

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|--|---|----------------------------------|
| TARA N. HARDIN and TARA N. HARDIN | : | |
| DDS, INC., | : | Case No. To Be Assigned |
| | : | |
| Plaintiffs, | : | COMPLAINT FOR DAMAGES AND |
| | : | INJUNCTIVE RELIEF |
| v. | : | |
| | : | JURY TRIAL DEMANDED |
| HEARTLAND DENTAL, LLC, | : | |
| | : | |
| Defendant. | : | |
| | : | |

COMPLAINT

Plaintiffs Dr. Tara N. Hardin (“Dr. Hardin”) and Tara N. Hardin DDS, Inc. (“TNHD”) (collectively, “Plaintiffs”) hereby bring this Complaint against Defendant Heartland Dental, LLC (“Heartland”), and allege and state as follows:

INTRODUCTION

1. Dr. Hardin is recognized as one of the top cosmetic dentists in the United States, with a successful practice in the Cincinnati, Ohio, area, specializing in cosmetic and general dentistry. As of 2022, she is one of just 89 dentists in the world awarded accredited fellowship status from the American Academy of Cosmetic Dentistry; is a Las Vegas Institute Fellow; and is a Fellow of the Academy of General Dentistry, the American Dental Association, and other industry groups. Dr. Hardin is an industry leader who has a global profile and regularly speaks and lectures on dental subjects.

2. As such, Dr. Hardin was stunned when fellow dentists began asking her why she had sold her practice to Heartland Dental, a multi-billion dollar dental practice juggernaut mostly

owned by global investment company KKR & Co. Dr. Hardin had no idea what these conversations were referencing, but soon learned that in an effort to appropriate her goodwill and outstanding reputation, Heartland copied her photograph and used it extensively on Heartland's website and in its communications with prospective dentist sellers in an attempt to fool the dental community into thinking that Dr. Hardin had sold her practice to Heartland, was a sponsor of Heartland, was an employee of Heartland, or otherwise approved of its practices in the United States dental industry. Nothing could be further from the truth. Not only had Dr. Hardin and TNHD not authorized Heartland's use of her image, photograph or trademarks, she never would have done so because in Dr. Hardin's professional opinion, Heartland's acquisition and operational practices are destroying the very fabric of sole proprietor and small practice dentistry by acquiring excellent firms and then devaluing the dentist's pay and motivation, removing decision-making from the person who knows the patient best – the local dentist -- resulting in the demoralization of dentists and their employees solely for financial gain. Consequently, neither Dr. Hardin nor her practice, TNHD, granted Heartland a license to exploit any of these intellectual property rights. This lawsuit seeks to right that wrong and recover damages caused by Heartland's misconduct.

PARTIES

3. Plaintiff Dr. Hardin is an individual residing in Cincinnati, Ohio. She is the sole owner of Plaintiff TNHD, a dental practice in Mason, Ohio, which specializes in cosmetic and general dentistry.

4. Plaintiff TNHD, is an Ohio corporation with its principal place of business at 5350 Socialville-Foster Rd., Mason, Ohio 45040. TNHD operates under the trade name Hardin Advanced Dentistry.

5. On information and belief, Defendant Heartland Dental, LLC (“Heartland”) is a Delaware limited liability company with its principal place of business at 1200 Network Centre Dr, Effingham, Illinois 62401. Heartland is a dental support organization that owns and manages more than 1,500 dental offices located throughout the United States, including Ohio.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331, 1338 and through the Court’s pendent and supplemental jurisdiction, and pursuant to 28 U.S.C. § 1332 because Dr. Hardin is an Ohio resident and Heartland is a Delaware limited liability company with its principal place of business in Illinois. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over Heartland Dental because it has sufficient minimum contacts with the State of Ohio by virtue of its commercial activities in Ohio, and within this judicial district, and because Heartland has caused injury to Plaintiffs and their intellectual property within the State of Ohio and this judicial district.

8. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. § 1391(a) through (c). A substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district, and Plaintiffs are being injured in this district.

STATEMENT OF FACTS

9. TNHD’s predecessor entity was founded by Dr. Hardin’s father, Dr. Gary Hardin, over forty years ago, in Mason, Ohio, a suburb of Cincinnati.

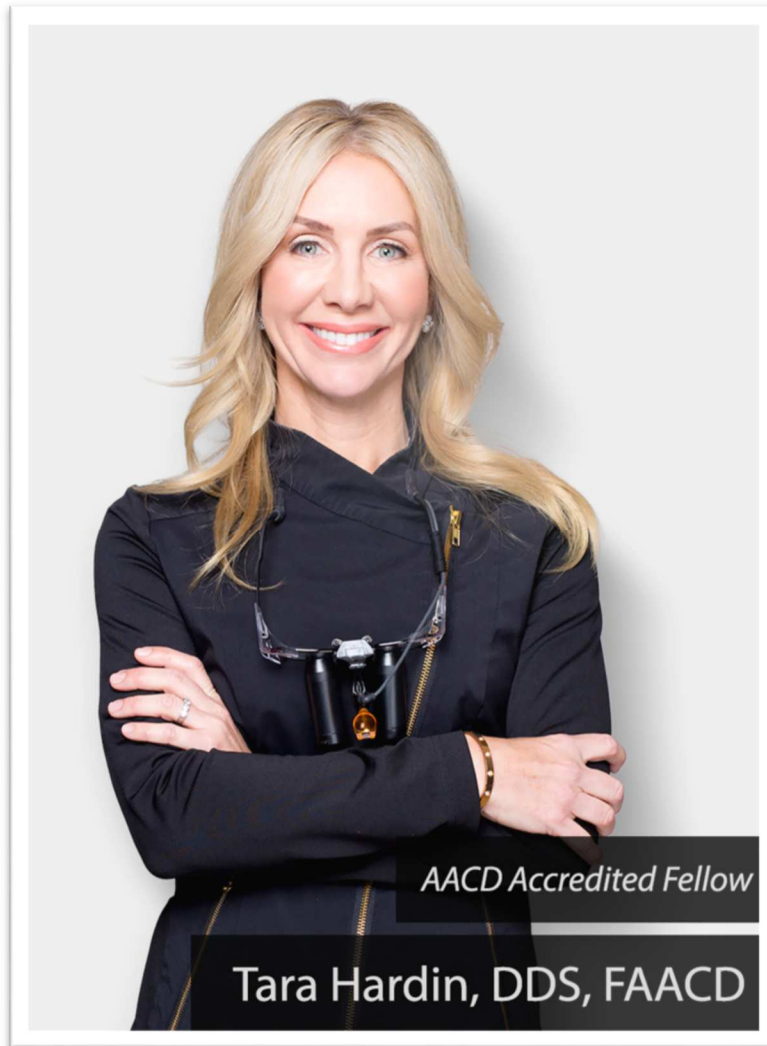
10. TNHD is widely considered as one of the top dental practices in the midwest, specializing in cosmetic and general dentistry. Dr. Hardin currently manages the practice.

11. Dr. Hardin is a member of various distinguished professional organizations. She is a Las Vegas Institute Fellow, and an accredited Fellow of the Academy of General Dentistry. She is a member of the American Dental Association, the Ohio Dental Association, and the Cincinnati Dental Society.

12. Dr. Hardin is highly regarded in her field by other dental professionals. For example, in 2015, she was honored as one of the “Top 25 Women in Dentistry” by Dental Product Reports. Moreover, Dr. Hardin is regularly invited to speak at dentistry events throughout the United States.

13. Dr. Hardin is the exclusive owner of her name, likeness, and image (collectively “Image Rights”).

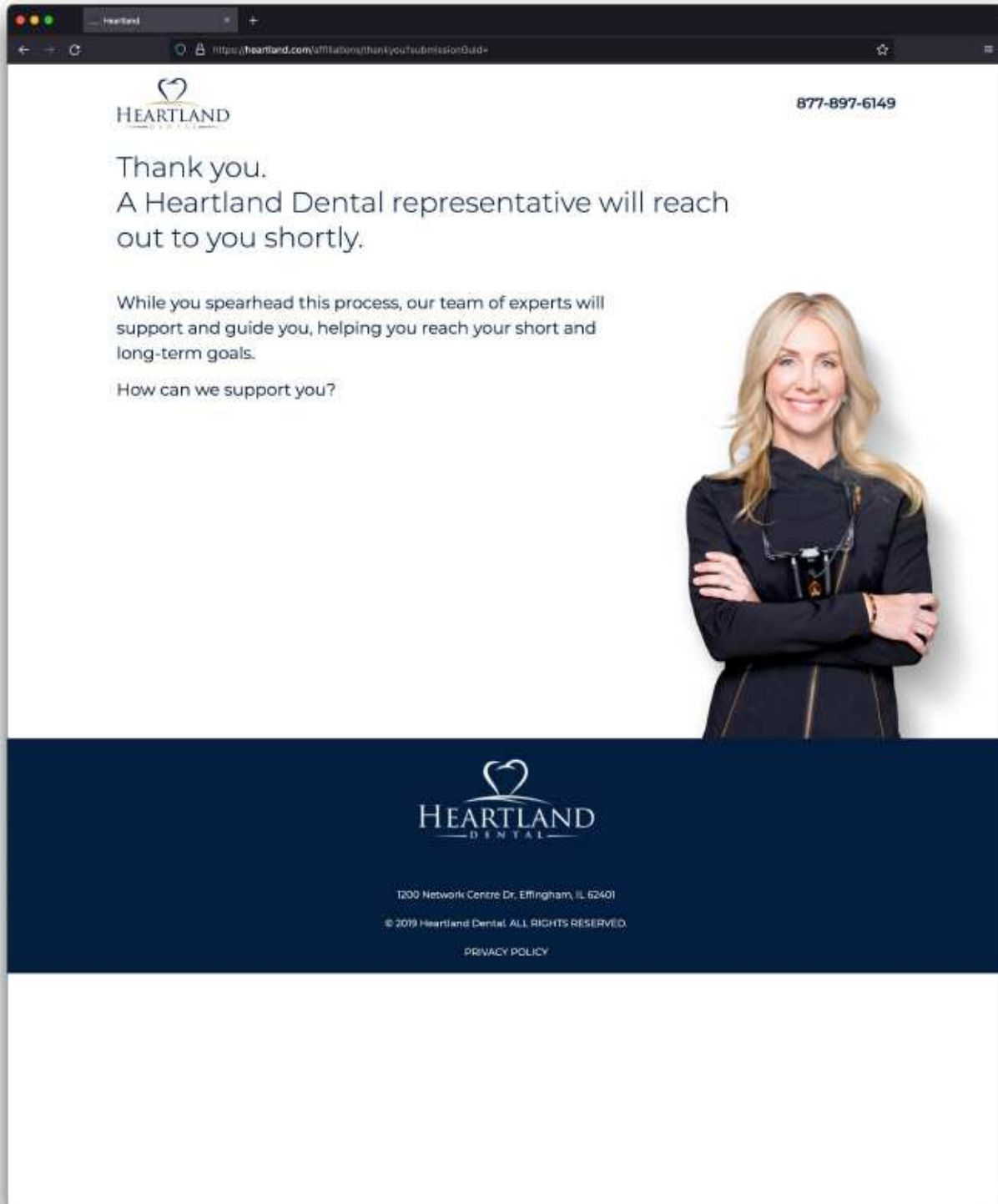
14. TNHD is the exclusive copyright owner of certain photographs, including the following photograph of Dr. Hardin (the “Photograph”), which is displayed on the TNHD website (available at <https://www.hardindental.com/about/dr-tara-hardin/>):



15. Dr. Hardin is the exclusive owner of the Image Rights, which she uses to designate her dental services through TNHD.

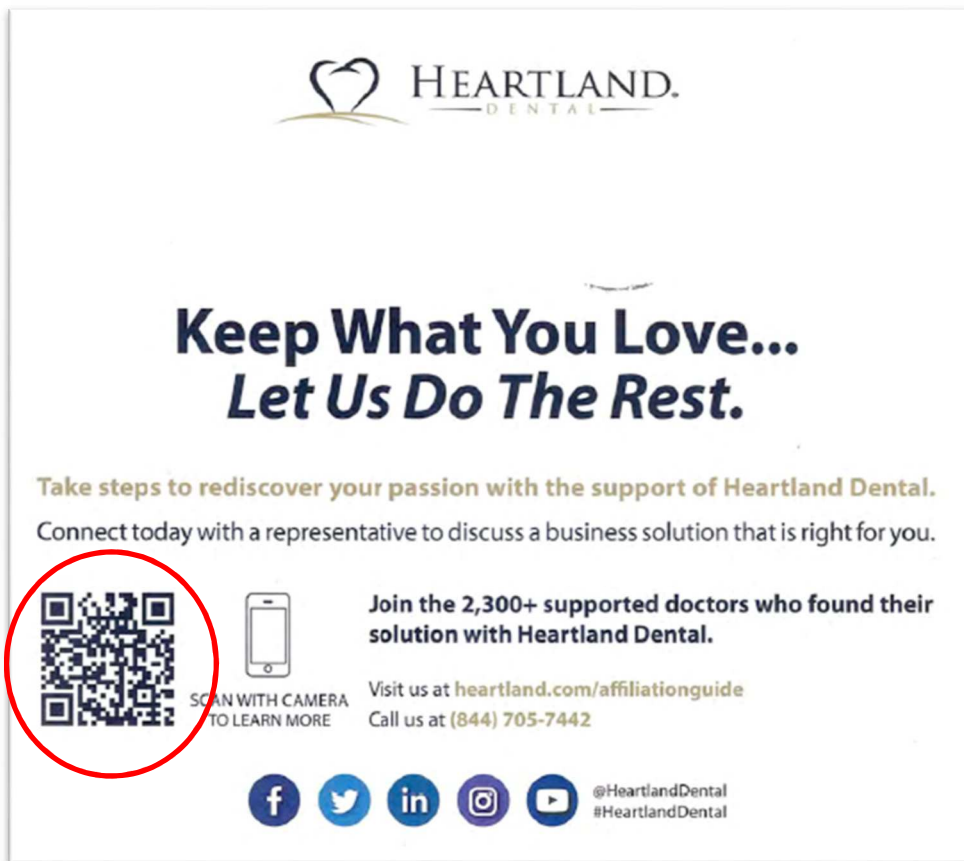
16. TNHD registered the Photograph with the United States Copyright Office on January 5, 2022 (Registration No. VA2-281-121). A copy of the Copyright Registration Certificate is attached as Exhibit A.

17. Heartland reproduced and displayed the Photograph, while removing Dr. Hardin's identification information, including without limitation, on its website (available at <https://heartland.com/affiliations/thankyou?submissionGuid=>) (the "Webpage"), a screenshot of which is reproduced below and which was taken in the September 2021 timeframe:



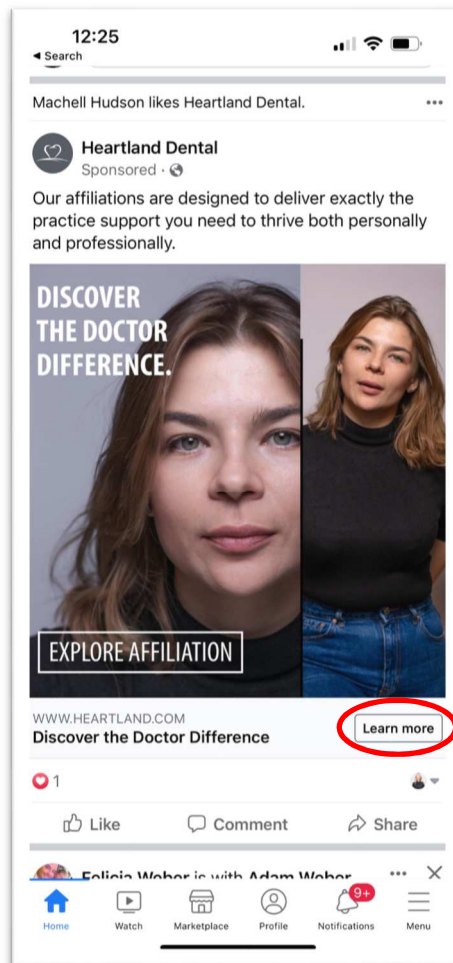
18. The Webpage was readily accessible to Heartland’s potential customers and a key aspect of Heartland’s marketing efforts. In addition, Heartland produced numerous brochures with testimonials by high profile Heartland dentists (i.e., dentists who had sold their practices to

Heartland and became Heartland employees), each outlining what Heartland had done to allegedly improve the quality of the dentist's practice and the process by which dentists can sell their practices to Heartland and become employed by it. The brochures include a QR code that, when scanned, takes potential dentist sellers (or any other member of the public) to Heartland's website to fill in their contact information. After submission, the website prominently displays the Photograph, as shown in the screenshot above, making it appear that Dr. Hardin sold her practice to Heartland and is a Heartland employee, even though it knew that she did not and was not. Copies of Heartland's marketing materials embodying the QR Code are attached as Exhibit B. An excerpt of Heartland's materials containing the QR code in question is below:



19. Additionally, through targeted advertising on social media (including Facebook and Instagram), Heartland markets to dentists to sell their practices to Heartland and become

Heartland employees. These targeted advertisements include a “Learn More” button that, when accessed, takes potential dentist sellers (or any other member of the public) to Heartland’s website to fill in their contact information. After submission, the website prominently displays the Photograph, as shown in the screenshot in paragraph 17 above, making it appear that Dr. Hardin sold her practice to Heartland and is a Heartland employee, even though it knew that she did not and was not. Copies of Heartland’s social media marketing materials embodying the “Learn More” link are attached as Exhibit C. An example containing the “Learn More” link is below:



20. On information and belief, Heartland removed Dr. Hardin’s name and title from the Photograph to enable and conceal Heartland’s infringement.

FIRST CLAIM

(Direct Copyright Infringement, 17 U.S.C. § 501)

21. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

22. TNHD is the exclusive owner of the Photograph and all copyrights associated with the Photograph.

23. Heartland infringed the copyright in the Photograph by reproducing, displaying publicly, creating derivative works, and/or distributing the Photograph on its website (including the Webpage) and marketing materials without TNHD's consent, approval, or license.

24. Heartland's actions constitute a direct violation of TNHD's exclusive rights under 17 U.S.C. § 106 with respect to the Photograph.

25. Heartland has benefited from its infringement of the Photograph through sales, brand promotion, and corporate goodwill. As a result of Heartland's infringement, TNHD has suffered monetary damages.

26. Pursuant to 17 U.S.C. § 504(b), TNHD is entitled to actual damages, including Heartland's profits from infringement in connection with the Photograph, in an amount to be proven at trial.

27. Heartland's conduct is causing and, unless enjoined and restrained by this Court, will continue to cause TNHD great and irreparable injury that cannot fully be compensated or measured in money. TNHD has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, TNHD is entitled to injunctive relief prohibiting Heartland from further infringing the Photograph's copyright and ordering Heartland to destroy all copies of its products and advertisements made in violation of TNHD's exclusive rights.

SECOND CLAIM

(Removal of Copyright Management Information, 17 U.S.C. § 1202)

28. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

29. The original version of the Photograph contains the text “Tara Hardin, DDS, FAACD” and “AACD Accredited Fellow.” Such text constitutes copyright management information (“CMI”) as defined in 17 U.S.C. § 1202.

30. As can be seen in the table below, the modified image of Dr. Hardin on the Heartland website does not contain “Tara Hardin, DDS, FAACD” or “AACD Accredited Fellow.”

| Original Image of Dr. Hardin | Modified Image on Heartland’s Website |
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31. Despite knowing that the correct CMI for the Photograph was “Tara Hardin, DDS, FAACD,” Heartland knowingly displayed publicly and distributed the Photograph without CMI, thereby removing the CMI and distributing CMI that was false.

32. Given Heartland's knowledge of the correct CMI, Heartland knew that its providing and distributing false CMI on the Photograph would induce, enable, facilitate, or conceal the infringement of the copyright in the Photograph.

33. TNHD did not authorize Heartland to remove, alter, or falsify the CMI on the Photograph, nor does the law permit such removal, alteration, or falsification.

34. Additionally, Heartland intentionally removed, altered, and falsified the CMI on the Photograph, and then distributed the Photograph, knowing that the CMI had been removed, altered, and falsified, and knowing that neither Dr. Hardin nor TNHD authorized such alteration or falsification.

35. Given Heartland's knowledge of the correct CMI, Heartland knew, or had reasonable grounds to know, that its intentional removal, alteration, and falsification of CMI and its distribution of the photographs, knowing that CMI had been removed, altered, and falsified without TNHD (or Dr. Hardin)'s consent, would induce, enable, facilitate, or conceal the infringement of the copyright in the Photograph.

36. In light of the foregoing, on information and belief, Heartland, without authority of TNHD or the law, knowingly, and with the intent to induce, enable, facilitate, and/or conceal infringement, provided CMI that is false in violation of 17 U.S.C. § 1202(a)(1).

37. In light of the foregoing, on information and belief, Heartland, without authority of TNHD or the law, knowingly, and with the intent to induce, enable, facilitate, and/or conceal infringement, distributed CMI that is false in violation of 17 U.S.C. § 1202(a)(2).

38. In light of the foregoing, on information and belief, Heartland, without authority of TNHD or the law, intentionally removed CMI having reasonable grounds to know that it

would induce, enable, facilitate, or conceal an infringement in violation of 17 U.S.C. § 1202(b)(1).

39. In light of the foregoing, on information and belief, Heartland, without authority of TNHD or the law, distributed CMI knowing that the CMI had been removed and having reasonable grounds to know that it would induce, enable, facilitate, or conceal an infringement in violation of 17 U.S.C. § 1202(b)(2).

40. In light of the foregoing, on information and belief, Heartland, without authority of TNHD or the law, distributed and publicly displayed the Photograph, knowing that CMI had been removed and having reasonable grounds to know that it would induce, enable, facilitate, or conceal an infringement in violation of 17 U.S.C. § 1202(b)(3).

41. Heartland knew or had reasonable grounds to know that its removal of copyright management information from the Photograph would induce, enable, facilitate, and/or conceal the infringement of the Photograph.

42. TNHD is a “person injured” by Heartland’s violations of 17 U.S.C. § 1202, thereby qualifying it as a person who may bring a civil action for such violations under 17 U.S.C. § 1203.

43. Heartland’s violation of 17 U.S.C. § 1202 has damaged TNDS in an amount to be proven during trial.

44. Pursuant to 17 U.S.C. § 1203(c), as the result of Defendants’ removal, alteration, and falsification of CMI, Defendants are liable for either TNHD’s actual damages plus any of Heartland’s additional profits derived from the unauthorized alteration or falsification of the Photograph’s CMI (or the distribution of same) or, at TNHD’s election, an award of statutory damages of up to \$25,000 for each violation.

45. TNHD is also entitled to recover its attorney's fees and costs pursuant to 17 U.S.C. §§ 1203(b)(4)-(5), regardless of whether the Photograph is registered with the United States Copyright Office and regardless of when the first violation occurred.

46. Heartland's removal of CMI has caused and, unless retrained by this Court, will cause irreparable injury to TNHD not fully compensable in monetary damages. Pursuant to 17 U.S.C. § 1203(b)(1), TNHD is entitled to injunctive relief, enjoining Heartland from any further such violations.

THIRD CLAIM

(Trademark Infringement, False Affiliation, False Advertising, and Unfair Competition Lanham Act, 15 U.S.C. § 1125(a))

47. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

48. Dr. Hardin has the exclusive rights to use and exploit her Image Rights which serve as distinctive trademarks within the meaning of Section 43 of the Lanham Act, 15 U.S.C. § 1125, and which are used as trademarks in interstate commerce for Dr. Hardin's professional dental services and identify Dr. Hardin and TNHD as the exclusive source of services offered thereunder (the "Marks").

49. The Marks have been in use for many years and play a prominent role with respect to the marketing and advertising of Dr. Hardin's and TNHD's dental services, and including, without limitation, with respect to TNHD. The Marks have gained widespread recognition in the dental community, including, but not limited to recognition in Ohio.

50. The Marks were distinctive and well-known long before Heartland began using unauthorized reproductions of the Marks on its marketing and website materials.

51. Heartland has infringed these rights by using the Marks in connection with Heartland's marketing and promotional materials in interstate commerce. Heartland has done so without the permission of Dr. Hardin.

52. Heartland's acts constitute trademark infringement, false designation of origin, false or misleading representation, false advertising, and false or misleading description which: (a) is likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection, right to use, or association of Heartland with Dr. Hardin and as to the origin, sponsorship, or approval of Heartland's products, services, and commercial activities by Dr. Hardin; and (b) in commercial advertising or promotion, misrepresent the nature, characteristics, qualities, or origin of Heartland's products, services, or commercial activities and/or Dr. Hardin's authorized products, services, or commercial activities.

53. Heartland's actions constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). As a result of Heartland's unlawful acts, Heartland has been unjustly enriched and Dr. Hardin has been damaged.

54. Heartland's unlawful activities have caused, and unless enjoined by this Court, will continue to cause, irreparable injury and other damage to Dr. Hardin and TNHD in terms of Dr. Hardin's business, reputation, and goodwill in the Marks. Dr. Hardin is damaged and believes she will continue to be damaged by Heartland's false descriptions and representations through direct diversion of sales and/or through a lessening of goodwill associated with the Marks. Heartland's acts also negatively impact Dr. Hardin's standing and reputation in the dental community by associating her with Heartland's inferior brand equity. TNHD is damaged in terms of the false association created by Heartland in its unauthorized use of the Marks and the false advertising associated there with. Neither Dr. Hardin nor TNHD has any adequate remedy

at law.

55. Dr. Hardin seeks injunctive relief, compensatory damages, disgorgement of profits, punitive damages, and recovery of its costs and attorney's fees against Heartland for its various and continuing acts of infringement, false affiliation, false designation of origin, false advertising, and unfair competition.

FOURTH CLAIM

(Ohio Common Law Trademark Dilution)

56. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

57. Through prominent, long, and continuous use in commerce, including commerce within the State of Ohio, the Marks have become and continue to be famous and distinctive throughout the State of Ohio.

58. Heartland's use of the Marks began after the Marks became famous and distinctive.

59. Heartland used the Marks, on or in connection with its unauthorized marketing materials, without Plaintiffs' permission.

60. Heartland is making commercial use in commerce of marks that dilute and are likely to dilute the distinctiveness and effectiveness of Plaintiffs' Marks by eroding the public's exclusive identification of these famous Marks with Plaintiffs, degrading and tarnishing the positive associations and prestigious connotations of the Marks, and otherwise lessening the capacity of the Marks to identify and distinguish Plaintiffs' high quality services offered under the Marks.

61. Heartland's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Marks and/or to cause dilution of the Marks, to the

great and irreparable injury of Plaintiffs.

62. Heartland is causing and will continue to cause irreparable injury to Plaintiffs' goodwill and business reputation and dilution of the distinctiveness and value of Plaintiffs' famous and distinctive Marks in violation of the Ohio common law.

63. Unless enjoined by this Court, the acts of Heartland complained of herein will cause Plaintiffs to suffer irreparable harm for which there is no adequate remedy at law.

FIFTH CLAIM

(Ohio Common Law Commercial Misappropriation)

64. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

65. Dr. Hardin's Image Rights have considerable value in the dentistry community.

66. Heartland appropriated Dr. Hardin's Image Rights on and in connection with its marketing materials, resulting in commercial benefit to Heartland. Dr. Hardin did not consent to this use by Heartland. Heartland knows that it had no right to use these Image Rights.

67. By using Dr. Hardin's Image Rights, Heartland deliberately sought to exploit the reputation, prestige, and standing of Dr. Hardin for its own benefit.

68. Heartland's use of Dr. Hardin's Image Rights damages Dr. Hardin by diverting professional dental services away from Dr. Hardin, degrading Dr. Hardin's reputation and goodwill in the dental community, and diminishing Dr. Hardin's ability to control her brand.

SIXTH CLAIM

(Ohio's Statutory Right of Publicity, Ohio Rev. Code § 2741 *et seq.*)

69. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

70. Dr. Hardin is a living individual and resident of the State of Ohio.

71. Heartland uses Dr. Hardin's Image Rights for commercial purposes in direct connection with Heartland's advertising and marketing efforts. Dr. Hardin did not consent to this use by Heartland.

72. Heartland's use of Dr. Hardin's Image Rights damages Dr. Hardin by diverting professional dental services away from Dr. Hardin, degrading Dr. Hardin's reputation and goodwill in the dental community, and diminishing Dr. Hardin's ability to control her brand.

73. Dr. Hardin is entitled to a permanent injunction against Heartland and all other remedies available under Ohio Rev. Code § 2741.07, including actual damages and profits derived from and attributable to the unauthorized use of Dr. Hardin's Image Rights for a commercial purpose, statutory damages, treble damages, costs, and attorney's fees.

SEVENTH CLAIM

(Ohio's Deceptive Trade Practices Act, Ohio Rev. Code § 4165 *et seq.*)

74. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

75. The conduct of Heartland constitutes unfair, unconscionable, and/or deceptive trade practices in the course of its business and in the conduct of trade or commerce, in violation of the Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165, *et seq.*

76. Defendant's conduct has and will continue to cause a likelihood or probability of confusion or misunderstanding as to the existence of any relationship, affiliation, connection, association, sponsorship, and/or endorsement between Dr. Hardin and TNHD on the one hand, and Heartland on the other.

77. Heartland's conduct has damaged and will continue to damage Dr. Hardin's and TNHD's goodwill and reputation and has resulted in losses to Dr. Hardin and TNHD, and an illicit gain of profit to Heartland in an amount that is unknown at the present time. Furthermore, Heartland's conduct was willful and Heartland knew of the deceptive nature of its acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

- A. That Heartland be enjoined during the pendency of this action, and permanently enjoined from infringing the Plaintiffs' rights in the Photograph;
- B. That the Court enter an order pursuant to 17 U.S.C. § 503 to destroy all infringing copies of the Photograph that are in Heartland's possession, custody or control, now and in the future;
- C. That Heartland be required to account for all gains, profits, and advantages derived by its infringement of Plaintiffs' rights;
- D. That Heartland be required to pay to Plaintiffs their actual damages and Heartland's profits attributable to its infringement, in such amounts as may be proven at trial;
- E. Other economic and consequential damages, in an amount to be determined at trial;
- F. That Heartland be enjoined during the pendency of this action, and permanently enjoined from infringing Dr. Hardin's publicity rights;
- G. That Heartland be required to pay Dr. Hardin actual damages from the humiliation, embarrassment, and mental distress caused by its unauthorized use of Dr. Hardin's publicity rights, in an amount to be proven at trial;
- H. That Heartland be required to pay Dr. Hardin any and all profits derived from and attributable to the unauthorized use of an Dr. Hardin's Image Rights and publicity rights;

- I. That the Court award Plaintiffs punitive and exemplary damages in an amount to be determined at trial;
- J. That the Court award Plaintiffs their attorney's fees, court costs, and other reasonable expenses associated with this lawsuit, in an amount to be determined at trial;
- K. That the Court award Plaintiffs pre- and post-judgment interest at the maximum legal rate; and
- L. For such other relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury in this case on all issues so triable.

Dated: September 21, 2022

Respectfully submitted,

/s/ Karen K. Gaunt

Robert E. Allen (*Pro hac vice* forthcoming)

Jason Linger (*Pro hac vice* forthcoming)

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