

NO. D-1-GN-14-004288

THE STATE OF TEXAS,

Plaintiff,

v.

ROBERT LINDSEY DUNCAN, aka "DR.
LINDSEY DUNCAN"

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of Robert Lindsey Duncan, aka "Dr. Lindsey Duncan," Defendant, and for cause of action would respectfully show:

**I.
DISCOVERY CONTROL PLAN**

1.1 Discovery in this case should be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.3.

1.2 This case is not subject to the restrictions of expedited discovery under TRCP 169 because:

- a) The relief sought by the State includes non-monetary injunctive relief; and
- b) The State's claims for monetary relief including penalties, consumer redress and attorneys' fees and costs are in excess of \$100,000 and could exceed \$ 1,000,000.00.

**II.
AUTHORITY**

2. This action is brought by Attorney General Greg Abbott, at the request of the Commissioner of Higher Education of the Texas Higher Education Coordinating Board, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by TEX. EDUC. CODE ANN. § 61.320. This action is also brought by Attorney General Greg Abbott through the Consumer Protection Division, in the name of the STATE OF TEXAS pursuant to the authority granted by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* ("DTPA"), upon the grounds that Defendant has engaged in false, misleading and deceptive acts and practices in the course of trade and commerce. Pursuant to §17.47 of the DTPA, the Attorney General is authorized to seek injunctive relief, penalties, and consumer redress for conduct declared unlawful under §§17.46(a) and (b) of the DTPA.

**III.
DEFENDANT**

3. Defendant Robert Lindsey Duncan, aka "Dr. Lindsey Duncan," ("Defendant" or "Mr. Duncan") is an individual doing business in Texas as alleged specifically below, and may be served with process at 200 Congress Avenue, Suite 19DE; Austin, Texas 78701.

**IV.
JURISDICTION**

4. This Court has jurisdiction over this action under 17.47(b) of the Texas Business and Commerce Code.

**V.
VENUE**

5. Venue of this suit lies in Travis County, Texas for the following reasons:

a) Pursuant to §17.47(b) of the DTPA, venue is proper because Defendant resides in Travis County, Texas; and

b) Under the §17.47(b) of the DTPA, venue is proper because Defendant has done business in Travis County, Texas, by promoting and marketing vitamins, herbs and related health products and items at local grocery stores and retail outlets.

**VI.
PUBLIC INTEREST**

6. Plaintiff, the State of Texas, has reason to believe Defendant is engaging in, has engaged in, or is about to engage in acts or practices declared to be unlawful under the DTPA; therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes that these proceedings are in the public interest.

**VII.
TRADE AND COMMERCE**

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

**VIII.
NOTICE BEFORE SUIT**

8. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by § 17.47(a) of the DTPA.

**IX.
ACTS OF AGENTS**

9. Whenever in this Petition it is alleged that Defendant did any act, it is meant that

a) Defendant performed or participated in the act, or

b) Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

X. FACTUAL ALLEGATIONS

10.1 Defendant, Mr. Duncan, is in the business of marketing nutritional products, including vitamin and herbal-based supplements. Mr. Duncan promotes himself as a Naturopathic Doctor, referring to himself in speaking engagements, marketing videos, advertisements, articles, interviews and in personal settings by the honorific "Doctor" or "Dr." and "ND." Mr. Duncan claims to have degrees in nutrition or naturopathy.

10.2 The State of Texas does not recognize the degree of Naturopathic Doctor or "ND."

10.3 Further, Mr. Duncan received his alleged degrees from the Clayton College of Natural Health, a non-accredited American distance-learning natural health college based in Birmingham, Alabama, specifically named on a list posted by The Higher Education Coordination Board of "Institutions Whose Degrees Are Illegal to Use in Texas." Clayton College of Natural Health was not accredited in any state during its existence and is now closed.

10.4 Mr. Duncan uses his alleged degrees and honorific to promote nutritional products with which he has a financial connection. More than one dozen promotional videos and recordings of television appearances have appeared and remain available on the internet in which Mr. Duncan either referred to himself, or others have referred to him with his acquiescence as, "Dr. Lindsey Duncan," and/or in which he claims to have degrees in nutrition or naturopathy.

10.5 In addition to the use of the honorific "Dr.," Mr. Duncan presents the appearance of a health practitioner, which he has done in television show appearances, media interviews, speaking engagements, and video promotions, by donning lab coats and making references to

clinical experience and practice. Mr. Duncan's acts and practices mislead the public into believing that he is disseminating health advice or knowledge, but such advice or knowledge is based on educational background and training which he does not have and when his underlying motivation is to sell products in which he has a financial interest.

**XI.
VIOLATIONS OF TEXAS EDUCATION CODE**

11.1 Pursuant to its authority, as set forth in TEX. EDUC. CODE ANN. § 61.027, the Texas Higher Education Coordinating Board maintains a list of "Institutions Whose Degrees are Illegal to Use in Texas," which can be viewed on the Board's web site at:

<http://www.thecb.state.tx.us/index.cfm?objectid=EF4C3C3B-EB44-4381-6673F760B3946FBB>

19 TEX. ADMIN. CODE, Chapter 7. The institution from which Mr. Duncan received his degree, Clayton College of Natural Health, is listed therein.

11.2 As determined by the Texas Higher Education Coordinating Board, Mr. Duncan's degree from the Clayton College of Natural Health is a "fraudulent or substandard degree," in accordance with TEX. EDUC. CODE ANN. § 61.302. It is a violation of 19 TEX. ADMIN. CODE §7.5(a)(6) to knowingly use or claim to hold a degree that is fraudulent or substandard in a written or oral advertisement or other promotion of a business or with intent to obtain employment, compensation or other benefit in the practice of a trade, profession, or occupation. A violation of this provision is a violation of TEX. EDUC. CODE ANN. §§ 61.304, 61.313.

11.3 Moreover, a person who violates subchapter 61 of the Texas Education Code commits a false, misleading, or deceptive act or practice within the meaning of § 17.46 of the Texas Deceptive Trade Practices – Consumer Protection Act. TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.*; TEX. EDUC. CODE ANN. § 61.320.

**XII.
FALSE, MISLEADING OR DECEPTIVE ACTS**

12. Defendant, as alleged in paragraphs 10.1 to 10.3 above, which are incorporated herein by reference, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA, by:

a) using or claiming to hold a degree conferred by institution whose degrees are illegal to use in Texas, in violation of § 61.320 of the Texas Education Code;

b) referring to himself with the honorifics “ND”, “Dr.”, or “Doctor”, in violation of TEX. EDUC. CODE ANN. §§ 61.304 and 61.313 of the Texas Education Code;

c) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of § 17.46(b)(2) of the DTPA;

d) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of § 17.46(b)(3) of the DTPA;

e) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of § 17.46(b)(5) of the DTPA; and

f) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

XIII. REQUEST FOR INJUNCTION

13.1 Because the Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as set forth herein. Unless restrained by this Honorable Court, Defendant may continue to violate the laws of the State of Texas and cause additional injury, loss and damage to its Texas insureds and to prospective Texas customers.

13.2 Plaintiff, the State of Texas respectfully requests that this Court (1) set this matter for trial; (2) issue a temporary injunction after notice and hearing and (3) issue a permanent injunction upon final hearing, restraining and enjoining Defendant, Defendant's agents, servants, employees, attorneys, and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- a. using or claiming to hold a degree or certificate conferred by institution whose degrees are illegal to use in Texas,
- b. using, claiming the status of, or referring to himself with the title or honorific "Doctor," "Dr.," "N.D." "Doctor of Naturopathy" or "Naturopathic Doctor," unless and until the State of Texas recognizes these designations and the institutions that confer this degree;
- c. causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, by using, claiming the status of, or referring to himself with the title or honorific "Doctor," "Dr.," "N.D." "Doctor of Naturopathy" or "Naturopathic Doctor," unless and until Defendant has received a doctorate from a medical school or other lawful degree granting institution;
- d. representing that he has a sponsorship, approval, status, affiliation, or connection which he does not have by using the title or honorific "Doctor," "Dr.," "N.D." "Doctor of Naturopathy" or "Naturopathic Doctor";

e. representing that he has a sponsorship, approval, status, affiliation, or connection which he does not have by using the title or honorific, "Doctor," "Dr.," "N.D." "Doctor of Naturopathy" or "Naturopathic Doctor" in the State of Texas;

f. disseminating any false advertisements or causing the dissemination of false advertising related to use of the titles or honorifics "Doctor," "Dr.," "N.D." "Doctor of Naturopathy" or "Naturopathic Doctor";

g. failing to provide written notice to any agent, servant, employee, or representative of Defendant of the existence and terms of any injunction entered in this case, and of their duty to comply with the terms set forth herein;

h. failing to provide written notice to any person or entity who promotes, advertises and/or sells Defendant's products, of the existence and terms of any injunction entered in this case, and of their duty to comply with the terms set forth herein;

i. failing to remove signage, internet and website postings, and any other public promotional material that refers to Defendant as "Doctor," "Dr.," "N.D." "Doctor of Naturopathy" or "Naturopathic Doctor" within seven (7) days of this Order;

j. representing, directly or by implication, that this Court, the Texas Higher Education Coordinating Board or the Attorney General has approved, or does not object to, any good or service sold or offered for sale by Defendant, or has approved, or does not object to, any of Defendant's business practices, including those not addressed by the terms of any injunction or judgment entered in this cause of action;

k. transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business

of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and

j. transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendant, insofar as such property relates to, arises out of or is derived from the business operation of Defendant within the State of Texas, save and except for reasonable and necessary expenditures in the ordinary course of business.

**XIV.
REQUEST FOR CIVIL PENALTIES AND RESTITUTION**

14. Plaintiff, the State of Texas, respectfully requests that this Court:

a. adjudge against the Defendant civil penalties in the amount of not more than \$20,000 per violation of the DTPA, pursuant to TEX. BUS. & COM. CODE ANN. § 17.47(c); and

b. enter additional orders and judgments against the Defendant as are necessary to compensate identifiable persons for restoration of money which may have been acquired by the Defendant by means of any act or practice restrained, as authorized by TEX. BUS. & COM. CODE ANN. § 17.47(d).

**XV.
ATTORNEY FEES AND COSTS OF COURT**

15. Plaintiff, the State of Texas, respectfully requests that this Court award the State its costs of this action, including reasonable attorneys' fees and costs, as provided by TEX. GOV'T CODE ANN. §402.006(c).

**XVI.
PRAYER**

16. Plaintiff, the State of Texas, respectfully prays that Defendant, Robert Lindsey Duncan, aka "Dr. Lindsey Duncan", be served with citation as required by law and that this Court grant judgment to Plaintiff against Defendant for all relief requested herein and to all other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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