness for the value associated with them. Walshpadillalaw.com features the logos of both HBA and HBF prominently on its

homepage and claims to be a member of both organizations. **Exhibit A, Walsh & Padilla Home Page.**

27. As a result, Plaintiffs can be identified by this publication on the website.

28. Walsh & Padilla receive a benefit from this appropriation. Namely, individuals who visit the Walsh & Padilla website will assume the law firm is endorsed by Plaintiffs, lending credence to Walsh & Padilla's fraudulent scheme.

29. Plaintiffs have suffered, and will continue to suffer, injury to their reputation as a result of Walsh & Padilla's appropriation of the HBA and HBF names and logos.

**PLAINTIFFS' RIGHT TO A TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTION**

30. The preceding paragraphs are incorporated as fully set forth herein.

31. Plaintiffs attach the verification of Alistair Dawson, HBA President, that verifies and proves the allegations relevant to this application for injunctive relief. It is incorporated by reference.

32. Plaintiffs have a probable right to relief and are likely to succeed on the merits of their claims. Walsh & Padilla has appropriated the names and logos of HBA and HBF for use on its website and stated it is a member of both organizations. **Exhibit A, Walsh & Padilla Home Page.** It is a member of neither, and is using this false association to further its fraudulent and illegal activity.

33. Plaintiffs have a probable injury. If Walsh & Padilla is allowed to continue to use the names of HBA and HBF while conducting its illegal activity, Plaintiffs will suffer harm to their reputation.

34. Plaintiffs' injuries are imminent and, in fact, immediate. Walsh & Padilla is already soliciting the elderly population to visit its website using both mail and the internet.

35. Plaintiffs' harm is irreparable. HBA has worked tirelessly for over a century to establish itself as a bedrock of the community and the legal profession. For its part, HBF has provided programs that offer legal representation to the indigent and foster the administration of justice for nearly forty years. If Walsh & Padilla is allowed to continue to use the HBA and HBF names to harm vulnerable, elderly individuals, Plaintiffs will lose the goodwill and reputation they have spent decades establishing.

36. Monetary damages are not sufficient and will not provide an adequate remedy if Walsh & Padilla is allowed to continue to operate its website.

37. It is essential that the Court immediately and temporarily restrain Walsh & Padilla, its agents, employees, or anyone acting in concert with it—including any server or webhosting company—from operating its website. It is imperative that the Court act immediately, prior to notice to Walsh & Padilla and a hearing on this matter, because Walsh & Padilla is continuing to solicit and defraud elderly individuals each day. Furthermore, the Harris County District Attorney's Office has begun an investigation into the matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

38. The issuance of a temporary restraining order restraining Walsh & Padilla, as well its agents, employees, or anyone acting in concert with it—including any server or webhosting company—from operating the website walshpadillalaw.com or any similar website; and

39. The setting of a hearing for a temporary injunction, and after such hearing, a temporary injunction further enjoining Walsh & Padilla, or anyone of its affiliates or anyone acting in concert with it, from operating the website walshpadillalaw.com or any similar website;

40. All damages, costs of court and reasonable attorneys' fees; and

41. Such other and further relief as may be appropriate.

Date: June 19, 2017

Respectfully submitted,

By: /s/ Alistair B. Dawson

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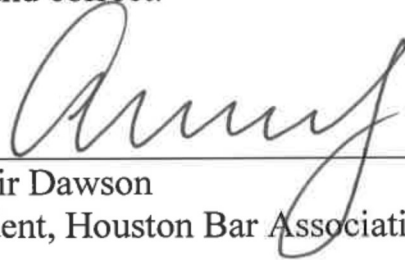
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**ATTORNEYS FOR PLAINTIFFS HOUSTON BAR
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VERIFICATION


THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Alistair Dawson, who, being by me duly sworn, on his/her oath deposed and said that he is President of the Houston Bar Association, Plaintiff in the above-entitled and numbered cause; that he has read the Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order and Temporary Injunction to which this Verification is attached; and that each and every statement contained therein is within his/her personal knowledge and true and correct.



Alistair Dawson
President, Houston Bar Association

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of June, 2017, to certify which witness my hand and official seal.



NOTARY PUBLIC IN AND FOR
STATE OF TEXAS



Notary's Printed Name:

Lisa Michele Verm

My commission expires: 7-23-2018