

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN NETS, LLC,

Plaintiff,

-against-

BORO PARK PHYSICAL THERAPY PLLC,

Defendant.

Civil Action No. 15 CV 1327

COMPLAINT

Plaintiff Brooklyn Nets, LLC (the “BNL” or “Plaintiff”), by its attorneys Olshan Frome Wolosky LLP, alleges on knowledge as to its own acts and otherwise on information and belief as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement, false designation of origin, and unfair competition in violation of the laws of the United States and the State of New York. Plaintiff seeks an injunction, damages and related relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338 and 1367. Plaintiff’s claims are predicated upon the Lanham Trademark Act of 1946, as amended, 15 U.S.C. § 1051, et seq., and related claims under the common law of the State of New York. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c).

PARTIES

3. Plaintiff is a New Jersey limited liability company with its principal place of business at 15 Metro Tech Center North, 11th Floor, Brooklyn, New York 11201. Plaintiff has

been injured and will continue to be injured in New York and in this judicial district by Defendant's wrongful acts alleged herein.

4. Defendant Boro Park Physical Therapy, PLLC, is a New York professional limited liability company, with locations at 5608 New Utrecht Avenue, Brooklyn, New York 11219, which does business as Boro Park Therapy & Pain Center (the "Boro Park Location"), and 103-22 Rockaway Beach Blvd., Rockaway Park, New York 11694, which does business as Rockaway Park Therapy Center (the "Rockaway Park Location") (the Boro Park Location and the Rockaway Park Location are collectively referred to as the "BP Locations"). The Rockaway Park Location claims to be a division of Boro Park Therapy Center, PLLC; however, there is no record of Boro Park Therapy Center, PLLC in the New York State Department of State records.

THE FAMOUS BROOKLYN NETS TRADEMARKS


5. BNL owns and operates the famous Brooklyn Nets professional basketball team, a franchise based in Brooklyn, New York, as a member team of the National Basketball Association (the "NBA") in the NBA's Atlantic Division of the Eastern Conference. The team was established in 1967 and has been known by the "Nets" team name since 1968. From 1977-2012, the team played in New Jersey as the New Jersey Nets; in the summer of 2012 the team moved to Brooklyn, New York to play at Barclays Center, and was re-named the Brooklyn Nets.

6. BNL exclusively owns throughout the United States the logos, words, names, nicknames, identifying slogans, symbols, emblems, uniform designs, trade dress colors, identifications, and all other intellectual property of the Brooklyn Nets.

7. Since at least as early as 2012, the Brooklyn Nets basketball team has been widely advertised and promoted as the "Brooklyn Nets", playing live and nationally televised basketball games, as well as advertising and selling a variety of high quality Brooklyn Nets branded merchandise, including basketball memorabilia, apparel, DVDs, trading cards, and other

accessories throughout the United States and the world through BNL, the NBA, and/or their respective licensees. In connection with these Brooklyn Nets related entertainment and merchandising activities, BNL use various distinctive trademarks to promote its goods and services throughout the United States and the world, including, but not limited to, the



BROOKLYN NETS word mark, the “Brooklyn Nets Logo” - , the “Nets Logo” -



, the “Brooklyn B Logo” -



, and the B Logo” -



, among others, which

are the subject of numerous federal trademark registrations.

8. BNL and its predecessors have used the “NETS” word mark since 1968 in connection with the American Basketball Association and since 1976 in connection with the NBA (the NETS word mark, along with the BROOKLYN NETS word mark, the Brooklyn Nets Logo, the Nets Logo, the Brooklyn B Logo, the B Logo, are collectively referred to as the “Brooklyn Nets Trademarks”). The Brooklyn Nets Trademarks have at all relevant times been owned by BNL and/or its predecessors.

9. The public recognition of the Brooklyn Nets Trademarks is enhanced by extensive advertising and related press coverage of the team, featuring the Brooklyn Nets trademarks. Advertisements featuring the Brooklyn Nets Trademarks appear in nationally distributed publications that reach many millions of people. Television and press coverage of the Brooklyn Nets team and many of the Brooklyn Nets Trademarks reach many millions of consumers.

10. The Brooklyn Nets Trademarks also are depicted on many millions of dollars worth of consumer goods sold in connection with Brooklyn Nets branded merchandising each year. Products bearing the Brooklyn Nets Trademarks are available at Barclays Center, where the Brooklyn Nets play, online at the official NBA e-commerce site and at the official BNL e-commerce site, by authorized retailers on the Internet, and in sporting goods retail locations throughout the United States, including in this judicial district.

11. As a result of their exclusive and extensive use, advertisement, and promotion, the Brooklyn Nets Trademarks have acquired enormous value, goodwill, recognition, fame, and secondary meaning in the United States and throughout the world. The Brooklyn Nets Trademarks are both distinctive and famous, and are well-known to the consuming public and trade as exclusively and uniquely identifying and distinguishing the Brooklyn Nets as a well-known professional basketball team and its related products and services.

12. Plaintiff is vigilant and zealous in its efforts to protect its valuable intellectual property. Plaintiff has registered dozens of trademarks before the United States Patent and Trademark Office (the "USPTO"), including the Brooklyn Nets Trademarks, for a variety of goods and services. Attached hereto as Exhibit A is a chart setting forth the trademark registrations for the Brooklyn Nets Trademarks at issue. These registrations are valid and subsisting and are in full force and effect. Registration No. 1956158 for the NETS word mark has achieved incontestable status pursuant to 15 U.S.C. § 1065.

THE SPONSORSHIP AGREEMENT

13. On March 6, 2013, the BNL predecessor, New Jersey Basketball, LLC d/b/a Brooklyn Nets, entered into a sponsorship agreement with Defendant, wherein Defendant was

granted a limited license, subject to the specific terms of the agreement, to use the Brooklyn Nets Trademarks during the term of the agreement (the "Sponsorship Agreement").

14. Pursuant to Section (a) of the Terms and Conditions of the Sponsorship Agreement, Defendant was licensed to use the Brooklyn Nets Trademarks, subject to prior written approval by Plaintiff's predecessor and pursuant to NBA guidelines.

15. During the term of the Sponsorship Agreement, Defendant used the Brooklyn Nets Trademarks to promote its services, including in promotional materials appearing on Defendant's Facebook page, located at <https://www.facebook.com/pages/Rockaway-Park-Therapy-Center/143006519201769> ("Defendant's Facebook Page"), on Defendant's Instagram page, located at <https://instagram.com/rockawayparktherapy> ("Defendant's Instagram Page"), and in one or more of the BP Locations.

16. Per its stated terms, the Sponsorship Agreement expired at the end of the Brooklyn Nets 2013-2014 season, on April 16, 2014 (the "Expiration Date"), and was not renewed.

POST-EXPIRATION USE OF THE BROOKLYN NETS TRADEMARKS

17. Defendant, notwithstanding BNL's exclusive ownership of the Brooklyn Nets Trademarks and the expiration of Defendant's license to use the Brooklyn Nets Trademarks under the Sponsorship Agreement, continued to use the Brooklyn Nets Trademarks to promote its services after expiration of the Sponsorship Agreement, including in promotional materials appearing on Defendant's website, located at www.rockawayparktherapy.com ("Defendant's Website").

18. On October 20, 2014, Plaintiff sent a cease and desist letter to Defendant's counsel (the "C+D Letter"), notifying Defendant that Plaintiff recently had learned that Defendant was continuing to use the Brooklyn Nets Trademarks to promote its services,

including in promotional materials appearing on Defendant's Website, and demanding that Defendant cease such unauthorized use. Attached hereto as Exhibit B is a true and correct copy of the C+D Letter.

19. Despite Defendant's receipt of the C+D Letter, Defendant has failed to comply with Plaintiff's demands to cease unauthorized use of the Brooklyn Nets Trademarks.

20. In fact, despite BNL's communications that Defendant should stop using the Brooklyn Nets Trademarks, Defendant continues to use the Brooklyn Nets Trademarks to promote its services and to create an affiliation with the Brooklyn Nets in the minds of the public. One egregious example of such unauthorized use is reflected in Defendant's business card that falsely claims "Rockaway Park Therapy Center, a Division of Boro Park Therapy Center PLLC [is an] Official Therapy Partner of the Brooklyn Nets". Not only is Defendant no longer a sponsor of Plaintiff, but even during the term of the Sponsorship Agreement, Defendant was not an "official therapy partner" of Plaintiff and had no authorization to present itself as such in any promotional materials. A copy of the afore-mentioned business card is below.



21. Defendant also continues to use the Brooklyn Nets Trademarks in the Rockaway Park Location and on Defendant's Website in a manner that is likely to cause the public to falsely believe that there is still an affiliation or sponsorship between Plaintiff and Defendant, when no such affiliation currently exists. Attached hereto as Exhibit C is an example of

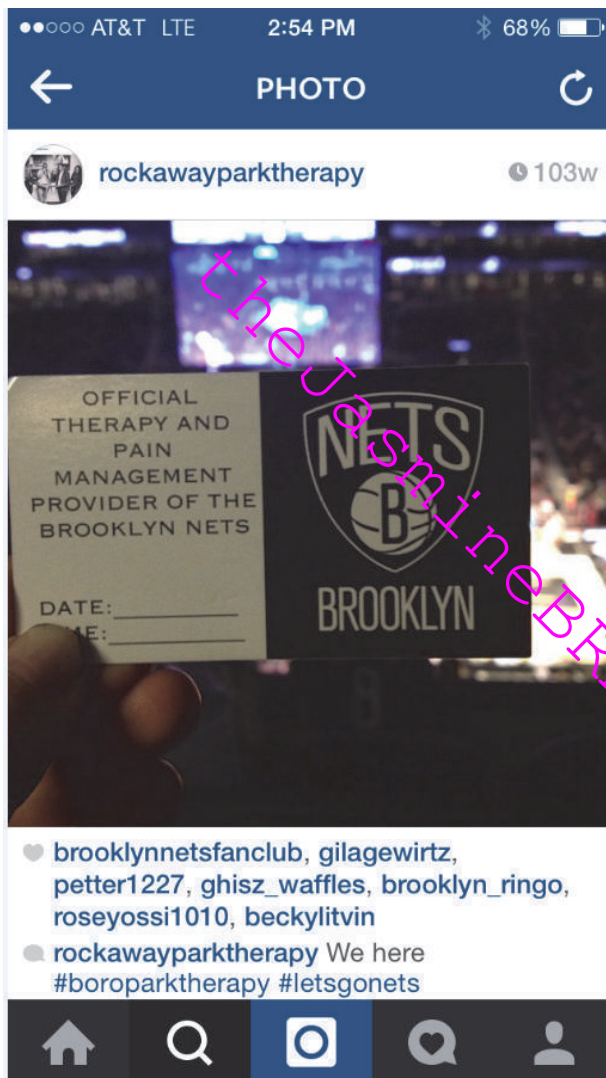
Defendant's use of the Brooklyn Nets Trademarks in the Rockaway Park Location and on Defendant's Website.

22. Further, Defendant continues to use the Brooklyn Nets Trademarks on Defendant's Facebook Page and Defendant's Instagram Page in a manner that is likely to cause the public to falsely believe that there is still an affiliation or sponsorship between Plaintiff and Defendant.

23. For example, Defendant continues to maintain social media posts on Defendant's Facebook Page and Defendant's Instagram Page displaying: (i) Brooklyn Nets players in NBA game action photographs, wearing Brooklyn Nets uniforms and/or wearing Brooklyn Nets branded gear, the Brooklyn Nets Trademarks and the "Rockaway Park Therapy Center Play of the Game"; (ii) photographs from one or more of the BP Locations with the Brooklyn Nets Trademarks prominently displayed on the front desk and gym floor mat, as well as a large picture depicting Brooklyn Nets players in NBA game action photographs, wearing Brooklyn Nets uniforms at Barclays Center, containing the stamp "Rockaway Park Therapy Center"; (iii) photographs taken at Barclays Center, featuring Brooklyn Nets players and entertainment performers; and/or (iv) images of the Brooklyn Nets Logo, all of which together falsely suggest an association with the Brooklyn Nets, when none exists. Attached hereto as Exhibit D are screen shots from Defendant's Facebook Page; attached hereto as Exhibit E are screen shots from Defendant's Instagram Page.

24. Moreover, Defendant's Instagram Page continues to egregiously include an appointment card with the words "OFFICIAL THERAPY AND PAIN MANAGEMENT PROVIDER OF THE BROOKLYN NETS" and the Brooklyn Nets Logo prominently displayed. As noted, not only is Defendant no longer a sponsor of Plaintiff, but even during the term of the

Sponsorship Agreement, Defendant was not an “official therapy and pain management provider of the Brooklyn Nets” and Defendant had no authorization to present itself as such in any promotional materials. A copy of the afore-mentioned post from Defendant’s Instagram Page is below.



25. Without the consent of Plaintiff, and in complete willful and wanton disregard of Plaintiff’s rights, Defendant has, since the expiration of the Sponsorship Agreement on April 16, 2014, intentionally infringed and continues to infringe the Brooklyn Nets Trademarks by

continuing to use the Brooklyn Nets Trademarks to advertise and promote Defendant's services and to create an affiliation with Plaintiff in the minds of the public without authorization.

26. Defendant's intentional conduct in refusing to cease its unauthorized exploitation of the Brooklyn Nets Trademarks has caused and continues to cause injury and will cause injury in the future, to Plaintiff and its operations, reputation and goodwill.

27. Defendant's acts were and are intentionally undertaken in a deliberate effort to cause confusion and mistake among the consuming public as to the affiliation and/or sponsorship of Defendant's services, and to gain for Defendant the continued unpaid benefit of BNL marketing sponsorship rights and the enormous goodwill associated with Plaintiff and its Brooklyn Nets Trademarks.

28. Defendant has used and continues to willfully use the Brooklyn Nets Trademarks without Plaintiff's authorization or consent. Such conduct by Defendant is likely to cause confusion, mistake or deception among consumers as to whether (a) there is some affiliation, connection or association between Defendant (and the services offered by Defendant) and Plaintiff, and/or (b) the services offered by Defendant are being offered to consumers with the sponsorship and/or approval of Plaintiff.

**FIRST CLAIM FOR RELIEF FOR
TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1114(1)(a)**

29. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 above as if fully set forth herein.

30. Defendant's use of the Brooklyn Nets Trademarks, without Plaintiff's consent, constitutes trademark infringement in violation of 15 U.S.C. § 1114(1)(a), in that, among other things, such use is likely to cause confusion, deception and mistake among the consuming public

and trade as to the approval or sponsorship of the services offered by Defendant, and is likely to lead the relevant trade and public to associate Defendant and its services with Plaintiff's business, products and services.

31. Defendant's acts complained of herein are willful and done with the intention of trading upon the valuable goodwill built up by Plaintiff in its registered trademarks, or otherwise injuring Plaintiff.

32. Such conduct on the part of Defendant jeopardizes the goodwill symbolized by the Brooklyn Nets Trademarks, has injured Plaintiff in an amount to be determined at trial, and has caused and will continue to cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law. As such, Plaintiff seeks an injunction pursuant to 15 U.S.C. §1116(a), as well as damages, a disgorgement of profits, and attorney's fees and costs, pursuant to 15 U.S.C. §1117(a).

**SECOND CLAIM FOR RELIEF FOR
FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION, 15 U.S.C. §
1125(a)**

33. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 31 above as if fully set forth herein.

34. Defendant's acts alleged above, including its continued use of Plaintiff's intellectual property without any authorization to do so, constitutes the use of false or misleading designations of origin and/or the making of false or misleading representations of fact, in violation of false 15 U.S.C. § 1125(a), in that, among other things, such use is likely to cause confusion, deception and mistake among the consuming public and trade as to the approval, affiliation, connection, association, or sponsorship of the relationship between Plaintiff and Defendant (and the services offered by Defendant).

35. Defendant's acts complained of herein are willful and done with the intention of trading upon the valuable goodwill built up by Plaintiff in the Brooklyn Nets Trademarks, or otherwise injuring Plaintiff.

36. Such conduct on the part of Defendant jeopardizes the goodwill symbolized by the Brooklyn Nets Trademarks, has injured Plaintiff in an amount to be determined at trial, and has caused and will continue to cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law. As such, Plaintiff seeks an injunction pursuant to 15 U.S.C. §1116(a), as well as damages, a disgorgement of profits, and attorney's fees and costs, pursuant to 15 U.S.C. §1117(a).

**THIRD CLAIM FOR RELIEF FOR
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION IN VIOLATION OF
NEW YORK COMMON LAW**

37. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 35 above as if fully set forth herein.

38. Defendant's foregoing actions constitute trademark infringement and unfair competition in violation of the common law of the State of New York.

39. Defendant has willfully engaged in acts of trademark infringement and unfair competition.

40. Defendant's acts of trademark infringement and unfair competition have injured Plaintiff in an amount to be determined at trial and have caused, and if not restrained by this Court, will continue to cause Plaintiff serious and irreparable injury for which Plaintiff has no adequate remedy at law. As such, Plaintiff seeks an injunction, damages and/or a disgorgement of profits.

WHEREFORE, Plaintiff demands that a judgment be entered granting the following relief:

A. Preliminarily and permanently enjoining and restraining Defendant and its members, affiliates, divisions, officers, directors, principals, servants, employees, successors and assigns, and all those in active concert or participation with them from:

(1) using the Brooklyn Nets Trademarks, or any other trademarks confusingly similar to the Brooklyn Nets Trademarks, in connection with the promotion of its services, including, but not limited to, on any signage, business cards, brochures, and/or advertising or promotional materials;

(2) advertising or promoting Defendant's services by using the Brooklyn Nets Trademarks, or any other designation confusingly similar to any of the Brooklyn Nets Trademarks, including, but not limited to use in any of Defendant's locations, on any social media sites and/or on any internet sites;

(3) holding out in any manner whatsoever, that Defendant or its services, are in any way sponsored by, or associated or affiliated with Plaintiff;

(4) engaging in any other activity constituting unfair competition with Plaintiff, or constituting an infringement of the Brooklyn Nets Trademarks or of Plaintiff's rights in, or its rights to use or exploit such trademarks, or the reputation and the goodwill associated with the Brooklyn Nets Trademarks; and

(5) making any statement or representation whatsoever, with respect to the Defendant and/or Defendant's Services that falsely designates the Brooklyn Nets as a partner or affiliate of Defendant, or that is false or misleading with respect to the Brooklyn Nets.

B. Directing that Defendant deliver for destruction all signage, business cards, artwork, brochures, advertisements and promotional materials bearing the Brooklyn Nets Trademarks.

C. Directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that Defendant is in any way affiliated or associated with Plaintiff.

D. Awarding Plaintiff all damages sustained by Plaintiff as a result of Defendant's wrongful acts and directing that these damages be trebled pursuant to 15 U.S.C. § 1117.

E. Requiring that Defendant make a detailed accounting to Plaintiff with respect to (1) its gross revenues; and (2) its total profits generated, for all transactions that occurred after the Expiration Date, including a detailed explanation of any alleged deductions to be made in the calculation of profits.

F. Requiring Defendant to account and pay over to Plaintiff all profits realized by Defendant's wrongful acts and directing that such profits be enhanced pursuant to 15 U.S.C. § 1117.

G. That Defendant be directed to pay over to Plaintiff its costs, disbursements, and reasonable attorneys' fees and expenses.

H. Awarding Plaintiff its costs and reasonable attorneys' and investigatory fees and expenses, together with pre-judgment interest.

I. That the Court retain jurisdiction of this action for the purpose of enabling Plaintiff to apply to the Court at any time for such further orders and interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith, and for the punishment of any violations thereof.

That Plaintiff be granted such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 13, 2015

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