HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARSHA LINEHAN, an individual, Plaintiff, v. LANE PEDERSON, an individual, and COGNITIVE AND BEHAVIORAL SPECIALTIES d/b/a DIALECTICAL BEHAVIOR THERAPY NATIONAL CERTIFICATION AND ACCREDITATION ASSOCIATION, a Minnesota non-profit corporation, Defendants.	CIVIL ACTION NO. 17-CV-1494-RSL **AMENDED JOINT STATUS REPORT AND DISCOVERY PLAN**

Plaintiff Marsha Linehan ("Plaintiff") and Defendants Lane Pederson and Cognitive and Behavioral Specialties d/b/a Dialectical Behavior Therapy National Certification and Accreditation Association ("Defendants") hereby submit this Joint Status Report and Discovery Plan pursuant to the Court's Amended Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement, entered on November 28, 2017 filed at ECF No. 16.

1. <u>Statement of Nature and Complexity of the case</u>. This is a case brought under the Lanham Act and Washington's Consumer Protection Act. In summary Plaintiff Marsha

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

Linehan brought this action for trademark infringement, false endorsement, and consumer protection act violations, after Defendants and non-parties Lane Pederson & Associates, LLC, and Mental Health Systems, P.C., initiated proceedings before the Trademark Trial and Appeal Board ("TTAB") seeking cancellation of the registration for the service mark DBT and opposing registration of the mark DIALECTICAL BEHAVIOR THERAPY. The TTAB has suspended the proceedings pending disposition of this case.

Plaintiff asserts three counts: (1) trademark infringement and false designation of origin pursuant to 15 U.S.C. § 1125(a); (2) false endorsement pursuant to 15 U.S.C. § 1125(a); and (3) violation of Washington Consumer Protection Act RCW 19.86.020, et. seq. Specifically Plaintiff alleges that Defendants infringed, and continue to infringe, Plaintiff's trademarks DIALECTICAL BEHAVIOR THERAPY and DBT by providing services using the marks. Plaintiff also alleges that Defendants made unauthorized use of Plaintiff's name, which has caused and will continue to cause confusion. Finally, Plaintiff alleges that Defendants use of the marks DIALECTICAL BEHAVIOR THERAPY and DBT to describe the services offered by Defendants is deceptive and misleading, and Plaintiff has suffered damages as a result. Defendants have answered and asserted affirmative defenses.

Defendant and Counterclaim Plaintiff Lane Pederson asserts counterclaims for cancellation of the DBT trademark registration on the grounds of genericness, mere descriptiveness, abandonment, and fraud on the USPTO; opposition to the registration of the purported mark DIALECTICAL BEHAVIOR THERAPY on the grounds of genericness, mere descriptiveness, abandonment, and fraud on the USPTO; a declaration of non-infringement with respect to the DBT mark; and abuse of process. Plaintiff and Counterclaim Defendant Linehan has answered and asserted affirmative defenses.

2. <u>Proposed deadline for joining additional parties.</u> The parties propose April 13, 2017 as the deadline for joining additional parties.

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

3. <u>Whether parties agree to assign case to Magistrate Judge</u>. The parties do not agree to assign the case to a Magistrate Judge.

4. <u>Proposed discovery plan (Fed. R. Civ. P. 26(f)(3))</u>

A. Initial disclosures.

The FRCP 26(f) conference took place on December 7, 2017. The parties have exchanged initial disclosures and shall supplement as required under the federal and local rules.

B. Subjects, timing, and potential phasing of discovery.

Plaintiff intends to conduct discovery regarding the allegations in Plaintiff's Complaint, Defendants' affirmative defenses, and counterclaims.

Defendants intend to conduct discovery regarding the allegations in Plaintiff's Complaint, Defendants' counterclaims and the parties' affirmative defenses.

The parties do not believe discovery should be conducted in phases or be limited to or focused on particular issue, other than the timelines for fact and expert discovery discussed below.

C. Electronically stored information.

The parties are in the process of negotiating a Protocol for Discovery of ESI, which may be submitted for the Court's approval at a later date.

D. Privilege issues.

The parties agree to redact documents that may be partially privileged. They further agree that documents that are responsive to discovery requests but are communications with counsel retained for the TTAB proceedings and for this litigation that are privileged in their entirety and withheld from production for that reason need not be listed on a privilege log by either side. The parties anticipate agreeing to a claw-back provision as contained in the Model Protocol for Discovery of ESI.

CAIRNCROSS & HEMPELMANN, P.S.
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E. Proposed limitation on discovery.

The parties do not believe any limitations on discovery are necessary or appropriate at this time, other than the limits imposed by the Federal Rules of Civil Procedure and the Local Civil Rules. Neither party waives the right to seek leave to exceed these limits if necessary as this case proceeds. The parties agree that any issues regarding numerical limits on interrogatories shall be resolved in accordance with the law applicable at the time the issue arises.

F. The need for any discovery related orders.

At this time, the parties do not believe that any additional discovery related orders need be entered by the Court pursuant to FRCP 26(c) or Local Civil Rule 16(b) and (c). However, the parties are in the process of negotiating a Stipulated Protective Order to protect confidential or proprietary information produced in discovery, which may be submitted for the Court's approval at a later date. The parties also are negotiating a Protocol for Discovery of ESI, which may be submitted for the Court's approval at a later date.

5. Local Civil Rule 26(f)(1) topics.

A. Prompt case resolution.

The parties have discussed, and continue to discuss, the possibility of promptly resolving the case.

B. Alternative dispute resolution.

The parties will discuss the possibility and advisability of participating in an early mediation, but no decision has been reached at this time.

C. Related cases.

As noted above, consolidated proceedings relating to the trademark claims are pending before the Trademark Trial and Appeal Board ("TTAB") under cause number 91228489. However, they have been suspended due to the filing of this action. The parties do not anticipate that any action need be taken before the TTAB with respect to those claims pending resolution of this case.

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
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office 206 587 0700 fax 206 587 2308

D. Discovery management.

Before any production of electronically stored information (ESI), the parties agree to confer with each other regarding the nature and type of ESI to be produced, including the form of production and to do so promptly to ensure production of ESI within the time allowed under the federal rules of civil procedure and local rules. The parties are negotiating a Protocol for Discovery of ESI.

E. Subjects on which discovery sought.

The parties expect to obtain discovery about each other's rights in the trademarks at issue, their use of the trademarks and priority of rights in the same, and the likelihood of consumer confusion between the uses. In addition, the parties expect to obtain discovery about Defendants' alleged use of Plaintiff's name in marketing and about the research, therapy, consultation, training, and certifications provided by Defendants and any other parties using the trademarks.

In addition, Defendants anticipate engaging in discovery concerning Plaintiff's standing to assert exclusive rights in the terms "DIALECTICAL BEHAVIOR THERAPY" and "DBT" based on federally funded research and development of services using those terms during Plaintiff's employment with, and under the sponsorship of the University of Washington.

Additionally, Plaintiff anticipates engaging in discovery concerning Defendants intentional use or approval of use of Plaintiff's name in promotional materials to confuse and/or mislead practitioners into the belief that Plaintiff has sponsored or approved Defendants' training; and Defendants' adoption of DBT as a trademark for their programs that issue certificates to practitioners, with knowledge that practitioners in the field associate DBT with Plaintiff.

F. Phasing motions.

The parties do not believe that phased motions are necessary at this time.

CAIRNCROSS & HEMPELMANN, P.S.
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G. Preservation of discoverable information.

The parties are preserving discoverable information. No further Court intervention is needed at this time.

H. Privilege issues.

Please see the entry for Section 4. D above, which is incorporated by reference.

I. Model Protocol for Discovery of ESI.

The parties are negotiating a Protocol for Discovery of ESI.

J. Alternatives to Model Protocol

The parties are negotiating a Protocol for Discovery of ESI.

6. Completion of Discovery.

The parties propose the following discovery deadlines:

A. Fact discovery completed by: August 31, 2018.

B. Opening expert reports under FRCP 26(a)(2) due: June 29, 2018.

C. Rebuttal expert reports due: August 15, 2018.

D. Expert discovery completed by: September 31, 2018.

E. All dispositive motions must be filed by: October 1, 2018.

7. Bifurcation. The parties agree that bifurcation is not necessary.

8. Pretrial Statements and Pretrial Order. The parties believe that the pretrial statements and pretrial order called for under the Local Rules will be useful and should be required.

9. Individualized Trial Program / ADR. The parties do not currently intend to utilize the Individualized Trial Program set forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil Rule 39.1. The parties will continue to discuss potential ADR options, including mediation. The parties agree that any ADR should be completed by December 14, 2018.

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
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10. Suggestions for shortening or simplifying the case. The parties do not have any other suggestions for simplifying or shortening the case but intend to cooperate towards that end.

11. Date case ready for trial. The parties believe the case will be ready for trial as of February 4, 2019.

12. Whether trial will be jury or non-jury. Trial will be by jury.

13. Number of trial days required. The parties believe that approximately 5–7 trial days are required.

14. Trial counsel. Names, addresses, and telephone numbers of all trial counsel as follows:

For Plaintiff:

Ana-Maria Popp
Jeff Nelson
Binah B. Yeung
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: (206) 587-0700
Facsimile: (206) 587-2308
Email: apopp@cairncross.com
Email: jnelson@cairncross.com
Email: byeung@cairncross.com

For Defendants:

William C. Rava
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
Email: WRava@perkinscoie.com

David P. Jendrzejek (*pro hac vice*)
Terese A. West (*pro hac vice*)
Moss & Barnett, a Professional Association
105 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Telephone: (612) 877-5000

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

Facsimile: (612) 877-5999
Email: David.Jendrzejek@lawmoss.com
Email: West@lawmoss.com

15. Date on which trial counsel may have complications. Plaintiff is not available for trial on the following dates:

- February: 5, 6, 7, 8, 9, 10

Defendants' counsel are not available for trial on the following dates:

- April: 15-26, 2019

16. Service on Defendants. All Defendants have been served.

17. Scheduling Conference. The parties do not anticipate requiring a scheduling conference with the Court at this time.

18. Disclosure Statements. The parties do not believe any change should be made in the timing or form of expert and pretrial disclosures under FRCP 26(a)(2)-(4), other than as set forth above.

19. Corporate Disclosure Statements. Defendant Cognitive and Behavioral Specialties filed its corporate disclosure statement on December 18, 2017 at ECF No. 18.

20. Video recording of hearings. Neither party consents to having hearings video recorded.

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CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

DATED this 22nd day of December, 2017.

CAIRNCROSS & HEMPELMANN, P.S.

/s/Ana-Maria Popp
Ana-Maria Popp, WSBA No. 39614
Email: apopp@cairncross.com
Jeff Nelson WSBA No. 44570
Email: jnelson@cairncross.com
Binah B. Yeung WSBA No. 44065
Email: byeung@cairncross.com
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: (206) 587-0700
Facsimile: (206) 587-2308
Attorneys for Plaintiff

PERKINS COIE LLP

By: s/William C. Rava
William C. Rava, WSBA No. 29948
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
WRava@perkinscoie.com
Telephone: 206-359-8000
Facsimile: 206-359-9000

MOSS & BARNETT
A Professional Association

David P. Jendrzejek, (*pro hac vice)*
Terese A. West (*pro hac vice)*
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
David.Jendrzejek@lawmoss.com
West@lawmoss.com
Telephone: 612-877-5000
Facsimile: 612-877-5999

Attorneys for Defendants

Certificate of Service

I, Gina Volynsky, certify under penalty of perjury of the laws of the State of Washington that I electronically filed the above document entitled JOINT STATUS REPORT AND DISCOVERY PLAN using the CM/ECF system which will send notification of such filing to the following persons:

David P Jendrzejek David.Jendrzejek@lawmoss.com, susan.mead@lawmoss.com

Terese A. West West@lawmoss.com, maureen.montpetit@lawmoss.com

William C Rava WRava@perkinscoie.com, docketsea@perkinscoie.com, tbrandon@perkinscoie.com

DATED this 22nd day of December, 2017, at Seattle, Washington.

/s/Gina Volynsky
Gina Volynsky

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308