

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 6<sup>TH</sup> Street, Boulder, CO 80302 (303) 441-3750</p> <hr/> <p><b>Plaintiffs: International Association of Certified Home Inspectors</b></p> <p><b>Defendants: National Association of Home Inspectors</b></p> <hr/> <p>Lawyer:       <b>MARK COHEN, J.D., LL.M.</b> Address:       <b>P.O. BOX 19192</b>                   <b>BOULDER, CO 80308</b> Phone:         <b>(303) 638-3410</b> E-mail:        <b>MARK@COHENSLAW.COM</b> URL:           <b>WWW.COHENSLAW.COM</b> Atty Reg. #   <b>13178</b></p>	<p style="text-align: center;"><b>σ COURT USE ONLY σ</b></p> <hr/> <p>Case No.   18 CV               21016</p> <p>Div.:        Ctvm.:</p>
<b>COMPLAINT</b>	

**PARTIES**

1. Plaintiff, International Association of Certified Home Inspectors (“InterNACHI”) is a Colorado nonprofit corporation with its principal place of business at 4635 Nautilus Court South, Unit C, Boulder, Colorado.
  
2. Defendant, National Association of Home Inspectors (“NAHI”) is a Florida not for profit corporation, with its principal place of business at 4426 5<sup>th</sup> Street West, Bradenton, FL 34207.

**JURISDICTION AND VENUE**

3. The Court has jurisdiction over the Defendant because NAHI has members in Colorado, maintains a website where Colorado residents can search for local home inspectors that are NAHI members, sponsors a chapter in Colorado, maintains a website used by Colorado residents, and because the actions complained of in this lawsuit impact Plaintiff and Colorado consumers.

4. The Court has subject matter jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution.

5. Venue is proper in Boulder County because (1) the Defendant is a non-resident of Colorado and this Complaint designates Boulder as the proper venue, (2) upon information and belief, Defendant has members in Boulder County, (3) Defendant maintains a website used by Boulder County residents, and (4) the acts complained of herein impacted Plaintiff and consumers in Boulder County.

### **GENERAL ALLEGATIONS**

6. Plaintiff and Defendant are both trade associations that represent the interests of home inspectors.

7. Both Plaintiff and Defendant maintain websites where consumers looking for a home inspector can identify members in their local area.

8. At all times relevant to this action, Defendant had three levels of membership – (1) provisional/student membership, (2) associate member, and (3) regular member.

9. To qualify for provisional/student membership, Defendant requires only that the applicant complete a 40-hour course.

10. To qualify for associate membership, Defendant requires that the applicant complete the 40-hour course, perform at least twenty home inspections, and complete sixteen continuing education units each year.

11. At all times relevant to this action, Defendant's website represented, "Only professionals are NAHI members. A NAHI inspector is well qualified with experience in all phases of home inspection." The website also represented, "All NAHI members are highly trained and well qualified with experience in all phases of home inspection."

12. In addition to InterNACHI and NAHI, there is a third major trade association for home inspectors in the United States – the American Society of Home Inspectors ("ASHI").

13. On or about August 1, 2016, NAHI posted a notice on its website that it intends to go out of business and that represented, "All current NAHI members have become ASHI members."

14. As of this date, NAHI has not filed Articles of Dissolution and continues to maintain the website described in the previous paragraphs.

15. Despite reasonable efforts, Plaintiff has been unable to learn what agreement, if any, ASHI made with NAHI such that NAHI members would automatically become ASHI members. Prior to filing this action, Plaintiff wrote to both ASHI and NAHI, asking them to provide the details of any agreement between them concerning the transfer of NAHI members to ASHI, but neither association has responded.

16. 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.

**FIRST CLAIM FOR RELIEF – DECEPTIVE TRADE PRACTICES**

17. Defendant has violated Colorado’s Deceptive Trade Practices Act (“the Act”) in one or more of the following ways:

a. Falsely representing that “Only professionals are NAHI members.” There is no way a person that has only completed a 40-hour course and never performed a home inspection can reasonably be considered a professional. A person who has performed only twenty inspections cannot reasonably be considered a “professional.”

b. Falsely representing that “A NAHI inspector is well qualified with experience in all phases of home inspection.” There is no way a person that has only completed a 40-hour course and never performed a home inspection can reasonably be considered well qualified and experienced. A person who has performed only twenty inspections cannot reasonably be considered well qualified and experienced.

c. Falsely representing that “All NAHI members are highly trained.” There is no way a person that has only completed a 40-hour course and never performed a home inspection can reasonably be considered highly trained.

d. Maintaining a website that offers information to consumers about NAHI and NAHI members when, in fact, NAHI has ceased operations or is ceasing operations, and when all NAHI members have become ASHI members. NAHI’s website only discloses that it is going out of business in small print and the overall impression of the website deceives consumers into believing that NAHI is still active.

e. Defendant may have also falsely represented that it is a true nonprofit corporation. Generally, the law is that upon dissolution a nonprofit must distribute its assets to another nonprofit. Plaintiff has been unable to ascertain through reasonable diligence whether NAHI, in fact, did that.

f. Failing to disclose the terms of any agreement with ASHI pursuant to which NAHI members automatically became ASHI members.

18. Defendant's actions have hurt Plaintiff, Plaintiff's members, and Colorado consumers.

WHEREFORE, Plaintiff moves for such damage as may be proven at trial, for a preliminary and permanent injunction to restrain Defendant from making the false representations set forth above, for an Order directing Defendant to disclose the terms of any agreement with ASHI, 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.

**SECOND CLAIM FOR RELIEF – INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIP**

19. InterNACHI is the largest of the three major trade associations in the U.S. for home inspectors.

20. Defendant knew or should have known that Plaintiff would like NAHI members to join InterNACHI when NAHI decided to cease operations.

21. By entering into a *sub rosa* agreement with ASHI pursuant to which all NAHI members automatically became ASHI members, Defendant deprived InterNACHI of the opportunity to contract with individual NAHI members to become InterNACHI members.

22. Defendant also knew or should have known that InterNACHI had a business interest in attracting consumers seeking a home inspector to use InterNACHI's website to find an InterNACHI inspector. Notwithstanding its decision to go out of business, Defendant nevertheless maintained its website and certain trademarks, thus knowingly interfering with InterNACHI's ability to attract consumers to its website.

23. Defendant's actions damaged Plaintiff in an amount to be determined at trial.

WHEREFORE, Plaintiff moves for such damage as may be proven at trial, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

**THIRD CLAIM FOR RELIEF – ILLEGAL RESTRAINT OF TRADE**

24. Section 6-4-104, C.R.S., provides, "Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce is illegal."

25. Upon information and belief, Defendant entered an agreement, oral or written, with ASHI pursuant to which all NAHI members automatically became ASHI members, thus depriving Plaintiff of the ability to market itself to NAHI members.

26. Plaintiff does not know the terms of the agreement or what, if anything, NAHI received in return.

27. Defendant's actions damaged Plaintiff in an amount to be determined at trial.

WHEREFORE, Plaintiff moves for such damage as may be proven at trial, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

**FOURTH CLAIM FOR RELIEF – CIVIL CONSPIRACY**

28. Upon information and belief, Defendant and ASHI conspired to interfere with Plaintiff's ability to market itself to NAHI members and to restrain competition as set forth above.

29. Defendant's actions damaged Plaintiff in an amount to be determined at trial.

WHEREFORE, Plaintiff moves for such damage as may be proven at trial, for costs and attorney's fees as allowed by law, and for such other relief as the Court deems just.

INTERNATIONAL ASSOCIATION OF  
CERTIFIED HOME INSPECTIONS, Plaintiff

s/ Mark Cohen

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