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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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07-CV-01458-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE AMERICAN BOARD OF
ANESTHESIOLOGY, INC.,

Plaintiff,

v.

RAY P. LIAO, M.D.,

Defendant.

No. **C 07-1458** Rsm
COMPLAINT
JURY DEMAND

Plaintiff, The American Board of Anesthesiology, Inc. (the "ABA" or "Board"), by its counsel, alleges for its Complaint against the defendant, Ray P. Liao, M.D. ("Dr. Liao"), as follows:

I. NATURE OF THE ACTION

1. This is a suit for preliminary and permanent injunctive relief and damages based on the trademark laws of the United States and the laws of the State of Washington.

2. The case arises out of the defendant's unlawful infringement of the ABA's registered certification marks in the course of Dr. Liao's efforts to deceive and mislead others into believing that he is or has been certified by the ABA.

ORIGINAL

Summ. 7/8/07
SEA 12/16/07

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1 **II. PARTIES**

2 3. Plaintiff, The American Board of Anesthesiology, Inc., is a corporation
3 organized and existing under the laws of the State of Connecticut having its principal place of
4 business at 4101 Lake Boone Trail, Raleigh, North Carolina 27607.

5 4. Defendant Ray P. Liao, M.D., is an individual who, upon information and
6 belief, resides in Seattle, Washington.

7 5. Upon information and belief, Dr. Liao is a medical doctor practicing medicine
8 with UW Anesthesiology, which has a place of business at 1959 NE Pacific Street, Seattle,
9 Washington 98195.

10 **III. JURISDICTION AND VENUE**

11 6. Several of the claims asserted in this action arise under the trademark laws of
12 the United States, 15 U.S.C. § 1114(1)(a), § 1125(a) and § 1125(c). Subject matter
13 jurisdiction is conferred upon this Court pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331,
14 1338(a), 1338(b) and 1367.

15 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
16 Defendant is doing business and resides in this District and a substantial part of the events
17 giving rise to Plaintiff's claims occurred in this District.

18 **IV. FACTS COMMON TO ALL COUNTS**

19 *The American Board of Anesthesiology, Inc.*

20 8. Since 1937, the ABA has been recognized by the medical community as the
21 source of professional certification for physicians practicing in the field of anesthesiology.

22 9. As relates to the practice of anesthesiology as a medical specialty, the ABA
23 exists for the following purposes:

- 24 (a) To maintain the highest standards of the practice of anesthesiology by fostering
25 *educational facilities and training in anesthesiology;*

- 1
- 2 (b) To establish and maintain criteria for the designation of a Board-certified
anesthesiologist;
- 3 (c) To inform the Accreditation Council for Graduate Medical Education
4 concerning the training required of individuals seeking certification as such
requirements relate to residency training programs in anesthesiology;
- 5 (d) To establish and conduct those processes by which the ABA may judge
6 whether physicians who voluntarily apply should be issued certificates
7 indicating that they have met the required standards for certification as a
diplomate of the American Board of Anesthesiology;
- 8 (e) To establish and conduct those processes by which the ABA may judge
9 whether physicians who voluntarily apply should be issued certificates
10 indicating that they have met the required standards for subspecialty
11 certification in a designated subsdiscipline of anesthesiology; and
- 12 (f) To serve the public, medical profession, health care facilities and
13 organizations, and medical schools by preparing for publication, lists of
14 physicians certified by the ABA.

15 10. A Board-certified anesthesiologist is a physician who provides medical
16 management and consultation during the perioperative period, in pain medicine and in critical
17 care medicine. At the time of application and at the time of initial certification, a Diplomate
18 of the Board must possess the knowledge, judgment, adaptability, clinical skills, technical
19 facility and personal characteristics sufficient to carry out the entire scope of anesthesiology
20 practice. An ABA Diplomate must logically organize and effectively present rational
21 diagnoses and appropriate treatment protocols to peers, patients, their families and others
22 involved in the medical community. A Diplomate of the Board can serve as an expert in
23 matters related to anesthesiology, deliberate with others and provide advice and defend
24 opinions in all aspects of the specialty of anesthesiology. A Board-certified anesthesiologist
25 is able to function as the leader of the anesthesiology care team.

1 11. Persons certified in anesthesiology by the ABA are also designated as
2 Diplomates in publications of the American Board of Medical Specialties and the American
3 Society of Anesthesiologists.

4 *The ABA Certification Process*

5 12. To become certified as a Diplomate of the ABA, each applicant must:

- 6 (a) Hold a permanent, unconditional, unrestricted and unexpired license to
7 practice medicine or osteopathy in at least one state or jurisdiction of
8 the United States or province of Canada; further, every United States
9 and Canadian medical license the applicant holds must be free of
10 restrictions;
- 11 (b) Fulfill all the requirements of the Continuum of Education in
12 Anesthesiology;
- 13 (c) Have on file with the American Board of Anesthesiology a satisfactory
14 Certificate of Clinical Competence covering the final six-month period
15 of Clinical Anesthesia training in each anesthesiology residency
16 program;
- 17 (d) Satisfy all examination requirements of the ABA; and
- 18 (e) Have professional standing satisfactory to the ABA.

19 13. The ABA's examination system consists of two distinct parts: a written
20 examination and an oral examination. A candidate for certification must pass each part of the
21 examination within a prescribed time period to become an ABA Diplomate.

22 14. Every candidate for ABA certification is given three opportunities, at yearly
23 intervals, to successfully complete each examination requirement. The written examination
24 must be completed satisfactorily within three years of the date of the first examination for
25 which the application was accepted, and the oral examination must be completed within three
years of the date of the first oral examination for which the candidate is declared eligible.
Candidates must wait at least six months after passing the written examination to be eligible
to appear for the oral examination. Candidates who do not pass an oral examination are not

1 eligible to appear at the next regularly scheduled oral examination. Failure to satisfy an
2 examination requirement within the prescribed number of opportunities or time, whichever
3 comes first, will result in the candidate's application being declared void.

4 15. Candidates who have submitted completed applications to the ABA and who
5 remain eligible to take ABA examinations but who have not yet successfully completed the
6 entire examination process are designated a candidate in the ABA examination system by the
7 ABA.

8 16. When a candidate for ABA certification successfully completes the
9 examination process and meets all other requirements of the ABA, the candidate is accepted
10 as an ABA Diplomate. To certify this achievement, the ABA awards the successful candidate
11 a numbered certificate that displays, among other things, certification marks belonging to the
12 ABA, including the mark THE AMERICAN BOARD OF ANESTHESIOLOGY® and the
13 ABA logo.

14 *The ABA Certification Marks*

15 17. The ABA has registered its certification marks with the United States Patent
16 and Trademark Office ("USPTO"). The certification mark for "THE AMERICAN BOARD
17 OF ANESTHESIOLOGY" has been assigned Registration Number 1,495,552 by the USPTO.
18 The certification mark for the ABA logo has been assigned Registration Number 1,530,346 by
19 the USPTO. Each of these certification marks have been deemed "incontestable" by the
20 USPTO pursuant to 15 U.S.C. § 1065. Copies of the ABA's certification mark registrations
21 are attached hereto as Exhibit A.

22 18. As reflected on the ABA's certification mark registrations, the ABA's marks
23 have been in continuous use in commerce since at least November 1950.

1 19. The ABA uses its certification marks in interstate commerce, as the marks
2 appear, with the "circle R" notification, on, among other things, letters sent by the ABA in
3 response to inquiries about a physician's certification status, letters sent to physicians who
4 successfully complete the certification process, and certificates awarded to ABA Diplomates.

5 *Dr. Liao's Willful and Deliberate*
6 *Infringement and Misappropriation of the ABA's Certification Marks*

7 20. In December, 2003, Dr. Liao applied for certification to become an ABA
8 Diplomate. Dr. Liao failed the Board's written examination in each of the years 2004, 2005
9 and 2006.

10 21. Because Dr. Liao never passed the ABA's examination process within the
11 allotted timeframe with respect to his application for certification, his application was
12 declared void in 2006.

13 22. Dr. Liao has not been a candidate in the ABA examination system since his
14 application was declared void in 2006, and he is not now, nor has he ever been, certified by
15 the ABA.

16 23. Notwithstanding the fact that Dr. Liao is not, and has never been, a Board-
17 certified anesthesiologist, he is holding himself out as a Board-certified anesthesiologist.

18 24. On or about September 10, 2007, a representative of Northwest Credentials
19 Verification Service in Bremerton, Washington ("NCVS") contacted the ABA to determine
20 whether Dr. Liao was certified by the ABA. The NCVS representative informed the Board
21 that Dr. Liao had represented to NCVS that he was a Board-certified anesthesiologist.

22 25. The NCVS representative then transmitted to the ABA a copy of a certificate
23 that Dr. Liao had provided to NCVS as proof of his status as a Board-certified
24 anesthesiologist. A true and correct copy of this document is attached hereto as Exhibit B.
25

1 26. The copy of the certificate supplied by Dr. Liao to NCVS purports to certify
2 him as a Diplomate of the ABA.

3 27. The copy of the certificate supplied by Dr. Liao to NCVS contains the ABA's
4 incontestable certification marks, the name "Ray Poonjui Liao" and states that Dr. Liao,
5 having complied with all the requirements of the ABA, is qualified to serve as a consultant in
6 anesthesiology. The certificate also bears the Certificate Number 21188, is dated the "twenty-
7 first day of September, 2005," and purports to be signed by certain officials of the ABA.

8 28. The copy of the certificate that Dr. Liao supplied to NCVS appears to be
9 identical to, and indistinguishable from, the type of certificate that the ABA conferred in the
10 past upon physicians who successfully completed the ABA examination process and were
11 accepted as ABA Diplomates in anesthesiology.

12 29. The certificate that Dr. Liao provided to NCVS is a counterfeit reproduction of
13 an actual ABA certificate and contains false statements.

14 30. Dr. Liao is not now, nor has he ever been Board certified in anesthesiology by
15 the ABA.

16 31. The certificate number which is listed on the copy of the certificate that Dr.
17 Liao provided to NCVS was actually assigned by the ABA to another physician who was
18 certified by the ABA on April 10, 1992.

19 32. Dr. Liao, by counterfeiting and publishing the purported ABA certificate, has
20 intentionally, willfully, and deliberately infringed upon the ABA's registered certification
21 marks.

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V. CLAIMS

FIRST CAUSE OF ACTION
WILLFUL INFRINGEMENT OF THE ABA'S
REGISTERED CERTIFICATION MARKS IN VIOLATION OF 15 U.S.C. § 1114(1)

33. Paragraphs 1-32 of this Complaint are hereby made Paragraph 33 of this Count One as if fully set forth herein.

34. Dr. Liao, by his deliberate and willful actions, has intentionally used in commerce a reproduction, counterfeit, copy, or colorable imitation of the ABA's registered certification marks.

35. Dr. Liao's use of the ABA's registered certification marks was done in connection with the sale, offering for sale, or distribution of Dr. Liao's services as a physician and anesthesiologist and for personal financial gain.

36. Dr. Liao's intentional, deliberate, and willful use of Plaintiff's registered certification marks has been and continues to be done in such a way as to be likely to cause confusion, or to cause mistake, or to deceive.

37. The deliberate and willful counterfeiting and use of Plaintiff's registered certification marks manifests Defendant's clear intent to deceive others into believing that he is an ABA Diplomate and that he is an ABA-certified anesthesiologist.

38. Dr. Liao has used and continues to use the ABA's registered certification marks without the consent of the registrant, the ABA.

39. Defendant's actions, which were intentional, willful, deliberate, and knowingly made, violate § 32 of the Lanham Act, 15 U.S.C. § 1114(1), have caused and will continue to cause substantial and irreparable damage to the Plaintiff, and will result in Defendant's unjust enrichment and unlawful derivation of profits and gains.

- 1 (a) misleading others into believing that Dr. Liao is an ABA Diplomate
2 and ABA-certified anesthesiologist;
- 3 (b) dilution of the value of the ABA's certification marks;
- 4 (c) Dr. Liao's benefiting from the name recognition and business goodwill
5 that the ABA has established and maintained; and
- 6 (d) financial gain to Dr. Liao based on the unlawful appropriation and
7 exploitation of the ABA's registered certification marks.

8 48. Defendant's actions, which were intentional, willful, deliberate, and knowingly
9 made, violate § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), have caused and will continue
10 to cause substantial and irreparable damage to Plaintiff, and will result in Defendant's unjust
11 enrichment and unlawful derivation of profits and gains.

12 49. As a result of Dr. Liao's actions, the ABA has suffered and will continue to
13 suffer irreparable injury to its business and reputation, the exact nature and extent of which
14 cannot be ascertained at this time, and for which there is no adequate remedy at law.

15 **THIRD CAUSE OF ACTION**
16 **VIOLATION OF FEDERAL ANTI-DILUTION STATUTE**
17 **15 U.S.C. §1125(c)**

18 50. Paragraphs 1-49 of this Complaint are hereby made Paragraph 50 of this Count
19 Three as if fully set forth herein.

20 51. Plaintiff's registered certification marks are famous and distinctive by virtue
21 of, inter alia, their registration with the USPTO, their inherent distinctiveness, their
22 longstanding duration, and their extensive recognition throughout the medical profession as
23 representing the rigorous standards that the ABA applies to its Diplomates.

24 52. Dr. Liao has intentionally, deliberately and willfully used in commerce a
25 reproduction, counterfeit, copy or colorable imitation of Plaintiff's famous and distinctive
certification marks.

1 2. A preliminary and permanent injunction restraining Defendant and
2 Defendant's partners, officers, agents, representatives, servants, employees, attorneys, and all
3 other persons or entities acting on or in active concert or participation with Defendant who
4 receive actual notice of such order and/or judgment by personal service or otherwise, from
5 contributing to, causing or abetting any of the following actions:

- 6 (a) Directly or indirectly using or infringing upon the ABA's certification
7 marks;
- 8 (b) Engaging in any acts or activities directly or indirectly calculated to
9 trade upon the ABA certification marks, or the reputation and goodwill
10 of the ABA, or which in any manner competes unfairly with the ABA;
11 and
- 12 (c) Making any representation, including any use of brochures, letterhead,
13 business cards, curriculum vitae or other written information indicating
14 or implying that Defendant is board certified by the ABA.

15 3. That Defendant be ordered to deliver up to be impounded all copies of the
16 infringing certificate or any other documents in his possession, custody, or control
17 representing or implying that Defendant is board certified by the ABA and deliver up for
18 destruction all materials used in creating such infringing copies;


19 4. That Defendant be directed to file with this Court and serve upon Plaintiff
20 within thirty (30) days after service of the injunctions herein prayed for, a written report,
21 under oath, setting forth in detail the manner and the form in which Defendant has complied
22 with the anticipated order of the Court;

23 5. That Defendant be required to account for and pay over to Plaintiff all gains,
24 profits, and advantages derived by Defendant's exploitation of the ABA's certification marks;

25 6. That Defendant be required to pay to Plaintiff the damages the ABA has
sustained as a consequence of the Defendant's unauthorized use of Plaintiff's certification
marks pursuant to all applicable laws;

VERIFICATION

I, Francis P. Hughes, am the Executive Director of the American Board of Anesthesiology, Inc. Based on my personal knowledge and upon my review of the relevant documents, I certify that the allegations contained in the above Verified Complaint are correct to the best of my knowledge and belief.


Francis P. Hughes, Ph.D.

Subscribed and sworn to before me
this 14th day of September, 2007.


Notary Public Toshi L. Swinney
My Commission Expires: 11/8/2011

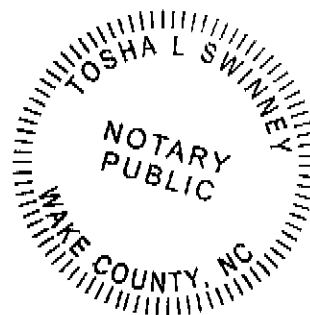


EXHIBIT A

Prior U.S. Cl.: B

United States Patent and Trademark Office

Reg. No. 1,495,552

Registered July 5, 1988

**CERTIFICATION MARK
PRINCIPAL REGISTER**

THE AMERICAN BOARD OF ANESTHESIOLOGY

AMERICAN BOARD OF ANESTHESIOLOGY,
INC., THE (CONNECTICUT CORPORATION)
100 CONSTITUTION PLAZA
HARTFORD, CT 06103

FOR: DELIVERY OF ANESTHESIOLOGY
SERVICES OR CRITICAL CARE MEDICINE BY
PHYSICIANS, IN CLASS B (U.S. CL. B).

FIRST USE 11-0-1950; IN COMMERCE
11-0-1950.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BOARD OF ANESTHESIOLO-
GY", APART FROM THE MARK AS SHOWN.

THE CERTIFICATION MARK AS USED BY
PERSONS AUTHORIZED BY CERTIFIER CER-
TIFIES THAT SUCH PERSONS MEET THE
CERTIFIERS STANDARDS AS TO EDUCA-
TION AND PROFESSIONAL COMPETENCE
AS, REFLECTED BY PASSAGE OF WRITTEN
AND ORAL EXAMINATIONS.

SEC. 2(F).

SER. NO. 653,463, FILED 4-6-1987.

LAURIE WHITAKER, EXAMINING ATTOR-
NEY

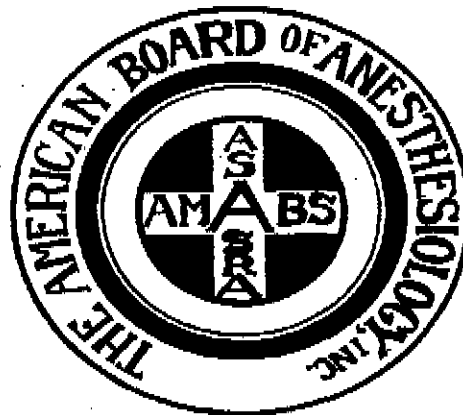
Prior U.S. Cl.: B

United States Patent and Trademark Office

Reg. No. 1,530,346

Registered Mar. 14, 1989

**CERTIFICATION MARK
PRINCIPAL REGISTER**



AMERICAN BOARD OF ANESTHESIOLOGY,
INC., THE (CONNECTICUT CORPORATION)
100 CONSTITUTION PLAZA
HARTFORD, CT 06103

FOR: DELIVERY OF ANESTHESIOLOGY
SERVICES OR CRITICAL CARE MEDICINE BY
PHYSICIANS, IN CLASS B (U.S. CL. B).

FIRST USE 11-0-1950; IN COMMERCE
11-0-1950.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BOARD OF ANESTHESIOLO-
GY", APART FROM THE MARK AS SHOWN.

THE CERTIFICATION MARK, AS USED BY
PERSONS AUTHORIZED BY CERTIFIER, CER-
TIFIES THAT SUCH PERSONS MEET THE
CERTIFIER'S STANDARDS AS TO EDUCA-
TION AND PROFESSIONAL COMPETENCE,
AS REFLECTED BY PASSAGE OF WRITTEN
AND ORAL EXAMINATIONS.

SEC. 2(F) AS TO THE WORDS "THE AMERI-
CAN BOARD OF ANESTHESIOLOGY, INC."

SER. NO. 653,462, FILED 4-6-1987.

LAURIE WHITAKER, EXAMINING ATTOR-
NEY

EXHIBIT B

The American Board of Anesthesiology

Thereby certifies that

Ray Boonini M.D.

a licensed Graduate of Medicine, having complied with all the requirements of this Board, is qualified to serve as a consultant in Anesthesiology.

Given this twenty-first day of September, 2005

Richard D. ...
President

Martin ...
Secretary-Treasurer

Boonini M.D. 21189

