

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 S. Tejon, P.O. Box 2980 Colorado Springs, CO 80901 719-452-5000</p> <hr/> <p>Plaintiffs: Master Inspector Certification Board, Inc.</p> <p>v.</p> <p>Defendants: Nathan Roszczewski and American Home Inspections, LLC</p> <hr/> <p>Lawyer: MARK COHEN, J.D., LL.M. Address: P.O. BOX 19192 BOULDER, CO 80308 Phone: (303) 638-3410 E-mail: MARK@COHENSLAW.COM URL: WWW.COHENSLAW.COM Atty Reg. # 13178</p>	<p style="text-align: center;">Court Use Only</p> <hr/> <p>Case No. 17 CV 32420 Div.: Ctrm:</p>
<p>COMPLAINT</p>	

PARTIES

1. Plaintiff, Master Inspector Certification Board, Inc. (MICB), is a Colorado nonprofit corporation with a mailing address of 1750 30th Street, No. 301, Boulder, CO 80301.
2. Defendant, Nathan Roszczewski (Roszczewski), resides at 10792 Ute Pass Avenue, Green Mountain Falls, Colorado, in El Paso County.
3. Defendant, America Home Inspections, LLC (AHI), is a Colorado limited liability company with its principal place of business at 10792 Ute Pass Avenue, Green Mountain Falls, Colorado, in El Paso County.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over the Roszczewski because he lives in Colorado and over AHI because it is a Colorado limited liability company.
5. The Court has subject matter jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution.

6. Venue is proper in El Paso County pursuant to C.R.C.P. 98.

GENERAL ALLEGATIONS

7. Plaintiff incorporates each allegation in this Complaint into each claim for relief. Further, Plaintiff incorporates the allegations in any claim for relief into all other claims for relief.

8. MICB is a Colorado nonprofit corporation with tax-exempt status under Section 501(c)(6) of the Internal Revenue Code.

9. MICB owns a federally registered trademark on a certification mark known as "Certified Master Inspector." Federal registration numbers 5089809 and 2892104. MICB also owns a federal trademark on "CMI," federal registration number 5189338. In addition, MICB also owns extensive common rights in these and related trademarks. These trademarks are famous and distinctive. MICB began using these trademarks before Defendants.

10. MICB awards the Certified Master Inspector designation to home inspectors that qualify for it. "Certified Master Inspector" and the related MICB marks have acquired secondary meaning and are well known to represent the highest professional designation available in the home inspection industry.

11. The International Association of Certified Home Inspectors (InterNACHI) is a Colorado nonprofit corporation with tax-exempt status as a trade association under Section 501(c)(6) of the Internal Revenue Code. It represents the interests of more than 20,000 inspectors. InterNACHI is the largest trade association for home inspectors in the world and InterNACHI membership carries prestige with it because, among other things, InterNACHI members must subscribe to InterNACHI's Code of Ethics, comply with InterNACHI's continuing education requirements, and perform home inspections in accordance with InterNACHI's Residential Standards of Practice.

12. InterNACHI has assigned its claims against Defendants to MICB.

13. InterNACHI owns federally registered trademarks on "InterNACHI" and "International Association of Certified Home Inspectors." Federal registrations 5076924 and 3791822. InterNACHI also owns extensive common law rights in those trademarks and related trademarks. These trademarks are famous and distinctive. InterNACHI began using these trademarks before Defendants.

14. Roszczewski is a home inspector who does business under AHI.

15. Upon information and belief, Roszczewski is the sole member of AHI and has complete control over it.

16. Roszczewski maintains a website or listing for AHI through Yelp, or provided information to Yelp, that includes “Certified Master Inspector” and a Certified Master Inspector logo.

17. Roszczewski maintains a website or listing for AHI through Angie’s List, or provided information to Angie’s List, where he claims to be “InterNACHI certified.”

18. Roszczewski recently posted an ad on Craigslist claiming to be “NACHI certified.” InterNACHI has extensive common law rights in the trademark “NACHI.” NACHI was a separate trade association that is now inactive. InterNACHI was formed in 2004 and has replaced it. Many in the industry still refer to InterNACHI as “NACHI.”

19. The MICB has never awarded Roszczewski the Certified Master Inspector designation.

20. Roszczewski is not an InterNACHI member.

21. Defendants’ use of the MICB’s trademarks has harmed the MICB by diluting the value of its trademarks and by misleading the public into the false believe that he has earned the Certified Master Inspector designation. Such use is likely to deceive the public.

22. Defendants’ use InterNACHI’s trademarks, including “NACHI certified” have harmed InterNACHI by diluting the value of its trademarks and by misleading the public into the false believe that he is an InterNACHI member. Such use is likely to deceive the public.

FIRST CLAIM FOR RELIEF – UNFAIR COMPETITION UNDER STATE LAW

23. Defendants’ use of the MICB’s trademarks and InterNACHI’s trademarks constitute unfair competition.

24. Defendants’ unfair competition has harmed the MICB and InterNACHI in an amount not presently known.

WHEREFORE, Plaintiff asks for judgment against Defendants, jointly and severally, for such damages as may be proven at trial, for a temporary and permanent injunction against the acts constituting unfair competition, for costs and attorney’s fees as allowed by law, and for such other relief as may be just.

SECOND CLAIM FOR RELIEF – MISAPPROPRIATION

25. Defendants have misappropriated valuable trademarks belonging to MICB and InterNACHI.

26. Defendants’ misappropriation has harmed the MICB and InterNACHI in an amount not presently known.

WHEREFORE, Plaintiff asks for judgment against Defendants, jointly and severally, for such damages as may be proven at trial, for a temporary and permanent injunction against the acts constituting misappropriation, for costs and attorney's fees as allowed by law, and for such other relief as may be just.

THIRD CLAIM FOR RELIEF – DECEPTIVE TRADE PRACTICES

27. Defendants have violated Colorado's Deceptive Trade Practices Act ("the Act") by falsely representing that Roszczewski has earned the Certified Master Inspector designation and falsely representing that he is an InterNACHI member.

28. Defendants' actions have hurt Plaintiff, InterNACHI and its members, and Colorado consumers.

WHEREFORE, Plaintiff asks for judgment for such damage as may be proven at trial, for a preliminary and permanent injunction to restrain Defendants from making the false representations set forth above, for damages under the Act, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

FOURTH CLAIM FOR RELIEF – FEDERAL TRADEMARK INFRINGEMENT

29. Defendants' wrongful use of MICB's federally registered trademarks and InterNACHI's federally registered trademarks is an infringement and is likely to cause confusion, mistake, and deception of the public as to Defendants' qualifications as home inspectors and as to the identity of any entities certifying such qualifications. Such use is causing irreparable harm to MICB and InterNACHI for which there is no adequate remedy at law.

30. Defendants are liable to Plaintiff for trademark infringement pursuant to 15 U.S.C. § 1114. This is part of the Lanham Act, 15 U.S.C. § 1111 et. seq. (Lanham Act).

31. Trademark infringement claims under the Lanham Act may be brought in state court. Concurrent jurisdiction in state and federal courts over claims arising from federal law is presumed. The presumption applies even if a federal statute explicitly provides for original federal jurisdiction, so long as that statute does not also provide that jurisdiction is exclusive in the federal courts. See 17A-120 Moore's Federal Practice-Civil § 120.12. Exclusive federal jurisdiction is established either through an express statutory statement or by a federal court ruling that federal court jurisdiction is exclusive. *Id.* Concurrent jurisdiction is the norm unless legislative history unambiguously indicates a Congressional intent for exclusive federal jurisdiction or the exercise of state court jurisdiction is incompatible with the federal interests. *Gulf Offshore Co. v. Mobil Oil Corp., et al.*, 453 U.S. 473, 477-78. 15 USC § 1121 provides that the district and territorial courts of the U.S. shall have original jurisdiction of any actions arising under the parts of the Lanham Act which fall within that chapter. Although the code grants the federal courts original jurisdiction, it does not expressly state that exclusive jurisdiction rests with them. In fact,

28 USC § 1338 states that the district courts shall have original jurisdiction of any civil action arising under any Act of Congress (i.e., the Lanham Act) relating to patents, plant variety protection, copyrights and trademarks. The statute continues, stating such jurisdiction is exclusive of the courts of the states in patent, plant variety protection and copyright cases. See 28 USC § 1338. Trademarks are not included in this list of matters subject to exclusive federal jurisdiction.

WHEREFORE, Plaintiff asks for such damages as may be proven at trial, for a preliminary and permanent injunction to restrain Defendants from such infringement, for damages under the Lanham Act, that Defendants be required to account for all profits derived from their illegal acts, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

FIFTH CLAIM FOR RELIEF – UNFAIR COMPETITION UNDER LANHAM ACT § 43

32. Defendants' wrongful use of the MICB and InterNACHI trademarks is in direct competition with the services of the MICB and InterNACHI and constitutes unfair competition pursuant to 15 U.S.C. § 1125(a).

33. Such use is likely to cause confusion, mistake, and deception among consumers.

34. Defendants' wrongful use has caused and will continue to damage MICB and InterNACHI, and will continue to cause them irreparable harm, for which there is no adequate remedy at law.

WHEREFORE, Plaintiff moves for such damages as may be proven at trial, for a preliminary and permanent injunction to restrain Defendants from such acts, for damages under the Lanham Act, that Defendants be required to account for all profits derived from their illegal acts, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

SIXTH CLAIM FOR RELIEF – FALSE DESCRIPTION

35. Defendants' wrongful use of the MICB and InterNACHI trademarks is such a colorable imitation and copy of the trademarks that such use is likely to cause confusion, or to cause mistake, or to deceive consumers as to the origin, sponsorship, or approval by the MICB and InterNACHI of Defendants' services.

36. Such use is a false description or representation of Defendants' business or products under 15 U.S.C. § 1125(a). Defendants' wrongful use has caused and will continue to damage MICB and InterNACHI, and will continue to cause them irreparable harm, for which there is no adequate remedy at law.

WHEREFORE, Plaintiff moves for such damages as may be proven at trial, for a preliminary and permanent injunction to restrain Defendants from such acts, for damages under the Lanham Act, that Defendants be required to account for all profits derived from

their illegal acts, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

SEVENTH CLAIM FOR RELIEF – FALSE ADVERTISING UNDER THE LANHAM ACT

37. Defendants' wrongful use of the MICB and InterNACHI trademarks is false advertising under the Lanham Act because such use misrepresents the nature, quality, and/or characteristics of Defendants' services. See, 15 U.S.C. § 1125(a)(1)(B).

38. Defendants' wrongful use has caused and will continue to damage MICB and InterNACHI, and will continue to cause them irreparable harm, for which there is no adequate remedy at law.

WHEREFORE, Plaintiff moves for such damages as may be proven at trial, for a preliminary and permanent injunction to restrain Defendants from such acts, for damages under the Lanham Act, that Defendants be required to account for all profits derived from their illegal acts, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

EIGHTH CLAIM FOR RELIEF – COMMON LAW INJURY TO BUSINESS REPUTATION

38. Defendants' wrongful use of the MICB and InterNACHI trademarks creates a likelihood of injury to MICB and InterNACHI because persons seeing Defendants' use of those trademarks will believe MICB has granted the Certified Master Inspector designation to them and that they are affiliated with InterNACHI.

39. Any adverse reaction by the public to Defendants and the quality of their services will injure the business reputation of the MICB and InterNACHI and the goodwill they enjoy in connection with their trademarks.

40. Defendants' wrongful use has caused and will continue to damage MICB and InterNACHI, and will continue to cause them irreparable harm, for which there is no adequate remedy at law.

WHEREFORE, Plaintiff asks for judgment against Defendants, jointly and severally, for such damages as may be proven at trial, for a temporary and permanent injunction against the acts constituting misappropriation, for costs and attorney's fees as allowed by law, and for such other relief as may be just.

NINTH CLAIM FOR RELIEF – FEDERAL TRADEMARK DILUTION

41. Defendants' use of MICB's and InterNACHI's trademarks is intended to deceive consumers and does, in fact, deceive consumers.

42. Defendants have injured MICB and InterNACHI and will continue to do so. The continuing loss of goodwill and reputation cannot be determined and therefore constitutes irreparable harm and an injury for which Plaintiff has no adequate remedy.

43. Defendants have tarnished and/or blurred the trademarks of MICB and InterNACHI in violation of 11 U.S.C. § 1125(c).

WHEREFORE, Plaintiff moves for such damages as may be proven at trial, for a preliminary and permanent injunction to restrain Defendants from such acts, for damages under the Lanham Act, that Defendants be required to account for all profits derived from their illegal acts, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

Master Inspector Certification Board, Inc.,
Plaintiff

s/ Mark Cohen

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