

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JARED ALLEN)

Plaintiff,)

v.)

Case No. _____

JEFF MORTON)

PAIN FREE LIFE CENTERS OF)
MICHIGAN, LLC)

Defendants.)

COMPLAINT

Plaintiff Jared Allen, by counsel, for his Complaint against Defendants Jeff Morton and Pain Free Life Centers of Michigan, LLC, alleges for his Complaint as follows:

PARTIES, JURISDICTION AND VENUE

1. This Complaint arises under the Lanham Act, 15 U.S.C. § 1125(a), as amended, and the statutory and common law of Tennessee and Michigan. This court has subject matter jurisdiction under 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a) in that this case arises under the Lanham Act. This court also has subject matter jurisdiction under 28 U.S.C. § 1332(a), there being

complete diversity of citizenship among the parties and the matter in controversy exceeding, exclusive of interest and costs, the sum of \$75,000.

2. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District and this is a District in which the Defendants may be found.

3. Plaintiff Jared Allen is an individual whose legal residence is in the State of Tennessee.

4. Defendant Jeff Morton (“Morton”) is an individual whose legal residence is, on information and belief, in the State of Michigan.

5. Defendant Pain Free Life Centers of Michigan, LLC (“PFLC”), is now, and at all times relevant to this complaint was, a limited liability company organized and existing under the laws of the State of Michigan, with its principal place of business located at 6585 Rochester Road, Suite 103, Troy, Michigan 48085 in Oakland County, Michigan. Upon information and belief, all members of PFLC are residents of the State of Michigan.

6. Personal jurisdiction over Defendants is appropriate because a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this District and because, also on information and belief, Defendants reside in this District.

NATURE OF THE ACTION

7. Plaintiff is a former professional football defensive end who played professionally for the Kansas City Chiefs, the Minnesota Vikings, the Chicago Bears, and the Carolina Panthers. Plaintiff, who currently resides in Tennessee, is well-known nationally and internationally for his football career, as well as his current commitment to support veterans through his non-profit organization, Jared Allen's Homes for Wounded Warriors.

8. Plaintiff has been featured as a guest commentator and co-host for ESPN, along with numerous other television and magazine appearances, contributing to national awareness of Plaintiff and the value of Plaintiff's rights in his image and persona.

9. Plaintiff has licensed rights to use his likeness, name, and other similar indicia in commercials and other advertisements, and such licenses are managed by Optimum Sports Management, Inc.

10. Defendant PFLC is a limited liability corporation registered to do business in the state of Michigan. Defendant offers laser therapy and other similar treatments and targets its advertisements to individuals who suffer from injuries and/or chronic pain.

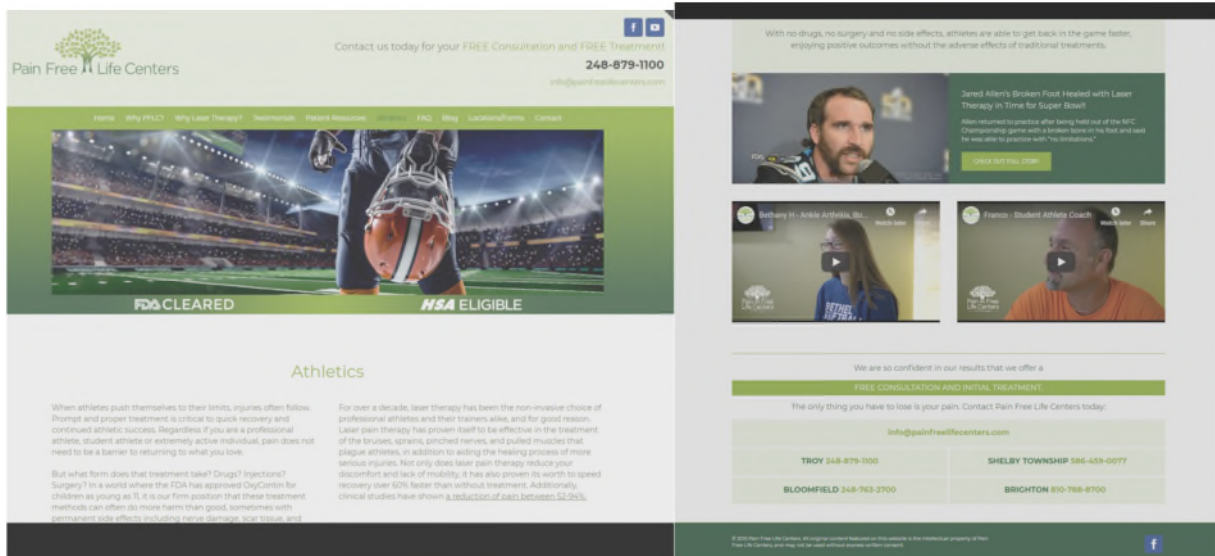
11. Defendant Morton serves as the Center Director and registered agent of Defendant PFLC, and as a result is an authorized agent or representative of

Defendant PFLC. Upon information and belief, the deceptive and infringing conduct of Defendant PFLC was authorized, directed, or undertaken by Defendant Morton.

12. On or around October 2018, PFLC, through its authorized agents and representatives, including Defendant Morton, without Plaintiff's prior knowledge or consent, placed an advertisement (shown below) in *Seen Magazine* featuring Plaintiff's image, his personal health story, and statements secured from a news article, with the intention and effect of misappropriating the valuable goodwill and reputation associated with Plaintiff and leading consumers to believe that Plaintiff received treatment and otherwise endorses Defendants. Based on information and belief, Defendant Morton personally sent the advertisement and instructions to *Seen Magazine*.



13. Plaintiff was alerted to this unauthorized use by a relative who, while traveling through Michigan, noticed the advertisement. Upon learning of this unauthorized use, Plaintiff also learned that Defendants had been using Plaintiff's likeness on the Pain Free Life Centers' website found at www.painfreelifecenters.com and in social media posts dating back to at least early 2017, as shown in the screenshots from Defendant PFLC's website and social media accounts below. Upon receipt of a cease and desist letter and reminder from Plaintiff's counsel, Defendants subsequently removed the unauthorized references from the website.



14. Upon information and belief, Defendant PFLC, through its authorized agents and representatives, including Defendant Morton, personally sent the deceptive and infringing advertisement to the magazine, knowingly, willfully, intentionally, and in conscious disregard of Plaintiff's rights, thereby engaging in

unauthorized and deceptive behavior.

15. This unauthorized use of Plaintiff's name, image, and statements creates a false and misleading representation that is likely to deceive customers into believing that: (i) there is an affiliation or association between Defendants and Plaintiff; (ii) that Plaintiff received treatment from Defendant PFLC; and (iii) that Plaintiff endorses or sponsors Defendant PFLC's services.

16. Defendants' use of Plaintiff's name, image, and statements is also a violation of Plaintiff's rights under federal and state unfair competition, deceptive trade practices, and false advertising laws.

17. Defendants' use of Plaintiff's name, image, and statements also violates Plaintiff's rights as a resident of the state of Tennessee under the Tennessee Personal Rights Protection Act of 1984, T.C.A. § 47-25-1101 et seq., and Tennessee common law rights of publicity and privacy.

FIRST CAUSE OF ACTION
False Endorsement, False Advertising, and Unfair Competition in Violation of
15 U.S.C. § 1125

18. Plaintiff realleges paragraphs 1 through 17 of this Complaint.

19. Defendants' described acts in connection with the promotion of Defendant PFLC's services constitute the use of words and images, false descriptions, and false and misleading representations which are likely to cause, and on Plaintiff's information and belief have caused, confusion and mistake.

20. Defendants' false and misleading representations are likely to deceive as to the affiliation, connection, and association of Defendants and their services with Plaintiff. Defendants' false and misleading representations are likely to deceive as to the sponsorship, endorsement, and approval of Defendants' services by Plaintiff.

21. Defendants' described acts also constitute the use of false descriptions and false and misleading representations of fact in commercial advertising and promotion, misrepresenting the nature, character, and quality of Defendants' services.

22. As a result of Defendants' acts and representations, members of the public are induced to make payments to Defendants in the mistaken belief that their services are endorsed by, associated with, or affiliated with Plaintiff.

23. Defendants have published statements in connection with their services in interstate commerce and with knowledge of the falsity of the descriptions and misleading representations, causing the same to be transported or used in interstate commerce.

24. Plaintiff has devoted significant time and resources into protecting and maximizing his public image and goodwill with advertisers and sponsors. Defendants have promoted Defendants' advertised services as described above with the intention and effect of misappropriating the valuable goodwill and

reputation associated with Plaintiff.

25. The foregoing actions of Defendants violate Plaintiff's rights under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

26. Defendants' wrongful conduct has permitted or will permit Defendant PFLC and its advertisers to increase their sales and their public exposure on the strength of Plaintiff's worldwide marketing, advertising, and consumer recognition.

27. Defendants engaged in the above-described wrongful actions knowingly, willfully, and intentionally, in conscious disregard of Plaintiff's rights, and in the face of demands that it cease its unlawful activities. This misconduct was also fraudulent, in that the public was led to believe falsely that Plaintiff consented to such commercial use of his name and identity, and was associated with, approved of, and endorsed Defendant PFLC's services.

28. As a direct and proximate result of Defendants' acts, Plaintiff has suffered and will continue to suffer damage to his commercial, competitive, and other interests in a sum yet to be determined, but in any event exceeding \$75,000. Plaintiff is entitled to recover from Defendants the remedies provided for in 15 U.S.C. §§ 1116 et seq.

29. The described acts of Defendants have caused and, unless restrained by the court, will continue to cause great and irreparable injury to Plaintiff. It

would be difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Moreover, there would be the likelihood that the consuming public would be deceived by Defendants' false endorsement and misleading advertising. Plaintiff's remedy at law is not adequate to compensate for the injuries threatened. By reason of the foregoing, Plaintiff asserts a claim against Defendants for injunctive relief.

SECOND CAUSE OF ACTION
Rights of Publicity Violation of Tennessee Annotated Code § 47-25-1101 et
seq. and Tennessee Common Law

30. Plaintiff realleges paragraphs 1 through 29 of this Complaint.

31. As a resident of Tennessee, Plaintiff's rights of publicity and privacy are governed by the laws of Tennessee. The described wrongful acts of Defendants constitute a violation of Tennessee's Right to Publicity pursuant to Tenn. Code Ann. § 47-25-1101 et seq., which is known as "The Personal Rights Protection Act of 1984," which recognizes that an individual has "a property right in the use of his name, photograph or likeness in any medium in any manner."

32. Defendants' acts violate Tenn. Code Ann. § 47-25-1105(a), which prohibits the knowing use of an "individual's name, photograph, or likeness in any medium, in any manner...as an item of commerce for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising...[or]

purchases of products, merchandise, goods, or services, without such individual's prior consent."

33. Plaintiff did not assign rights to his likeness, name, and other similar indicia to Defendants or otherwise authorize the use of his likeness by Defendants.

34. Defendants knowingly exploited Plaintiff's likeness, name, and other similar indicia through various mediums for the purpose of advertising their services, commercial benefit, and personal profit.

35. Tennessee concurrently recognizes a common law right of publicity, which protects individuals from the knowing use likeness, name, and other similar indicia.

36. Defendants' actions in misappropriating Plaintiff's likeness, name, and other similar indicia in order to solicit business for its personal commercial benefit also violate the common law of Tennessee.

37. As a direct and proximate result of Defendants' misconduct, Defendants have been unjustly enriched at the expense of Plaintiff in a substantial sum, and Plaintiff is entitled to the restitution of that sum, which is as yet unknown to him. In addition, Plaintiff is entitled to disgorgement of Defendants' ill-gotten gains in order to prevent further acts of unfair competition.

38. The described acts of Defendants have caused and, unless restrained by the court, will continue to cause great and irreparable injury to Plaintiff. It

would be difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Moreover, Plaintiff's rights of publicity and privacy and the value of his licensing rights in his image have been harmed by Defendants' unauthorized use of Plaintiff's name, image, and statements. Plaintiff's remedy at law is not adequate to compensate for the injuries threatened. By reason of the foregoing, Plaintiff asserts a claim against Defendants for injunctive relief.

THIRD CAUSE OF ACTION
Unfair Competition in Violation of Michigan Common Law and
Michigan Compiled Laws § 445.903

39. Plaintiff realleges paragraphs 1 through 38 of this Complaint.

40. The described wrongful acts of Defendants constitute unfair competition in violation of M.C.L. § 445.901, et seq., in the following respects:

a. Defendants' acts violate 15 U.S.C. § 1125(a), M.C.L. § 445.903, and Michigan common law regarding invasion of privacy, misappropriation of rights of publicity, and, consequently, constitute unlawful business acts or practices within the meaning of M.C.L. § 445.903.

b. Defendants' conduct constitutes unfair business acts or practices within the meaning of M.C.L. § 445.903.

c. Defendants' actions are likely to mislead the general public and,

consequently, constitute fraudulent business acts or practices within the meaning of M.C.L. § 445.903

d. Defendants' actions are likely to mislead the general public and, consequently, constitute unfair, deceptive, untrue or misleading advertising within the meaning of M.C.L. § 445.903.

e. Defendants' acts of untrue and misleading advertising, as more fully set forth above, violate M.C.L. § 445.903.

41. The conduct of Defendants, as alleged above, constitutes unfair competition against Plaintiff and unfair business practices in violation of the common law of Michigan.

42. The described wrongful acts of Defendants also constitute deceptive advertising, unfair business practices, and unfair competition, in that the public has been and will continue to be misled regarding the affiliation, connection or association of Defendant PFLC's services with Plaintiff, and the origin, sponsorship, and approval of its services.

43. As a direct and proximate result of Defendants' misconduct, Defendants have been unjustly enriched at the expense of Plaintiff in a substantial sum, and Plaintiff is entitled to the restitution of that sum, which is as yet unknown to him. In addition, Plaintiff is entitled to disgorgement of Defendants' ill-gotten gains in order to prevent further acts of unfair competition.

44. The described acts of Defendants have caused and, unless restrained by the court, will continue to cause great and irreparable injury to Plaintiff. It would be difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Moreover, there would be the likelihood that the consuming public would be deceived by Defendants' unfair and deceptive activities. Plaintiff's remedy at law is not adequate to compensate for the injuries threatened. By reason of the foregoing, Plaintiff asserts a claim against Defendants for injunctive relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment in Plaintiff's favor and against Defendants that:

1. Defendants be adjudged to have violated the provisions of 15 U.S.C. § 1125, Tenn. Code Ann. § 47-25-1101 et seq., and M.C.L. § 445.901 et seq. by using Plaintiff's name, image, and statements without Plaintiff's consent.
2. Defendants be adjudged to have violated the provisions of 15 U.S.C. § 1125(a) and M.C.L. § 445.901 *et seq.* by its false endorsements, false descriptions, and false advertising.
3. Defendants be adjudged to have engaged in unfair competition in violation of federal and Michigan common law.

4. Defendants and all those persons in active concert or participation with them, be immediately and permanently enjoined from engaging in further unlawful acts and false advertising concerning Plaintiff.

5. Defendants be required to permanently remove any reference to Plaintiff from any and all websites or social media accounts they maintain or control, and make no further representations or references regarding Plaintiff in connection with Defendant PFLC's services.

6. Defendants be required to account to Plaintiff for any and all profits derived by them by reason of Defendants' acts complained of here, and any damages sustained by Plaintiff by reason of Defendants' acts.

7. Defendants be required to disgorge and pay over to Plaintiff any and all profits they earned and any other unjust enrichment that they received from their unlawful conduct.

8. Damages be awarded in an amount as shall be found to have been caused by Defendants' unlawful conduct, but in any event exceeding \$75,000.

9. Such damages and profits be trebled and awarded to Plaintiff pursuant to 15 U.S.C. § 1117.

10. Punitive damages be awarded against Defendants in an amount sufficient to punish Defendants and to deter Defendants and others from engaging in similar wrongdoing.

11. Plaintiff be awarded costs and attorney fees in prosecuting this action.
12. Plaintiff be granted such other relief as the court may find just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable under the law as provided by Rule 38 of the Federal Rules of Civil Procedure.

Dated: December 14, 2018

Respectfully submitted,

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