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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
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BY  
**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

HYPATIA AESTHETIC & LASER  
TREATMENT CLINIC, PLLC, a Washington  
limited liability corporation,

Plaintiff,

vs.

SAM NAFICY, MD, PS, a Washington  
professional services corporation,

Defendant.

Cause No.

**CV6 1366** *[Handwritten signature]*

COMPLAINT



06-CV-01366-CMP

*SEA 4171 SCS*

COME NOW the Plaintiff, Hypatia Aesthetic & Laser Treatment Clinic, PLLC ("Hypatia"), by and through its counsel of record, and for claims against the Defendant alleges and avers the causes of action set forth below.

**I. PARTIES**

1. Hypatia Aesthetic & Laser Treatment Clinic, PLLC is a Washington Limited Liability Company doing business in King County, Washington. Hypatia has met all prerequisites for bringing and maintaining this action.

2. Upon information and belief, Sam Naficy, MD, PS ("SNPS") is a Washington Professional Services Corporation. SNPS' primary place of business, and the address of its registered agent, is 1110 - 112<sup>th</sup> Avenue NE, Suite 150, Bellevue, Washington 98004.

**II. JURISDICTION**

3. Jurisdiction is properly vested in this Court under 28 U.S.C. §1338 by virtue of the nature of the claim against the Defendant. Jurisdiction for Washington State law claims is proper under 28 U.S.C. §1367, as the state law claims are part of the same case or controversy as the federal claims.

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**III. FACTS**

4. Hypatia is in the business of providing minimally invasive and non-invasive cosmetic medical therapies under the direction of a qualified medical practitioner.

5. SNPS is, upon information and belief, in the business of providing cosmetic medical therapies.

6. Hypatia markets its business in several ways, but most significantly through its Internet website, [www.hypatiaclinic.com](http://www.hypatiaclinic.com).

7. SNPS is, upon information and belief, knowledgeable regarding Hypatia's type of business and method of marketing itself on the Internet.

8. In the last 1.5 months, Hypatia has experienced a drastic drop in the number of inquiries from new customers via the internet.

9. SNPS has purchased from [www.google.com](http://www.google.com), the right to have a sponsored link to its website appear at the top or the top right side of the search results page when anyone performs a Google search for the term "hypatia".

10. The sponsored link reads: "Rejuvenation Center [seattleface.com](http://seattleface.com) Non-surgical treatments for healthy & beautiful skin with no down time."

11. The link transfers a user directly to SNPS website at [www.seattleface.com](http://www.seattleface.com).

12. As of the date of this complaint, there is no instance of the term "hypatia" on the website at [www.seattleface.com](http://www.seattleface.com).

13. Upon information and belief, SNPS' sponsored link was purchased to confuse Hypatia customers and prospects seeking Hypatia's website into viewing the SNPS website and diverting customers and prospects to SNPS for their cosmetic medical needs, with the purpose of taking Hypatia's customers, prospects and market share.

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**IV. CAUSES OF ACTION**

**First Cause of Action – Violation of Lanham Act, 15 USC §1125**

14. Hypatia incorporates and realleges paragraphs 1-13 as if fully set forth herein.

15. Defendant's actions as set forth above are a use in commerce of the term "hypatia".

16. Defendant's use of the term "hypatia" is a false designation of the origin of Defendant's services.

1 17. Defendant's use of the term "hypatia" is likely to confuse the public as to the source of  
2 the services provided, making the public believe that they are going to Hypatia for services when they  
3 are actually going to SNPS.

4 18. Defendant's use of the term "hypatia" is a use in commercial advertising.

5 19. Defendant's use of the term "hypatia" misrepresents the nature and origin of its services.

6 20. As a result of Defendant's use of the term "hypatia", Hypatia has been damaged in an  
7 amount to be proven at trial and will continue to suffer immediate and irreparable damage unless  
8 Defendant's use is enjoined.

9 **Second cause of action – infringement of common-law trademark**

10 21. Hypatia incorporates and realleges paragraphs 1-20 as if fully set forth herein.

11 22. Hypatia's use of the term "hypatia" in their business activities has been sufficient that  
12 the term has gained secondary meaning identifying Hypatia.

13 23. Defendant's use of the term "hypatia" is an infringement of the common law trademark  
14 rights of Hypatia.

15 24. Defendant's use of the term "hypatia" is likely to cause confusion in the public.

16 25. As a result of Defendant's use of the term "hypatia", Hypatia has been damaged in an  
17 amount to be proven at trial and will continue to suffer immediate and irreparable damage unless  
18 Defendant's use is enjoined.

19 **Third cause of action – infringement of trade dress**

20 26. Hypatia incorporates and realleges paragraphs 1-25 as if fully set forth herein.

21 27. The term "hypatia" is a critical part of Hypatia's trade dress.

22 28. Defendant's use of the term "hypatia" is likely to cause confusion in the public.

23 29. As a result of Defendant's use of the term "hypatia", Hypatia has been damaged in an  
24 amount to be proven at trial and will continue to suffer immediate and irreparable damage unless  
25 Defendant's use is enjoined.

26 **Fourth cause of action – trade name infringement**

27 30. Hypatia incorporates and realleges paragraphs 1-29 as if fully set forth herein.

28 31. Defendant's use of the term "hypatia" infringes on the distinctive feature of Hypatia's  
29 name.

1 32. Defendant's use of the term "hypatia" tends to confuse the two businesses in the public's  
2 mind.

3 33. Defendant's use of the term "hypatia" is designed to generally deceive or mislead the  
4 public.

5 34. As a result of Defendant's use of the term "hypatia", Hypatia has been damaged in an  
6 amount to be proven at trial and will continue to suffer immediate and irreparable damage unless  
7 Defendant's use is enjoined.

8 **Fifth cause of action – Violation of the Washington Consumer Protection Act, RCW**

9 **19.86.020 et seq.**

10 35. Hypatia incorporates and realleges paragraphs 1-34 as if fully set forth herein.

11 36. Defendant's use of the term "hypatia" is unfair or deceptive in that it seeks to divert  
12 consumers seeking Hypatia to SNPS.

13 37. Defendant's use of the term "hypatia" is a use in trade or commerce as it is an  
14 advertisement.

15 38. Defendant's use of the term "hypatia" impacts the public interest as it is damaging to  
16 Hypatia and it is capable of repetition.

17 39. As a result of Defendant's use of the term "hypatia", Hypatia has been damaged in an  
18 amount to be proven at trial and will continue to suffer immediate and irreparable damage unless  
19 Defendant's use is enjoined.

20 **Sixth cause of action – Common law unfair competition**

21 40. Hypatia incorporates and realleges paragraphs 1-39 as if fully set forth herein.

22 41. Defendant's use of the term "hypatia" is likely to deceive or mislead prospective  
23 purchasers to the detriment of Hypatia.

24 42. As a result of Defendant's use of the term "hypatia", Hypatia has been damaged in an  
25 amount to be proven at trial and will continue to suffer immediate and irreparable damage unless  
26 Defendant's use is enjoined.

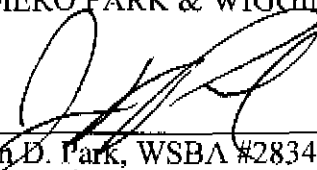
27 **V. PRAYER FOR RELIEF**

28 WHEREFORE, Hypatia, having asserted claims for relief, prays for judgment against  
29 Defendant as follows:  
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- 1 (1) For judgment against Defendant for damages incurred as a result of Defendant's acts in an  
2 amount to be proven at trial;
- 3 (2) For an order of injunction specifically enjoining Defendant from its current use of the term  
4 "hypatia" and from any further or other use of the term "hypatia";
- 5 (3) For pre-judgment and post-judgment interest at the maximum rate allowable under federal  
6 and state law;
- 7 (4) For treble damages allowable under Washington's Consumer Protection Act;
- 8 (5) For reasonable attorneys' fees and costs as allowable under federal and state law; and
- 9 (6) For all other relief this Court deems just and equitable under the circumstances.

10 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of September, 2006.

11 ROMERO PARK & WIGGINS P.S.

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