

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)**

IVFMD FLORIDA, INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
IVFMD, P.A., formerly known as)	
ADVANCED REPRODUCTIVE CARE)	
CENTER, P.A., and SY Q. LE,)	
)	
Defendants.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff IVFMD Florida, Inc. (“IVFMD”), by its undersigned attorneys and for its Complaint, alleges as follows:

NATURE OF THE ACTION

1. By this action, IVFMD seeks to enforce its trademark rights relating to its IVFMD marks for a wide range of medical and health goods and services. IVFMD has used its IVFMD marks for over fifteen years and has established extensive use of and fame in the marks in Florida, across the United States, and internationally.

2. IVFMD seeks relief arising from use by Defendant Advanced Reproductive Care Center, P.A. (“ARCC”), now known as IVFMD, P.A., of an infringing IVFMD mark in various contexts in connection with its medical and health services which are identical to certain of Plaintiff’s medical and health goods and services.

3. More particularly, IVFMD seeks injunctive relief against Defendants and damages: for trademark infringement in violation of Section 1114 of the Trademark Act of the United States, 15 U.S.C. § 1114; for unfair competition and false designations of origin in

violation of Section 1125(a) of the Trademark Act of the United States, 15 U.S.C. § 1125(a); for violations of the Texas Anti-Dilution Statute; and for related acts of unfair competition and trademark infringement actionable under the common law of the State of Texas.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 (Lanham Act), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338 (patent, trademark and copyright), and pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

5. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

6. Plaintiff IVFMD Florida, Inc. is a corporation organized and existing under the laws of the State of Florida, having its principal place of business at 7300 SW 62 Place, 4th Floor, Miami, Florida, 33143.

7. Upon information and belief, Defendant Advanced Reproductive Care Center, P.A., now known as IVFMD, P.A., is a professional association organized and existing under the laws of the State of Texas, having its principal place of business at 7501 Las Colinas Boulevard, Suite 200, Irving, Texas 75603. It may be served with process by serving its registered agent, Morris Williams, 14114 Dallas Parkway, Suite 530, Dallas, Texas 75254.

8. Upon information and belief, Defendant Sy Q. Le (“Le”) is an individual resident of Texas. According to the records of the Texas Secretary of State, he is the founder, sole member, and sole officer of ARCC. He may be served with process at his place of business, 7501 Las Colinas Boulevard, Suite 200, Irving, Texas 75063.

PLAINTIFF'S FAMOUS IVFMD MARK

9. IVFMD is the owner of all rights and interests in the service mark IVFMD (the "IVFMD Mark") for a wide range of medical and health services and goods.

10. IVFMD's services provided pursuant to its IVFMD Mark include IVF (in-vitro fertilization), ICSI (intracytoplasmic sperm injection), Andrology, Inseminations (intrauterine insemination or IUI), natural cycle IVF, low cost IVF, tubal reversal, mini-stimulation medication protocols, fertility preservation, egg freezing, sperm freezing, and sperm/egg donor programs, as well as psychological and medical counseling, nutritional and fitness support.

11. IVFMD holds an application for a federal trademark registration for its IVFMD Mark, at Serial No. 85/892,637 (the "IVFMD Mark"), which was filed on April 2, 2013, with a stated date of first use in Class 44 of at least as early as January 1, 1998, for: (a) services including, but not limited to, human fertility treatment services; testing services, namely, fitness evaluations and/or consulting services in the field of mental fitness; reproductive medicine services, gynecology services, cancer screening services, cancer diagnosis services, cancer patient support services, cancer survivor support services, obstetric services, nutritional therapy services, nutritional counseling services, nutritional analysis services; human egg fertilization, ovarian health services, human egg donation, fertility, namely reproductive endocrinology and infertility services, tubal ligation services and services involved in the reversal of tubal ligations, tubal health, psychological and psychiatric testing/evaluation/counseling/support services, genetic testing and counseling services, contraceptive services, and physical fitness training services (collectively, "IVFMD Services") and (b) dietary and nutritional supplements; mixed vitamin preparations; multi-vitamin preparations; nutritional and dietary supplements formed and packaged as bars; nutritional supplements; prenatal vitamins; vitamin and mineral preparations

for medical use; vitamin and mineral supplements and vitamins (collectively, “IVFMD Goods”). (IVFMD Goods and IVFMD Services are, collectively, “IVFMD Goods and Services.”)

12. IVFMD also holds an application for a federal trademark registration for its IVFMD & Design mark at Serial No. 85/892,645 for the same goods and services, filed on April 2, 2013, with a stated date of first use in Class 44 of at least as early as January 1, 2007 (the “IVFMD Design Mark”). (Collectively, the IVFMD Mark and IMFMD Design Mark are the “IVFMD Marks.”)

13. IVFMD has consistently used its IVFMD Mark and its IVFMD Design Mark since their respective dates of first use on advertising and promotional material for its various medical offices, in its phone number, email addresses and domain name, and in other ways on marketing materials, uniforms and items provided to patients and prospective patients.

14. The IVFMD Mark and IVFMD Design Mark have been and are being used exclusively by IVFMD in connection with its IVFMD Goods and Services. IVFMD’s marks are exclusively associated with IVFMD by patients, consumers, doctors and medical personnel, medical companies, hospitals, and other service providers within the health care industry and particularly within the reproductive health service industry. The IVFMD Goods and Services are extremely well respected worldwide. In the last fifteen years, IVFMD has established good will of inestimable value in and with its IVFMD Marks. Photographs of the IVFMD Marks, as used by Plaintiff, on goods and in connection with its services, are attached as Exhibit A.

15. Plaintiff has advertised its medical services in the state of Texas and to residents of the state of Texas. For example, in January and February of 2005, Plaintiff ran ads in various airplane magazines, including American Eagle Latitude magazine, which was distributed to passengers flying to and from Texas. Plaintiff has also sponsored “Baby Races” at Miami Heat

basketball games, including games against teams from Texas, which were attended by Texas residents.

16. As a result of the respect and popularity afforded to IVFMD's Goods and Services sold and performed under and pursuant to its IVFMD Marks, IVFMD Marks have achieved secondary meaning in the minds of the public. The IVFMD Marks are immediately identified with IVFMD.

DEFENDANTS' INFRINGING CONDUCT

17. On or about September 21, 2012, Defendant ARCC filed papers with the Texas Secretary of State to change its name from "Advanced Reproductive Care Center, P.A." to "IVFMD, P.A." A copy of that filing is attached hereto as Exhibit B. On or about October 1, 2012, Defendant ARCC announced its name change to the public. A copy of its web page as archived on June 6, 2013, by Archive.org is attached hereto as Exhibit C. Defendant stated on its web page that "We hope that the new name, **IVFMD**, will be easier to say and remember than Advanced Reproductive Care Center." The emphasis of the IVFMD component is theirs.

18. On May 29, 2013, Plaintiff, through counsel, sent a Cease & Desist letter to Defendant ARCC's webmaster@ivfmd.net email address; a copy of the letter is attached as Exhibit D.

19. On July 29, 2013, Plaintiff, through counsel, sent a follow up letter to Defendant ARCC's webmaster@ivfmd.net email address; a copy of the letter is attached as Exhibit E.

20. On August 4, 2013, Defendant Dr. Sy Q. Le emailed to counsel for Plaintiff a letter where the body contained only the following: "We intend to defend our IVFMD corporate name to the fullest extent. You will hear from our legal team." A printout of this email is attached as Exhibit F.

21. On August 15, 2013, counsel for Defendant ARCC sent an email to counsel for Plaintiff. A printout of this email is attached as Exhibit G.

22. On August 19, 2013, counsel for Plaintiff sent an email with audio, video and image file attachments wherein plaintiff provided Defendant ARCC and Defendant Le with copious examples of its use of its IVFMD mark in the United States and internationally, going back many years. A printout of the email is attached as Exhibit H, as are printouts of the print advertisements that were attached to the email.

23. On information and belief, Defendant ARCC and Defendant Le have, since at least October 1, 2012, provided medical services under the infringing IVFMD mark, where such medical services are identical to the services provided by Plaintiff.

24. On information and belief, Defendant ARCC has, since at least July 12, 2013, used the Twitter account IVFMD_TX to advertise and promote its medical services under an infringing mark, namely, IVFMD_TX. Plaintiff notes that as of August 26, 2013, there are only two accounts following the infringing IVFMD_TX Twitter account. A printout of the Twitter account page located at twitter.com/IVFMD_TX is attached as Exhibit I.

25. At least as late as 2011, Defendant ARCC was using the name and mark Advanced Reproductive Care on its Facebook page; a printout of the Facebook status update posted on September 8, 2011, is attached as Exhibit J.

26. On information and belief, on October 1, 2012, Defendant ARCC changed its name and mark on Facebook to IVFMD and continues to use said infringing IVFMD mark on its Facebook page to advertise and promote its medical services. A printout of the Facebook page located at <https://www.facebook.com/ivfmd.net> is attached as Exhibit K.

27. On information and belief Defendant ARCC has created a Google+ web page at <https://plus.google.com/u/0/106664929643521307084/about> where Defendant ARCC uses its infringing IVFMD marks to advertise and promote its medical services. A printout of said Google+ page is attached as Exhibit L.

28. On information and belief, on or about June 10, 2013, Defendant ARCC created a YouTube account at <https://www.youtube.com/user/IVFMD1> where Defendant ARCC uses its infringing IVFMD marks to advertise and promote its medical services. A printout of said YouTube page is attached as Exhibit M. As of August 27, 2013, the three videos at said account had been viewed under 150 times.

29. Upon information and belief, since at least October 1, 2012, Defendant ARCC has used various marks incorporating the “IVFMD” component to advertise and promote its medical services, which are identical to certain of Plaintiff’s medical services.

30. On June 17, 2013, Defendant Sy Le filed, as an individual, an application with United States Patent and Trademark Office to register the mark IVFMD WHERE MIRACLES BEGIN & Design in Class 44 for human fertility treatment services; medical services; medical evaluation, treatment and diagnosis of infertility at Serial No. 85/961,142 (the “Infringing Application”). The stated date of first use in the Infringing Application was given by its applicant (Dr. Le) as October 1, 2012. As of August 26, 2013, this application had not yet been assigned to an Examining Attorney at the USPTO.

31. On information and belief, Defendants have used at least the following marks in connection with its medical services: (a) IVFMD, (b) IVFMD WHERE MIRACLES BEGIN, (c) IVFMD WHERE MIRACLES BEGIN & Design (d) IVFMD_TX (collectively, the “Infringing Uses”).

32. The Infringing Applications and Infringing Uses are, collectively, referred to herein as the Infringing Marks.

33. The IVFMD mark used by Defendants is identical to Plaintiff's famous IVFMD mark.

34. On or about October 1, 2012, Defendants commenced offering the Infringing Services, under the Infringing Marks, to the trade and the general public.

35. Defendants' services so closely resemble the services and goods provided under IVFMD's IVFMD Mark as to create a commercial impression that Plaintiff has authorized, licensed, sponsored, or approved of Defendants' marketing, advertising, offering for sale, selling and offering of the Infringing Services.

36. The Infringing Services are identical in concept, purpose and theme to IVFMD's medical services offered under Plaintiff's famous IVFMD Mark, which the public exclusively associates with IVFMD, as to cause confusion or cause consumers to believe that Plaintiff has authorized or endorsed the quality of the Infringing Services.

37. Upon information and belief, the Infringing Services are advertised and marketed online via Defendants' own websites and pages, as well as on consolidating and/or consortium websites including but not limited to WinFertility.com at winfertility.com/pages/find-a-fertility-specialist/Texas. The Infringing Services also appear, in connection with the Infringing Mark, on the first page of Google search results, just below links to Plaintiff's IVFMD services on Plaintiff's own website and Facebook page.

38. Upon information and belief, Defendants have offered and continue to offer the Infringing Services with knowledge of IVFMD's widely known IVFMD Mark and with the intent to trade on IVFMD's good name as well as the reputation of IVFMD's IVFMD Mark.

39. Defendants' infringing conduct is likely to create confusion and deceive consumers into believing that Defendants' Infringing Services originate with or are in some way sponsored, endorsed, licensed, associated or otherwise authorized or connected with IVFMD. Such confusion would irreparably harm and damage IVFMD because it has no control over the nature or quality of the services provided or produced by Defendant, and because individuals and those in the trade will believe that Defendants' services are connected with, licensed by or otherwise authorized by Plaintiff.

40. Defendants' infringing conduct is likely to lead to dilution of the distinctive and famous IVFMD mark.

41. In vitro fertilization can be an expensive, physically taxing, long-term service for some patients, and the safety of all the parties to the procedures required to effect fertilization is paramount to Plaintiff. Plaintiff has no control over the degree of safety, concern, quality or effectiveness offered by Defendants. Further, those who see Defendant ARCC's advertisement for their medical services are likely to think it is a IVFMD-owned, -licensed or -franchised medical office and/or service provider. They may be disappointed if their expectations are not met or if the procedures they undergo with Defendants are painful, traumatizing or difficult. They may form an unfavorable opinion of IVFMD's medical services based solely on Defendants' medical services.

42. Plaintiff has advertised its IVFMD medical services in the United States, including to residents of the state of Texas, as well as internationally, since at least 1998; a copy of an advertisement that ran in airline magazines that were distributed in 2005 is attached as Exhibit N.

43. On information and belief, Defendants' medical services are marketed directly to customers located in the United States as well as other geographic locations.

44. Therefore, on information and belief, Defendants and Plaintiff are operating in and competing for customers in the same market area.

45. Upon information and belief, Defendants' infringing conduct is knowing, willful, and intentional and was undertaken in bad faith with the intention to unfairly trade on the goodwill of Plaintiff's IVFMD Mark.

46. Defendants' infringing conduct has deceived, and will continue to deceive the public. Defendants' conduct constitutes an ongoing threat to Plaintiff and the public. Defendants have shown by their conduct that they are willing to continue use of its infringing mark even after being advised of such infringement and confirming its receipt of said notification. Defendants have undertaken their actions although their infringing uses of its IVFMD marks infringe on Plaintiff's rights in and to its famous IVFMD marks. Unless Defendant is restrained and enjoined from engaging in the infringing actions described herein, Plaintiff will suffer irreparable injury.

47. As a consequence of substantial sales, advertising and promotion by Plaintiff on radio and television, on the Internet on web pages, social media networks and via newsletters, in newspapers and magazines, and in sponsorship of major sporting and community events, the unique and distinctive IVFMD Mark has become famous and is publicly recognized as being associated with Plaintiff's medical services.

COUNT I
False Designation of Origin (15 U.S.C. § 1125(a))

48. IVFMD hereby incorporates by reference and realleges each and every allegation contained in each of the foregoing paragraphs.

49. Defendants' use of the Infringing Marks is without the permission, consent or authorization of IVFMD.

50. Defendants' unauthorized use of the Infringing Marks is likely to cause confusion as to the source, origin, sponsorship or affiliation of Defendants' business.

51. Defendants' unauthorized use of the Plaintiff's famous IVFMD mark falsely designates the origin of its services, and falsely and misleadingly describes and represents facts with respect to Defendants and their services.

52. Defendants' unauthorized use of the Plaintiff's famous IVFMD mark removes from Plaintiff the ability to control the nature and quality of products and services provided under its IVFMD Marks, and places the valuable reputation and goodwill of IVFMD in the hands of Defendants, over whom IVFMD has no control and who have already shown their willingness to continue to infringe on Plaintiff's mark.

53. Defendants' unauthorized use of the Infringing Marks is likely to cause confusion with Plaintiff's IVFMD Mark, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) and constitutes the sale of goods or services bearing a false designation of origin.

54. Upon information and belief, Defendants Le and ARCC were aware of IVFMD's ownership and prior use of the IVFMD Mark in advance of their adoption of their Infringing Marks for use in connection with the Infringing Services and, in fact, continued to expand their use of their Infringing Marks subsequent to being informed by Plaintiff of their infringement. As such, Defendants' use of the Infringing Marks constitutes willful infringement.

55. IVFMD has been damaged by Defendants' acts complained of in an amount to be determined at trial, and if Defendant's conduct is allowed to continue, IVFMD and its goodwill

and reputation will continue to suffer immediate, substantial and irreparable injury that may not be adequately calculated and compensated in monetary damages.

56. Because Defendants' actions have been committed willfully, maliciously and intentionally, this is an exceptional case and Plaintiff is entitled to recover Defendants' profits together with Plaintiff's damages, trebled, costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. Sec. 1117(a).

57. Plaintiff is entitled to monetary damages and injunctive relief prohibiting Defendants from using infringing IVFMD marks and their IVFMD corporate name, and any other trade name, trademark, service mark, user name or domain name that is likely to be confused with Plaintiff's mark or otherwise unfairly competing with Plaintiff. Without preliminary and permanent injunctive relief, Plaintiff has no means by which to control the continuing injury to the reputation and goodwill associated with its IVFMD mark. Money damages may not adequately compensate Plaintiff from damage to its reputation and associated goodwill through the false and unauthorized use by Defendants of marks containing the "IVFMD" formative.

COUNT II
Trademark Dilution Under 15 U.S.C. § 1125(c)

58. IVFMD hereby incorporates by reference and realleges each and every allegation contained in each of the foregoing paragraphs.

59. Based on IVFMD's use, publishing, advertising, marketing and general popularity of the IVFMD Mark, the IVFMD Mark has acquired fame such that that the public associates the IVFMD Mark with IVFMD's medical services.

60. Plaintiff's mark is famous and distinctive within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

61. Plaintiff's IVFMD mark was famous years before Defendants misappropriated said IVFMD mark for use in commerce in connection with its Infringing Services.

62. Plaintiff has not authorized or licensed Defendants' use of the any mark similar to IVFMD.

63. Upon information and belief, Defendants' adoption and commercial use of its infringing IVFMD Mark was undertaken knowingly and willfully.

64. By reason of the foregoing, Defendants have engaged in and are continuing to engage in acts which dilute and are likely to dilute the distinctive quality of Plaintiff's IVFMD Mark in violation of Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c)).

65. IVFMD has been damaged by Defendants' acts complained of in an amount to be determined at trial, and if Defendants' conduct is allowed to continue, Plaintiff's famous IVFMD mark, as well as its goodwill and reputation will continue to suffer immediate, substantial and irreparable injury that cannot be adequately calculated and compensated in monetary damages.

66. Plaintiff is entitled to monetary damages and injunctive relief prohibiting Defendants from using any infringing IVFMD marks and corporate name, and any other trade name, trademark, service mark, user name or domain name that is likely to be confused with Plaintiff's mark or otherwise unfairly competing with Plaintiff. Without preliminary and permanent injunctive relief, Plaintiff has no means by which to control the continuing injury to the reputation and goodwill associated with its IVFMD mark. Money damages may not adequately compensate Plaintiff if it suffers damage to its reputation and associated goodwill through the false and unauthorized use by Defendant of its marks containing the "IVFMD" formative.

COUNT III
Dilution Under Texas Business and Commerce Code §16.103

67. IVFMD hereby incorporates by reference and realleges each and every allegation contained in each of the foregoing paragraphs.

68. IVFMD is the exclusive owner of the distinctive and famous IVFMD Mark.

69. The IVFMD Mark is inherently distinctive and has been in use in commerce across many different types of media.

70. The IVFMD Mark has garnered widespread publicity and public recognition in Texas and elsewhere worldwide.

71. Defendants' use of the Infringing Marks in the marketing, advertising, offering for sale and selling of its Infringing Services constitutes commercial use in commerce of the IVFMD Mark. IVFMD has not authorized or licensed this use.

72. Defendants' use of the IVFMD Mark in the marketing, advertising, offering for sale and selling of its Infringing Product actually dilutes, or is likely to dilute, the distinctive quality of the IVFMD Mark, and to lessen the capacity of the IVFMD Mark to identify and distinguish IVFMD's goods and services.

73. Defendants' unlawful use of the IVFMD Mark causes blurring and tarnishment in the minds of the consumers between IVFMD and Defendants, thereby lessening the value of the IVFMD Mark as a unique identifier of IVFMD's property.

74. By the acts described above, Defendants have intentionally and willfully diluted the distinctive quality of the IVFMD Mark and thus the acts of Defendant complained of herein constitute dilution of Plaintiff's famous IVFMD Mark in violation of Texas Business and Commerce Code § 16.103.

75. IVFMD has been damaged by Defendants' acts complained of in an amount to be determined at trial, and if Defendants' conduct is allowed to continue, IVFMD and its goodwill and reputation will continue to suffer immediate, substantial and irreparable injury that may not be adequately calculated and compensated in monetary damages.

76. Defendant's actions are in violation of Texas Business and Commerce Code §16.103

COUNT IV
False Advertising Under Texas Law

77. IVFMD hereby incorporates by reference and realleges each and every allegation contained in each of the foregoing paragraphs.

78. Defendants have made false and/or misleading statements of fact, implicitly representing that IVFMD is the source, sponsors, is affiliated with, is connected to, approves of, or otherwise is associated with Defendants and Defendants' Infringing Services.

79. Defendants have disseminated the statements described above into commerce within the State of Texas.

80. Defendants' statements described above have deceived a substantial segment of the audience exposed to them, or have the capacity for such deception. Such statements are material in that they have affected or will likely affect the purchasing decisions of consumers.

81. IVFMD has been damaged by Defendants' acts complained of in an amount to be determined at trial, and if Defendants' conduct is allowed to continue, IVFMD and its goodwill and reputation will continue to suffer immediate, substantial and irreparable injury that cannot be adequately calculated and compensated in monetary damages.

82. Defendants' actions have unjustly enriched Defendants at the expense of Plaintiff.

COUNT V
Trademark and Service Mark Infringement
Under Texas Common Law

83. IVFMD hereby incorporates by reference and realleges each and every allegation contained in each of the foregoing paragraphs.

84. The IVFMD Mark is distinctive. Based on IVFMD's use, publishing, advertising, marketing and general popularity of the IVFMD Mark, the IVFMD Mark has acquired secondary meaning so that the public associates the IVFMD Mark with IVFMD's medical services.

85. IVFMD has made continuous use of its IVFMD Mark since introducing the IVFMD Character into U.S. Commerce, including the State of Texas, in 1998.

86. Defendants have intentionally used the Infringing Marks without IVFMD's consent or authorization. Defendants' use of the IVFMD Mark in connection with the sale of its Infringing Product is likely to cause confusion and mistake in the minds of the public, leading the public to believe that Defendants' Infringing Services emanates from or originates with IVFMD, or that IVFMD approves of or sponsors, or otherwise associates itself with Defendants or Defendants' Infringing Services.

87. IVFMD has been damaged by Defendants' acts complained of in an amount to be determined at trial, and if Defendants' conduct is allowed to continue, IVFMD and its goodwill and reputation will continue to suffer immediate, substantial and irreparable injury that may not be adequately calculated and compensated in monetary damages.

88. The acts of Defendants complained of herein constitute infringement in violation of the common law of the State of Texas.

COUNT VI
Unfair Competition Under Texas Common Law

89. IVFMD hereby incorporates by reference and realleges each and every allegation contained in each of the foregoing paragraphs.

90. By making unauthorized use in commerce of the Infringing Marks, Defendants are likely to cause confusion, mistake, or deception as to the affiliation or connection of Defendants with IVFMD and as to the sponsorship or approval of Defendants' Infringing Services by IVFMD.

91. Defendants' marketing, advertising, offering for sale and provision of its Infringing Services cause confusion and mistake, deceives and misleads the purchasing public, trades upon IVFMD's high quality reputation, and improperly appropriates to Defendants the valuable goodwill of IVFMD.

92. By the acts described above, Defendants have intentionally and willfully infringed IVFMD's IVFMD Mark in violation of Texas common law.

93. IVFMD has been damaged by Defendants' acts complained of in an amount to be determined at trial, and if Defendants' conduct is allowed to continue, IVFMD and its goodwill and reputation will continue to suffer immediate, substantial and irreparable injury that cannot be adequately calculated and compensated in monetary damages.

JURY DEMAND

94. IVFMD demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands:

A. For judgment that:

- i. Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a);
 - ii. Defendants have violated Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c);
 - iii. Defendants have engaged in unlawful dilution in violation of Texas Business and Commerce Code §16.103.
 - iv. Defendants have engaged in false advertising under the common law of the State of Texas;
 - v. Defendants are liable in unjust enrichment under the common law of the State of Texas; and
 - vi. Defendants have engaged in unfair competition under the common law of the State of Texas; and
 - vii. Defendants have caused dilution to IVFMD's IVFMD Marks in violation of the common law of the State of Texas;
- B. That Defendants, their agents, servants, employees, licensees, sponsors, associates, and attorneys, and all persons acting by, through, or in active concert with any of them, be preliminarily and permanently enjoined:
- i. From using any name or mark confusingly similar to the IVFMD Mark;
 - ii. From committing any other act which falsely represents or which has the effect of falsely representing that the goods or services of the Defendant are licensed, authorized by, or in any way associated with IVFMD;
 - iii. From otherwise infringing the IVFMD Mark;
 - iv. From otherwise unfairly competing with IVFMD; and

- v. From otherwise diluting or tarnishing the IVFMD Mark and IVFMD's business reputation;
- C. That Defendants account to IVFMD for all gains, profits and advantages derived from Defendants' wrongful acts;
- D. That IVFMD recovers from Defendants Plaintiff's damages, including lost profits, sustained by IVFMD as a result of Defendants' wrongful acts, and such other compensatory damages as the Court determines to be fair and appropriate, pursuant to 15 U.S.C. § 1117(a) and Texas law;
- E. That Defendants be obligated to engage in corrective advertising in newspapers and magazines in Texas and throughout the United States, and on Defendants' website, Facebook page, YouTube page, Google+ page, Twitter account and any other social media accounts including but not limited to LinkedIn that are owned or controlled by Defendants or their designees;
- F. That IVFMD be awarded all the costs, disbursements and attorneys' fees incurred by IVFMD in bringing this claim, pursuant to 15 U.S.C. § 1117 and Texas law, and actual and punitive damages to the full extent available under common law;
- G. That the United States Patent and Trademark Office refuse registration of Defendant Sy Le's pending application for the IVFMD WHERE MIRACLES HAPPEN mark listed herein and any applications filed subsequent to the filing of this Complaint; and
- H. Such other and further relief as this Court may deem just and proper.

Dated: September 3, 2013

Respectfully submitted,

/s/ Thomas M. Farrell

Thomas M. Farrell
Texas State Bar No. 06839250
McGuireWoods LLP
600 Travis St.
Suite 7500
Houston, Texas 77002
tfarrell@mcguirewoods.com
(713) 571-9191
(713) 571-9652 (Fax)

ATTORNEY FOR PLAINTIFF
IVFMD FLORIDA, INC.

OF COUNSEL:

Heidi Howard Tandy
1111 Lincoln Road
Suite 400
Miami Beach, Florida 33139
(305) 926-2227

EXHIBITS

- A. Photographs of the IVFM Marks
- B. Name Change from Advanced Reproductive Care Center, P.A. to IVFMD, P.A.
- C. June 6, 2013 Archived Web Page
- D. May 29, 2013 Cease and Desist Letter
- E. July 29, 2013 Cease and Desist Letter
- F. August 4, 2013 Email from Dr. Sy Q. Le
- G. August 15, 2013 Email
- H. August 19, 2013 Email to Defendants' Counsel
- I. Twitter Printout
- J. Facebook Printout
- K. Facebook Printout
- L. Google+ Printout
- M. YouTube Printout
- N. 2005 Advertisement