

ESTTA Tracking number: **ESTTA170063**

Filing date: **10/22/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91158590
Party	Defendant American Massage Therapy Association
Correspondence Address	THOMAS P. WHITE SCHIFF HARDIN & WAITE 6600 SEARS TOWER CHICAGO, IL 60606-0079 UNITED STATES trademarks@schiffhardin.com
Submission	Other Motions/Papers
Filer's Name	Thomas P. White
Filer's e-mail	trademarks@schiffhardin.com, twhite@schiffhardin.com
Signature	/ThomasPWhite/
Date	10/22/2007
Attachments	status report 91158590.pdf (11 pages)(208450 bytes)

dismissed Folkers' appeal in the civil action. (A copy of the order dismissing Folkers' appeal is attached as Exhibit C.)

As a preliminary matter, the applicant respectfully requests that the Board grant the applicant's Motion for Leave to Join Additional Party (filed March 31, 2004). As stated in that motion, the American Massage Therapy Association has assigned Application Serial No. 76/466,224 to the Commission on Massage Therapy Accreditation, and the assignment has been recorded in the Assignment Division of the USPTO. (After the assignment, the Commission on Massage Therapy Accreditation was joined as a plaintiff in the civil action along with the American Massage Therapy Association.) The Commission on Massage Therapy Accreditation will be filing a request with the Office, pursuant to 37 CFR §3.85, that the registration issue to it as assignee.

In light of the final judgment in the civil action, the applicant respectfully requests that the Board enter judgment in its favor (and in favor of the Commission on Massage Therapy Accreditation, if it is joined as a party) in this proceeding, and return the application to the Office for issuance of a registration.

AMERICAN MASSAGE THERAPY
ASSOCIATION

By: 

Thomas P. White
Jeanette S. Zimmer
SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, Illinois 60606
Telephone: (312) 258-5500
Facsimile: (312) 258-5700

Dated: October 22, 2007

EXHIBIT A

10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AMERICAN MASSAGE THERAPY)
ASSOCIATION and THE COMMISSION ON)
MASSAGE THERAPY ACCREDITATION,)

Plaintiffs,)

v.)

CHRIS FOLKERS, d/b/a COUNCIL)
OVERSEEING MEDICAL & MASSAGE)
THERAPY ACCREDITATION and JAMES)
LATTANZIO,)

Defendants.)

No. 03C 6820

Judge Elaine E. Bucklo
Magistrate Judge Maria Valdez

CORRECTED FINAL JUDGMENT AND PERMANENT INJUNCTION

On March 15, 2004, the Court entered a preliminary injunction against the defendants, enjoining them and all those who act in concert or participation with them from using the name and mark COMMTA and other infringing marks (Doc. No. 55.). The Court entered default against defendant Chris Folkers on January 14, 2005 (Doc. No. 121) and against defendant James Lattanzio on February 14, 2005 (Doc. No. 139), and referred the case to the assigned Magistrate Judge to conduct prove-up proceedings. Magistrate Judge Maria Valdez conducted a prove-up hearing on September 28, 2005. She issued her Report and Recommendation under Federal Rule of Civil Procedure on April 13, 2006, and it was entered on the Court's docket April 17, 2006. (Doc. No. 213.) The Report and Recommendation and accompanying minute entry were duly served on the parties by the Clerk of the Court. (Doc. Nos. 212, 213.)

Having conducted a careful, de novo review of the Report and Recommendation and the record of the prove-up hearing, it is ordered and adjudged that:

1. The Report and Recommendation of Magistrate Judge Maria Valdez, entered April 17, 2006 (Doc. No. 213), is adopted in its entirety.

2. The certification marks COMTA and COMMISSION ON MASSAGE THERAPY ACCREDITATION (the "COMTA Marks"), are owned by plaintiff The Commission on Massage Therapy Accreditation, and are valid, subsisting and enforceable. The COMTA Marks serve to indicate and certify to the public the quality of the educational service provided by, and the accredited status of, massage therapy schools and educational programs that have been accredited by The Commission on Massage Therapy Accreditation. The Court has considered the various defenses and arguments that the defendants raised during the course of this litigation regarding the validity and enforceability of the COMTA Marks, and finds them to be without merit.

3. Defendants Chris Folkers and James Lattanzio willfully infringed the COMTA Marks.

4. Judgment is entered in favor of the plaintiff The Commission on Massage Therapy Accreditation, and against defendants Chris Folkers and James Lattanzio, jointly and severally, in the amount of \$509,199.00 (comprised of \$216,000.00 in enhanced damages, and \$293,199.00 in attorneys' fees), plus post-judgment interest.

5. Defendants Chris Folkers and James Lattanzio, their employees, agents, independent contractors, representatives, and attorneys, and all those who act in concert or participation with them, are permanently enjoined from using, and from assisting and contributing to the use of, any trademark, service mark, certification mark, collective mark, or trade name that so resembles either of the COMTA Marks as to be likely to cause confusion or mistake or to deceive, including but not limited to the designations COMMTA, COM&MTA,


C.O.M.M.T.A, C.O.M.&M.T.A, COUNCIL OVERSEEING MEDICAL MASSAGE THERAPY ACCREDITATION, and COUNCIL OVERSEEING MEDICAL & MASSAGE THERAPY ACCREDITATION (the "Infringing Marks"). This injunction encompasses, but is not limited to, use in marketing, advertising, signage, publications, Internet domain names, email addresses, and websites.

6. The persons and entities bound by this injunction include, but are not limited to: (i) any accrediting body, whether incorporated or not, that either defendant, or any person or entity acting in concert with them, owns, controls, operates, or participates in operating; (ii) any massage therapy schools and educational programs that either defendant, or any person or entity acting in concert with them, owns, controls, operates, or participates in operating; and (iii) any massage therapy schools and educational programs that were or are granted a license or other permission to use any of the Infringing Marks by either defendant, by any accrediting body referred to in clause (i) above, or by any person or entity acting in concert with them, whether the permission was granted through accreditation or otherwise.

7. This order supersedes the Preliminary Injunction entered in this action on March 15, 2004 (Doc. No. 55).

8. This order and the injunction that it contains will remain in full force and effect unless modified by a further order of this Court.

Dated: 6/14/06



Elaine E. Bucklo
United States District Judge

EXHIBIT B

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

DISMISSAL PER CIRCUIT RULE 3 (b)

Date: December 14, 2006

By the Court:

No. 06-2979

AMERICAN MASSAGE THERAPY ASSOCIATION and COMMISSION MASSAGE
THERAPY ACCREDITATION,
Plaintiffs - Appellees

v.

JAMES LATTANZIO,
Defendant - Appellant

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 03 C 6820, Elaine E. Bucklo, Judge

This cause, docketed on 7/18/06, is **DISMISSED** for
failure to timely pay the required docketing fee, pursuant
to Circuit Rule 3(b).

(1030-110293)

EXHIBIT C

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

DISMISSAL PER CIRCUIT RULE 31(c)(2)

Date: October 15, 2007

By the Court:

No. 06-2867

AMERICAN MASSAGE THERAPY ASSOCIATION and COMMISSION MASSAGE
THERAPY ACCREDITATION,
Plaintiffs - Appellees

v.

CHRIS FOLKERS,
Defendant - Appellant

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 03 C 6820, Elaine E. Bucklo, Judge

This court issued a Rule to Show Cause on 9/17/07 and
there has been no response filed. Pursuant to that Rule
to Show Cause and Circuit Rule 31(c)(2),

IT IS ORDERED that this cause is **DISMISSED** for want
of prosecution.

(1034-110293)

CERTIFICATE OF SERVICE


Thomas P. White, an attorney, certifies that on October 22, 2007, he caused to be served the foregoing Applicant's Status Report and Request for Judgment via prepaid first class U.S.

Mail on:

Bruce E. Burdick
Burdick Law Firm
3656 Western Avenue
Alton, IL 62002

Galen Institute
1025 Silas Deane Hwy., 2nd Floor
Wethersfield, CT 06109

James Lattanzio
344 Scotland Road
Windham, CT 06280

A handwritten signature in black ink, appearing to read 'T P White', written over a horizontal line.

Thomas P. White