

Sept. 18, 2008

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMIUNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. PIERCE DIVISION

CASE NO. 08-CV-\_\_\_\_\_

**08-CV-14333-Martinez/Lynch**THE FLORIDA GOLF SCHOOL, INC.  
d/b/a THE UNITED STATES GOLF  
TEACHER'S ASSOCIATION, a Florida  
corporation,

Plaintiff,

v.

THE PROFESSIONAL GOLFERS'  
ASSOCIATION OF AMERICA, d/b/a  
The PGA of America, a Florida  
corporation,Defendant.  
  
\_\_\_\_\_ /**DEFENDANT'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant The PGA of America (the "PGA") respectfully notifies this Court that it has removed this action to this Court from the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. In support of removal, the PGA states as follows:

**Removal is Proper Because Claims Allege Violation of Federal Law**

Plaintiff, The Florida Golf School, Inc. d/b/a The United States Golf Teacher's Association (the "Golf Teachers"), has brought claims against the PGA that arise "under the trademark laws of the United States, 15 U.S.C. § 1051 et seq." Complaint ¶ 1. Briefly, the Golf Teachers allege that it owns the service mark for the phrase "Share Your Passion" and that the PGA used that phrase in its promotional materials without permission. The Complaint alleges nine causes of action, the first of which is for alleged violation of the Lanham Trademark Act, 15

U.S.C. § 1051, *et seq.* The other claims that are cognizable state causes of action arising out of the same alleged trademark violation.

“The district courts of the United States are granted jurisdiction over all actions ‘arising under’ the [Lanham] Act.” *Steele v. Bulova Watch Co.*, 344 U.S. 280, 284-85 (1952) (citing 15 U.S.C. §1121). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. Because this Court would have original jurisdiction of this trademark case, it is removable pursuant to 28 U.S.C. §§ 1441 and 1446. In addition, this Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

Indeed, the Complaint’s own jurisdictional allegations sound as if the case were already in Federal court:

This is also an action arising under the trademark laws of the United States, 15 U.S.C. §1051 *et seq.* Jurisdiction is conferred upon this Court by the provisions of Section 39 of the Lanham Trademark Act, 15 U.S.C. § 1121. ***This Court also has supplemental jurisdiction over the claims asserted under the laws of Florida under 28 U.S.C. § [sic] 1347 [intending 28 U.S.C. § 1367]. Venue is proper within this District under 28 U.S.C § 1391(c).***”

Complaint ¶ 2 (emphasis added).

Accordingly, there can be no dispute that this case is properly removable to Federal Court.

#### **Procedural Statement**

**Notice timely filed.** The Golf Teachers filed its Complaint in the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida, Case No. 56-2008 CA 007152 (Judge Ben Bryan) on August 11, 2008. The Complaint was served on the PGA on August 29, 2008. This Notice of Removal is filed within the applicable 30-day period. *See* 28 U.S.C. § 1446(b); *see also* *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

**Copies of Pleadings Attached.** Pursuant to 28 U.S.C. § 1446(a), the PGA has attached as Composite Exhibit A true and correct copies of the docket sheet, Complaint, Summons and Civil Cover Sheet, which are the only documents in the Court file as of the date of this Notice of Removal.

**Notice of Filing Notice of Removal.** Pursuant to 28 U.S.C. § 1446(d), the PGA will promptly serve upon Plaintiff's counsel and file with the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida, Civil Division, a true and correct copy of this Notice of Removal.

**Non-waiver.** By removing this action to this Court, the PGA does not waive any rights or defenses available to it under state or federal law. The PGA will file and serve a response to the Complaint pursuant to Rule 81(c)(2), Federal Rules of Civil Procedure.

WHEREFORE, the PGA respectfully removes this action from the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida, Civil Division, to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

Dated: September 18, 2008.

Respectfully submitted,

**ACKERMAN, LINK & SARTORY, P.A.**  
222 Lakeview Avenue, Suite 1250  
West Palm Beach, FL 33401  
Telephone: (561) 838-4100  
Facsimile: (561) 838-5305  
E-mail: wleavitt@alslaw.com

By: *Wendy S. Leavitt*  
Wendy S. Leavitt  
Florida Bar No. 908819

- AND -

**ARNOLD & PORTER LLP**

Roberta Horton (to seek pro hac vice admission)

Brent LaBarge (to seek pro hac vice admission)

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Washington, DC 20004-1206

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Facsimile: (202) 942-5999

E-mail: roberta.horton@aporter.com

E-mail: brent.labarge@aporter.com

*Attorneys for Defendant The PGA of America***CERTIFICATE OF SERVICE**

I hereby certify that on September 18<sup>th</sup>, 2008, the foregoing document is being filed conventionally pursuant to the Court's ECF Administrative Procedures. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

**ACKERMAN, LINK & SARTORY, P.A.**

222 Lakeview Avenue, Suite 1250

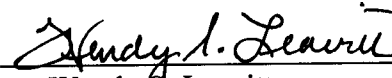
West Palm Beach, FL 33401

Telephone: (561) 838-4100

Facsimile: (561) 838-5305

E-mail: wleavitt@alslaw.com

By: \_\_\_\_\_



Wendy S. Leavitt

Florida Bar. No. 908819

**SERVICE LIST**

***The Florida Golf School, Inc. v. The Professional Golfers' Association of America***  
**Case No. \_\_\_\_\_**  
**United States District Court, Southern District of Florida**

Wendy S. Leavitt (Fla. Bar 908819)  
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[joe@treasurecoastlawfirm.com](mailto:joe@treasurecoastlawfirm.com)  
Brandt & Gufford  
516 S.W. Camden Avenue  
Stuart, Florida 34994  
Telephone: (772) 221-1922  
Facsimile: (772) 221-1990  
*Counsel for Plaintiff, The Florida Golf School, Inc.*  
*Via U.S. Mail*

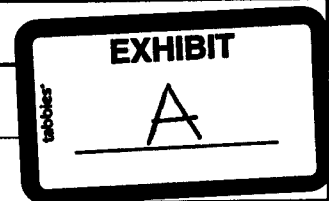
AL3604

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Case Information			
Case Description	562008CA007152AXXXHC FLORIDA GOLF SCHOOL VS PROVESSIONAL GOLFERS (OC)		
Court	CIRCUIT CIVIL ACTION	Case Type	OTHER COMPLAINT
Filing Date / Time	08/11/2008 - 15:42:00	Location	HC-Historic Courthouse
Party Information			
Name	JOSEPH L GUFFORD - ATTORNEY FOR PLAINTIFF		
Date of Birth		Date of Death	
End Date			
Contact Information	Business - STUART FL 34994		
Name	PROFESSIONAL GOLFERS ASSOC - DEFENDANT		
Date of Birth		Date of Death	
End Date			
Contact Information	Registered Agent - PALM BCH GARDENS FL 33418		
Name	BEN L BRYAN - JUDGE		
Date of Birth		Date of Death	
End Date			
Contact Information	Business - FT PIERCE FL 34950		



<b>Name</b>				<b>FLORIDA GOLF SCHOOL INC dba UNITED STATES GOLF TEACHERS ASSO - PLAINTIFF</b>			
<b>Date of Birth</b>				<b>Date of Death</b>			
<b>End Date</b>							
<b>Contact Information</b>							
<b>Event Information</b>							
<p><b>08/25/2008 : SUMMONS ISSUED</b></p> <p style="padding-left: 40px;"><b>PROFESSIONAL GOLFERS ASSOC OF AMERICA dba PGA OF AMERICA (duces tecum)</b></p> <p><b>08/11/2008 : COMPLAINT</b></p> <p style="padding-left: 40px;"><b>(1-21) EXHIBITS (1-5) NO TRIAL</b></p> <p><b>08/11/2008 : CIVIL COVER SHEET</b></p>							

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**CIVIL COVER SHEET**

**I. CASE STYLE**  
 IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
 IN AND FOR ST. LUCIE COUNTY, FLORIDA

THE FLORIDA GOLF SCHOOL, INC.,  
 d/b/a THE UNITED STATES GOLF  
 TEACHER'S ASSOCIATION, a Florida  
 Corporation,

Plaintiff,

vs.

THE PROFESSIONAL GOLFERS'  
 ASSOCIATION OF AMERICA,  
 d/b/a The PGA of America, a Florida  
 Corporation,

Defendant.

CASE NO.:  
**56200-8 CA 007157**  
 JUDGE:  
**Assigned to  
 Judge Ben Bryan**

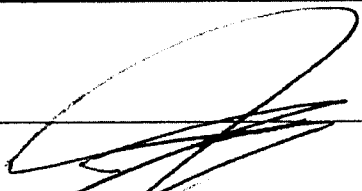
**II. TYPE OF CASE** (Place an X in one box only. If the case fits more than one type of case, select the most definitive.)

<input type="checkbox"/> Simplified Dissolution	<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Breach Contracts/Money Lent
<input type="checkbox"/> Dissolution	<input type="checkbox"/> Products liability	<input type="checkbox"/> Condominium
<input type="checkbox"/> Support-IV-D	<input type="checkbox"/> Auto negligence	<input type="checkbox"/> Real property/Mortgage Foreclosure
<input type="checkbox"/> Support-Non-IV-D	<input type="checkbox"/> Other negligence	<input type="checkbox"/> Eminent domain
<input type="checkbox"/> URESA-IV-D		<input checked="" type="checkbox"/> Other
<input type="checkbox"/> URESA-Non-IV-D		
<input type="checkbox"/> Domestic Violence		
<input type="checkbox"/> Other Domestic Relations		

**III. IS JURY TRIAL DEMANDED IN PETITION?**

Yes  
 No

Date: August \_\_, 2008.

  
 JOSEPH L. GUFFORD, III, ESQ.  
 516 SW Camden Avenue  
 Stuart, Florida 34994  
 FBN 0879576



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR ST. LUCIE COUNTY, FLORIDA

THE FLORIDA GOLF SCHOOL, INC.,  
d/b/a THE UNITED STATES GOLF  
TEACHER'S ASSOCIATION, a Florida  
Corporation,

Plaintiff,

vs.

THE PROFESSIONAL GOLFERS'  
ASSOCIATION OF AMERICA,  
d/b/a The PGA of America, a Florida  
Corporation,

Defendant.

CASE NO.:  
**56200** 8 **CA** 007152  
**Assigned to**  
**Judge Ben Bryan**

AJC  
COURT OFFICER #843  
15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
DATE: 8/29/08 TIME: 2:50 PM  
*AJC*

**SUMMONS**  
**(SERVICE ON A CORPORATION)**

**YOU ARE COMMANDED** to serve this Summons and a copy of the Complaint or  
Petition in this action on **Defendant, The Professional Golfers' Association of America d/b/a  
The PGA of America, a Florida Corporation** by serving:

**Registered Agent – Christine M. Garrity**  
**100 Avenue of the Champions**  
**Palm Beach Gardens, FL 33418-3653**

**IMPORTANT**

A lawsuit has been filed against you. You have twenty (20) calendar days after this  
Summons is served on you to file a written response to the attached Complaint with the Clerk of this  
Court. A phone call will not protect you. Your written response, including the case number given  
above and the names of the parties, must be filed if you want the Court to hear your side of the case.  
If you do not file your response on time, you may lose the case, and your wages, money, and  
property may thereafter be taken without further warning from the Court. There are other legal  
requirements. You may want to call an attorney right away. If you do not know an attorney, you  
may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or take a copy of your written response to the "Petitioner/Husband's Attorney" named below.

JOSEPH L. GUFFORD, III, ESQUIRE  
Brandt & Gufford, Attorneys at Law  
516 SW Camden Avenue  
Stuart, Florida 34994  
Telephone No.: (772) 221-1922  
Facsimile No.: (772) 221-1990

THE STATE OF FLORIDA

TO EACH SHERIFF OF THE STATE: You are commanded to serve this Summons and a copy of the Complaint on the above named Defendant.

DATED on 8/25/, 2008.

**EDWIN M. FRY, JR.**  
CLERK OF THE COURT

(COURT SEAL)

By s/PATTIE MAIN  
Deputy Clerk

**IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, deve presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podies perder el caso y podria ser despojado de sus ingresos y propiedades, o prlvado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos leglales. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta antel el tribunal, devera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Petitioner=s Attorney" (Demandante o Abogado del Demandante).

JOSEPH L. GUFFORD, III, ESQUIRE  
Brandt & Gufford, Attorneys at Law  
516 SW Camden Avenue  
Stuart, Florida 34994  
Telephone No.: (772) 221-1922  
Facsimile No.: (772) 221-1990

**AVISO:** La regla 12.285, de las reglas de procedimiento del derecho de la familia del estado de la Florida exige que se entreguen ciertos datos y documentos a la parte adversa...Si Ud. no cumple con estos requisitos, se le podran aplicar sanciones, las cuales pueden dar lugar al rechazo o a la desestimacion de sus escritos.

**IMPORTANT**

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour deposer une reponse ecrite a la plainte ci-jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre wreponse ecrite, avec mention du numero de dossire ci-dessus et du nome des parties nommees ici, si vous shouhaitez que le tribuanl entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainse que bkotre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requerir les services immediate d'un avocat. Si vvous ne connaissez pas d'avacat, vous pourriez telephoner a un servic de reference d'avacats ou a un burea d' assitance juridique (figurant a l'annuaire de telephones).

Si vous choisesses de deposer vous-meme une reponse ecrite, il vous faudra egalement, en meme temps que cette formalite, faire "Petitioner/ Husband's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

JOSEPH L. GUFFORD, III, ESQUIRE  
Brandt & Gufford, Attorneys at Law  
516 S.W. Camden Avenue  
Stuart, Florida 34994  
Telephone No.: (772) 221-1922  
Facsimile No.: (772) 221-1990

**ATTENTION:** Le regle 12.285 des regles de procedure du droit de la famille de la Floride exige que l'on remette certains renseignements et certains documents a la partie adverse. Tout refus de les fournir pourra donner lieu a des sanctions, y compris le rejet ou lav suppreion d'un ou de plusieurs actes de procedure.



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR ST. LUCIE COUNTY, FLORIDA

THE FLORIDA GOLF SCHOOL, INC.,  
d/b/a THE UNITED STATES GOLF  
TEACHER'S ASSOCIATION, a Florida  
Corporation,

Plaintiff,

vs.

THE PROFESSIONAL GOLFERS'  
ASSOCIATION OF AMERICA,  
d/b/a The PGA of America, a Florida  
Corporation,

Defendant.

-----/

CASE NO.:  
**16200** 8 **CA** 007652  
**Assigned to**  
**Judge Ben Bryan**

**COMPLAINT**

COMES NOW, the Plaintiff, THE FLORIDA GOLF SCHOOL, INC., d/b/a THE UNITED STATES GOLF TEACHER'S ASSOCIATION, a Florida Corporation, by and through its undersigned attorney and sues Defendant, THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC., d/b/a The PGA of America, a Florida Corporation, and as grounds therefore would show:

**GENERAL AND JURISDICTIONAL ALLEGATIONS**

- 1) This is an action for damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest, costs and attorneys fees and for injunctive relief. This is also an action for declaratory judgment pursuant to Fla. Stat. 86.011 Florida Statutes.
- 2) This is also an action arising under the trademark laws of the United States, 15 U.S.C. § 1051 et seq. Jurisdiction is conferred upon this Court by the provisions of Section 39 of the Lanham

Trademark Act, 15 U.S.C. § 1121. This Court also has supplemental jurisdiction over the claims asserted under the laws of Florida under 28 U.S.C. § 1347. Venue is proper within this District under 28 U.S.C. § 1391(c). State courts have concurrent jurisdiction with federal courts over trademark infringement matters<sup>1</sup>.

- 3) Plaintiff is a corporation organized and existing under the laws of the State of Florida and having its principal place of business in St. Lucie County, Florida. It does business under the fictitious name of the Unites States Golf Teachers Association and the Unites States Golf Teachers Federation.
- 4) Plaintiff, THE FLORIDA GOLF SCHOOL, INC., is a Corporation engaged in the business of certifying golf instructors as golf teaching professionals.
- 5) Defendant, THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, is a Florida Corporation, doing business as The PGA of America having its principal place of business in Palm Beach County, Florida.
- 6) Venue for this action is properly laid in St. Lucie County, Florida as the cause of action accrued in St. Lucie County.
- 7) Plaintiff is the owner of the following service mark registration upon the U.S. Patent Office Principal Register and is the owner of the goodwill of the business appertaining to it: "Share Your Passion". This registration is valid and subsisting, and is uncanceled and unrevoked. The required affidavits of use have been filed pursuant to 15 U.S.C. §§ 1058a and 1065 and this registration has become incontestable pursuant to 15 U.S.C. § 1065. A copy of the registration certificate is appended as Exhibit A. Plaintiff has given notice to the public of its registration as provided in 15 U.S.C. § 1111 and has given notice in writing to Defendants of its registration.

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<sup>1</sup>Flagship Real Estate Corp. v. Flagship Banks, Inc., 374 So.2d 1020 (Fla. 2<sup>nd</sup> DCA 1979)



- 8) Plaintiff is the owner of the following service mark registration upon the U.S. Patent Office Principal Register and is the owner of the goodwill of the business appertaining to it: "Sharing Our Passion". This registration is valid and subsisting, and is uncanceled and unrevoked. The required affidavits of use have been filed pursuant to 15 U.S.C. §§ 1058a and 1065 and this registration has become incontestable pursuant to 15 U.S.C. § 1065. A copy of the registration certificate is appended as Exhibit B. Plaintiff has given notice to the public of its registration as provided in 15 U.S.C. § 1111 and has given notice in writing to Defendants of its registration.
- 9) Plaintiff is the owner of the trademark, "Sharing Our Passion", that has been duly issued by the United States Patent and Trademark Office under Registration number 3,104,392 (See attached Exhibit A). The trademark was issued to the Plaintiff for the purpose of "ASSOCIATION SERVICES, NAMELY, PROMOTING THE INTEREST AND OBJECTIVES OF GOLF INSTRUCTORS AND GOLF INSTRUCTION PROVIDERS, IN CLAS S35 (U.S. CLS. 100, 101 AND 102)". See attached Exhibit A.
- 10) Plaintiff is the owner of the trademark, "Sharing Our Passion", that has been duly issued by the United States Patent and Trademark Office under Registration number 3,029,854 (See attached Exhibit B). The trademark was issued to the Plaintiff for the purpose of "ASSOCIATION SERVICES, NAMELY, PROMOTING THE INTEREST AND OBJECTIVES OF GOLF INSTRUCTORS AND GOLF INSTRUCTION PROVIDERS, IN CLASS35 (U.S. CLS. 100, 101 AND 102)". See attached Exhibit B.

**COUNT I-**

**CLAIMS FOR VIOLATIONS OF THE LANHAM TRADEMARK ACT**

- 11) Plaintiff realleges each and every allegation of paragraphs 1 through 10 as if stated verbatim herein.

- 12) The principal aspect of Plaintiff's activities in its use of the trademark constitutes the organization, promotion and sponsorship of the certification of professional golf instructors and in promoting the use of instructors certified by the Plaintiff to the general public. The Plaintiff's organization is the largest organization of strictly golf teaching professionals in the world with over 17,000 members. Founded in 1989, the USGTF is one of 35 member nations that make up the World Golf Teachers Federation®. Each member nation adheres to a set of Federation bylaws set forth to enact a world standard of uniformity and professionalism in the training of teaching professionals.
- 13) The Plaintiff derives substantial revenue from its activities as set forth above.
- 14) The Plaintiff, based on the facts set forth heretofore, has established and now possesses incalculable national and international goodwill, fame, reputation and recognition concerning itself and its golf related activities. To identify its services associated with the certification of golf instructors, Plaintiff has adopted, has used in commerce, and continues to use in commerce various names, terms, symbols, emblems and designs and other identifying indicia (Marks), many of which have been registered under the Lanham Act of 1946, 15 U.S.C. § 1051 et seq., and also under the provisions of Florida law, including the "Share Your Passion" mark..
- 15) As a result of the aforementioned and other uses, the public and professional golf instructors (both aspiring and those who have undergone certification by the Plaintiff) strongly associate the certification of golf instructors with the "Share your Passion" trademark when this symbol is used in conjunction with the sport of golf. The Marks of the Plaintiff thus include the "Share your Passion" mark.
- 16) Notice to the public that the "Share Your Passion" trademark is federally registered has been given by Plaintiff by printing the Mark in conjunction with the letter "R" enclosed within a

circle in accordance with Section 29 of the Lanham Act, 15 U.S.C. § 1111. This notice was given as early as January 1, 2004.

17) The Plaintiff has further used the terms "Sharing Our Passion" in relation to its golf related activities. Notice to the public that the "Sharing Our Passion" trademark is federally registered has been given by Plaintiff by printing the Mark in conjunction with the letter "R" enclosed within a circle in accordance with Section 29 of the Lanham Act, 15 U.S.C. § 1111. This notice was given as early as January 1, 2004.

18) The Plaintiff's trademarks are recognized and highly regarded by members of the golfing public, and are highly recognized by professional golf instructors everywhere. As a result, such Marks have become extremely valuable and highly sought after by various third parties for use in connection with the certification of golf instructors.

19) Defendant is now engaged in the business of promoting the game of golf, various professional and amateur golfing events and/or the certification of golf instructors using the words "Share the Passion" in Florida and perhaps other states in knowing derogation of the rights of Plaintiff. It is believed that the Plaintiff has successfully marketed and sold itself to golfing professionals, aspiring golfing professionals and the golfing and non-golfing public at large using the mark or word so substantially similar as to be confusing to the public.

20) Specifically, on August 18, 2006, the Defendant caused to be released a television commercial during the 2006 PGA National Championship in which graphic quotation "Share the Passion" was used to promote the Defendant's activities with regard to golf. Shortly thereafter (the same day in fact), Plaintiff notified the Defendant through its then president to immediately desist from using the words "Share the Passion" as the same were confusingly similar to the Plaintiff's use of the words "Sharing Our Passion" and "Share Your Passion".

- 21) The Defendants ignored the Plaintiff's request and continued to run commercials using the words "Share the Passion".
- 22) On September 20, 2006, Plaintiff's attorney, wrote the letter attached hereto as Exhibit B advising the Defendants to "take whatever action is necessary to preclude any further use of the phrase SHARE THE PASSION or any similar phrase that might be confused with the registered mark. See attached Exhibit C.
- 23) On January 2, 2007, Christine M. Garrity, Managing Director and General Counsel for Defendant, sent the letter attached hereto as Exhibit D to Plaintiff's counsel. In that letter, Ms. Garrity wrote "Please be advised that the PGA of America removed the reference to "Share the Passion" from its not for profit public service announcement following the conclusion of 2006 PGA Championship in the middle of August. We trust this matter is concluded".
- 24) On information and belief the Defendant has in fact simply removed the graphic words "Share the Passion" from its commercials but has continued to present the words "Share the Passion" in the audio portion of its television commercials.
- 25) On June 22, 2008 at approximately 8:29 p.m., Defendant caused to be run a television commercial using the words "Share the Passion" in connection with the game/business of golf.
- 26) Defendant has likely used the "Share the Passion" words in numerous other television, print, radio or internet advertisements.
- 27) Defendant has not been authorized by Plaintiff to use the mark or words that are sustainably similar when connected to the game and business of golf.
- 28) Substantial sales of golf related items, instructional services and/or certification of golf instructors are or have been made by Defendant in Florida and perhaps other states and are affecting business in interstate commerce. Such sales are likely to cause confusion or mistake or

to deceive aspiring golf instructors, golf instructors in general and the public of such persons as to sponsorship of it by Plaintiff. Such acts are also likely to and have most likely caused persons who have undergone certification and membership in Plaintiff's organization to discontinue such membership in its organization.

29) Such infringing sales by Defendant are causing losses to Plaintiff of both its reputation in the professional golfing community and the public at large, thereby reducing the revenue generated by the Plaintiff. The relationship between the Plaintiff and golf instructors and the public who aspires to learn to play the game of golf from instructors certified by the Plaintiff will be jeopardized in the event that Defendant's infringing activities remain unrestrained. Moreover, such activities by Defendant are causing instructors in Florida and throughout the world to be concerned about an interference with their promotion of themselves as accredited golf instructors vis a vie instructors who are accredited through the Defendant. The image of the Plaintiff with golf instructors, aspiring golf instructors and the golfing public will be endangered if Defendant is permitted to continue these prejudicial and willful infringing activities by the use of the words "Share the Passion" and other words that are confusingly similar to the registered marks.

30) Plaintiff is entitled to such relief as is provided under Federal law including but not limited to such relief as is set forth under 15 USCA § 1117<sup>2</sup>.

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2 § 1117. Recovery for violation of rights

(a) Profits; damages and costs; attorney fees

When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) of this title, shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the

31) As a result of the foregoing, Plaintiffs are being and have been damaged and irreparably injured by Defendant.

32) Plaintiff has no adequate remedy at law.

33) The Plaintiff is entitled to recover the reasonable attorneys fees and costs of this action pursuant to 15 USCA § 1117.

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court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

**(b) Treble damages for use of counterfeit mark**

In assessing damages under subsection (a) of this section, the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, in the case of any violation of section 1114(1)(a) of this title or section 220506 of Title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of Title 26, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate.

**(c) Statutory damages for use of counterfeit marks**

In a case involving the use of a counterfeit mark (as defined in section 1116(d) of this title) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a) of this section, an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of--

(1) not less than \$500 or more than \$100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

(2) if the court finds that the use of the counterfeit mark was willful, not more than \$1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

**(d) Statutory damages for violation of section 1125(d)(1)**

In a case involving a violation of section 1125(d)(1) of this title, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court considers just.

**(e) Rebuttable presumption of willful violation**

In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs, injunctive relief as set forth hereafter and such other and further relief as the Court deems just and proper.

**COUNT II-**

**COMMON LAW TRADEMARK INFRINGEMENT**

34) Plaintiff realleges each and every allegation of paragraphs 1 through 33 as if stated verbatim herein.

35) The advertisement, sale, offering for sale and distribution of golf products and services using the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" through television, print, radio or internet advertising or colorable imitations of the mark, has caused a likelihood of confusion or misunderstanding as to source, origin, sponsorship or approval of the unauthorized advertisements, and constitutes infringements of the Marks under common law and the taking of plaintiff's rights in violation of common law trademark principles.

36) Unless restrained and enjoined by this Court, Defendant will persist in its advertising, sale, offering for sale and distribution of the unlawful and unauthorized advertisements bearing the Marks of the Plaintiff or colorable imitations of it, causing Plaintiff irreparable injury.

37) As a result of the foregoing, Plaintiff have and continue to be damaged and irreparably injured by Defendant.

38) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs to the extent the same are recoverable under statute(s), injunctive relief as set forth hereafter and such other and further relief as the Court deems just and

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section.

proper.

**COUNT III-**

**FALSE DESIGNATION OF ORIGIN CLAIM**

39) Plaintiff realleges each and every allegation of paragraphs 1 through 38.

40) The advertising, offering for sale, selling and marketing of golf products and/or services by Defendant of the unlicensed, unauthorized use of the terms "Share the Passion" constitutes a false designation of origin and a false description or representation that the services offered by Defendant are sponsored by or affiliated with the Plaintiff in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)3. Plaintiff has not authorized or sponsored those

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3 § 1125. False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(3) In a civil action for trade dress infringement under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

(b) Importation

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.

(c) Dilution by blurring; dilution by tarnishment

(1) Injunctive relief

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.



**(2) Definitions**

**(A)** For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

- (i)** The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
- (ii)** The amount, volume, and geographic extent of sales of goods or services offered under the mark.
- (iii)** The extent of actual recognition of the mark.
- (iv)** Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

**(B)** For purposes of paragraph (1), "dilution by blurring" is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

- (i)** The degree of similarity between the mark or trade name and the famous mark.
- (ii)** The degree of inherent or acquired distinctiveness of the famous mark.
- (iii)** The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.
- (iv)** The degree of recognition of the famous mark.
- (v)** Whether the user of the mark or trade name intended to create an association with the famous mark.
- (vi)** Any actual association between the mark or trade name and the famous mark.

**(C)** For purposes of paragraph (1), "dilution by tarnishment" is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

**(3) Exclusions**

The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

- (A)** Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with--
  - (i)** advertising or promotion that permits consumers to compare goods or services; or
  - (ii)** identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.
- (B)** All forms of news reporting and news commentary.
- (C)** Any noncommercial use of a mark.

**(4) Burden of proof**

In a civil action for trade dress dilution under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that--

- (A)** the claimed trade dress, taken as a whole, is not functional and is famous; and
- (B)** if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

**(5) Additional remedies**

In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 1116 of this title. The owner of the famous mark shall also be entitled to the remedies set forth in sections 1117(a) and 1118 of this title, subject to the discretion of the court and the principles of equity if--

- (A)** the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after October 6, 2006; and
- (B)** in a claim arising under this subsection--
  - (i)** by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark; or
  - (ii)** by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

**(6) Ownership of valid registration a complete bar to action**

The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this chapter shall be a complete bar to an action against that person, with respect to that mark, that--

- (A)(i)** is brought by another person under the common law or a statute of a State; and

(ii) seeks to prevent dilution by blurring or dilution by tarnishment; or  
(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

(7) Savings clause

Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.

(d) Cyberpiracy prevention

(1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person

(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

(ii) registers, traffics in, or uses a domain name that--

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

(III) is a trademark, word, or name protected by reason of section 706 of Title 18 or section 220506 of Title 36.

(B)(i) In determining whether a person has a bad faith intent described under subparagraph (a), a court may consider factors such as, but not limited to

(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

(II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

(VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c) of this section.

(ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.

(E) As used in this paragraph, the term "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(2)(A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the

advertisements.

41) Unless restrained and enjoined by this Court, Defendant will persist in its advertising efforts using the Marks, or colorable imitations of it, causing Plaintiff irreparable injury.

42) As a result of the foregoing, Plaintiff have been and continue to be damaged and irreparably injured by Defendant.

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domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if

(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c) of this section; and

(ii) the court finds that the owner--

(I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or

(II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by--

(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(bb) publishing notice of the action as the court may direct promptly after filing the action.

(B) The actions under subparagraph (A)(ii) shall constitute service of process.

(C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which

i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or

(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(D)(i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark. upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall

(I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

(II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.

3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available under either such action, shall be in addition to any other civil action or remedy otherwise applicable.

(4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.

**VALIDITY OF AMENDMENT TO SUBSEC. (A)**

<The United States Supreme Court, in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, U.S.N.J. 1999, 119 S.Ct. 2199, 527 U.S. 666, 144 L.Ed. 2d 605, 51 U.S.P.Q. 2d 1065, June 23, 1999, found that the Trademark Remedy Clarification Act, Pub.L. 102-542, which amended subsec. (a) of this section to subject states to suit under this section, did not validly abrogate a state's sovereign immunity.>

43) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs to the extent the same are recoverable under statute(s), injunctive relief as set forth hereafter and such other and further relief as the Court deems just and proper.

**COUNT IV-**

**MISSAPPROPIATION**

44) Plaintiff realleges each and every allegation of paragraphs 1 through 43 as if stated verbatim herein.

45) The use of the Marks in connection with the promotion of golf activities in general without license or authority from Plaintiff constitutes unfair competition and misappropriation by Defendant to its own benefit the valuable goodwill, reputation and business properties of Plaintiff.

46) As a result of the foregoing, Plaintiff has been and continues to be damaged and irreparably injured by Defendant.

47) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs to the extent the same are recoverable under statute(s), injunctive relief as set forth hereafter and such other and further relief as the Court deems just and proper.

**COUNT V-**

**MISSAPPROPRIATION OF RIGHT OF PUBLICITY**

48) Plaintiff realleges each and every allegation of paragraphs 1 through 47 as if stated verbatim

herein.

49) As a result of these activities, Defendant has misappropriated for its own benefit the right of publicity of Association

50) As a result of the foregoing, Plaintiff are being damaged and irreparably injured by Defendant.

51) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs to the extent the same are recoverable under statute(s), injunctive relief as set forth hereafter and such other and further relief as the Court deems just and proper.

COUNT V-

52) Plaintiff realleges each and every allegation of paragraphs 1 through 51 as if stated verbatim herein.

53) The activities of Defendant have and will continue to injure the business relationships of Plaintiff, with golf instructors who are members of Plaintiff's organization, with aspiring golf instructors and with and with consumers of instructor certification services and the general public who aspires to learn the game of golf through an instructor accredited by the Plaintiff.

54) Unless restrained and enjoined by this Court, Defendant will persist in its injury to Plaintiff business relationships, causing Plaintiff irreparable injury.

55) As a result of the foregoing, Plaintiff are being damaged and irreparably injured by Defendant.

56) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs to the extent the same are recoverable under statute(s),

injunctive relief as set forth hereafter and such other and further relief as the Court deems just and proper.

**COUNT VII-**

**DILUTION**

57) Plaintiff realleges each and every allegation of paragraphs 1 through 56.

58) The activities of Defendant have and are causing injury to Plaintiff business reputation and have and are diluting the distinctive quality of Marks of Association, all of which are valid at common law in violation of the laws of the State of Florida.

59) Unless restrained and enjoined by this Court, Defendant will persist in injuring Plaintiff.

60) As a result of the foregoing, Plaintiff are being irreparably injured by Defendant.

61) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for damages as set forth above, prejudgment interest, attorneys fees and costs to the extent the same are recoverable under statute(s), injunctive relief as set forth hereafter and such other and further relief as the Court deems just and proper.

**COUNT VIII-**

**INJUNCTIVE RELIEF**

62) Plaintiff realleges each and every allegation of paragraphs 1 through 61.

63) Defendant's use of the Marks of the Plaintiff in the manner specified above is an obvious attempt to use a colorable imitation of a registered trademark in connection with the manufacture, sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to source of origin of such goods or services, in violation of Fla. Stat.(s) 831.03 and 495.131

64) As a result of the foregoing, Plaintiff has been and continues to be damaged irreparably by Defendant.

65) Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays(s):

- a) That Defendant, its agents, representatives and all persons acting or claiming to act on its behalf or under its direction or authority, and all persons acting in concert or in participation with Defendant be permanently enjoined and restrained from:
  - i) Using on or in connection with the sale, offering for sale, advertisement, labeling or promotion of any golf related matters the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" including, but not limited to, advertising, the Marks of Plaintiff or any colorable imitations of it unless such advertising has been licensed by Plaintiff;
  - ii) Representing by any method whatsoever that any services offered by Defendant including, but not limited to, golf instructions services, are sponsored or are authorized or approved by or originate with Plaintiff, or its licensee(s), or from otherwise taking any action likely to cause confusion, mistake, or deception on the part of buyers as to the origin or sponsorship of such goods, unless such services shall have been licensed by Plaintiff.
  - iii) That Defendant be required to deliver for ultimate destruction to the Court or to some other person that the Court may designate any and all advertising materials using the terms he words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion", and the means for their manufacture in the possession or control or in the possession or control of any of the Defendant's representatives which might, if

distributed for advertising in the future, violate the injunction granted.

- iv) That pending trial of this action, Defendant be: (a) preliminarily restrained and enjoined from doing and engaging in any of the acts described above; and (b) directed and required to conform with each and every provision set forth above.
- b) That Plaintiff have an accounting of Defendant for the profits arising from the sale of any and all services of golf instruction certification that arose from or were connected to the improper use of Plaintiff's mark, where such certification was not obtained from licensees of Plaintiff and that in accordance with such accounting, that Plaintiff be awarded an amount equal to the profits together with interest thereon.
- c) That Plaintiff have a judgment against Defendant in an amount equal to their damages resulting from injury to their business relationships and injury to their goodwill and reputation, together with interest thereon.
- d) That Plaintiff be awarded punitive damages, reasonable attorney fees and disbursements as authorized under 15 U.S.C. § 1117 in view of Defendant's intentional and willful infringement of Plaintiff rights.
- e) That Plaintiff have such other and further relief as this Court may deem just.

**COUNT IX-**  
**DECLARATORY JUDGMENT**

- 66) Plaintiff realleges Paragraphs 1-65 as if stated verbatim herein.
- 67) This is an action for Declaratory Judgment pursuant to Chapter 86 of the Florida Statutes.
- 68) Plaintiff, THE FLORIDA GOLF SCHOOL, INC., has duly registered the trademarks set forth above.
- 69) THE FLORIDA GOLF SCHOOL, INC., through the US Patent and Trademark Office has been



granted the right to use such mark in the conduct of its business affairs within the State of Florida.

70) Defendant, THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, has acquired the trademark of the Plaintiff. It is Plaintiff's contention that Plaintiff is the owner of the mark and the exclusive use of the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" including, but not limited to, advertising, the Marks of Plaintiff or any colorable imitations of it unless such advertising has been licensed by Plaintiff in connection with the sport of golf. It is the further belief of the Plaintiff that it is entitled to use those words and reasonable derivations of it in connection with the sport of golf to the exclusion of others.

71) It is Plaintiff's further contention that Defendant's use of the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" is an improper use of the Plaintiff's mark and it is so similar to it as to cause confusion amongst the public. Defendant, through its predecessor in interest, contends that it has used the mark since at least 2004 and has the continued right to use the same.

72) Plaintiff believes that Plaintiff is entitled to use the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" and its derivatives to describe its products and services to the exclusion of others. Plaintiff is in doubt as to its rights and needs this Court to make a determination as to the following:

- a) That it is entitled to use the words;
  - i) "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" and its derivatives to describe its products and services to the exclusion of others in connection with the game and business of golf;
- b) That Plaintiff is the owner of the "Share Your Passion" trademark and its derivatives as set

forth above in connection with the game/business of golf;

- c) That any use of the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" by Defendant in connection with the game/business of golf and its derivatives to describe its products and services is a violation of Plaintiff's rights to use those words under Federal and/or State law; and is likely to confuse the public.

WHEREFORE, for all the foregoing reasons, Plaintiff prays this Honorable Court will enter an Order determining the following:

- a) That it is entitled to use the words;
- b) "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" and its derivatives to describe its products and services to the exclusion of others in connection with the game and business of golf;
- c) That Plaintiff is the owner of the "Share Your Passion" trademark and its derivatives as set forth above in connection with the game/business of golf;
- d) That any unauthorized use of the words "Share the Passion", "Share Your Passion" and/or "Sharing Our Passion" by Defendant in connection with the game/business of golf and its derivatives to describe its products and services is a violation of Plaintiff's rights to use those words under Federal and/or State law; and is likely to confuse the public.
- e) Granting such other and further relief as the Court would deem just and proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been sent via service of process on this \_\_\_ day of \_\_\_\_\_, 2008 to: Christine M. Garrity, 100 Avenue of the Champions Palm Beach Gardens, Fl. 33418.

**BRANDT & GUFFORD**  
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By: \_\_\_\_\_

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Int. Cls.: 35, 41, and 42

Prior U.S. Cls.: 100, 101, 102, and 107

Reg. No. 3,104,392

**United States Patent and Trademark Office**

Registered June 13, 2006

**SERVICE MARK  
PRINCIPAL REGISTER**

**SHARE YOUR PASSION**

THE FLORIDA GOLF SCHOOL, INC. (FLORIDA CORPORATION), DBA UNITED STATES GOLF TEACHERS FEDERATION, 1295 S.E. PORT ST. LUCIE BLVD. PORT ST. LUCIE, FL 34952

ING COURSE MATERIALS IN CONNECTION THEREWITH; EDUCATIONAL DEMONSTRATION FOR INSTRUCTORS IN THE FIELD OF GOLF, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FOR: ASSOCIATION SERVICES, NAMELY, PROMOTING THE INTEREST AND OBJECTIVES OF GOLF INSTRUCTORS AND GOLF INSTRUCTION PROVIDERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-2004; IN COMMERCE 1-1-2004.

FIRST USE 1-1-2004; IN COMMERCE 1-1-2004.

FOR: TESTING, ANALYSIS AND EVALUATION OF THE GOLF INSTRUCTION SERVICES OF OTHERS FOR THE PURPOSE OF CERTIFICATION, IN CLASS 42 (U.S. CLS. 100 AND 101).

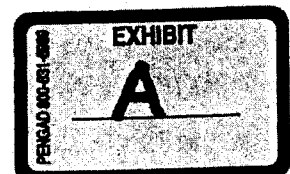
FIRST USE 1-1-2004; IN COMMERCE 1-1-2004.

FOR: ENTERTAINMENT IN THE NATURE OF GOLF TOURNAMENTS AND COMPETITIONS IN THE FIELD OF GOLF; ORGANIZING GOLF EXHIBITIONS FOR SPORTING AND ENTERTAINMENT PURPOSES; EDUCATIONAL SERVICES, NAMELY CONDUCTING CLASSES, SEMINARS, CONFERENCES, WORKSHOPS IN THE FIELD OF GOLF FOR PROFESSIONAL INSTRUCTORS AND DISTRIBUT-

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 76-569,465, FILED 1-12-2004.

DAVID C. REIHNER, EXAMINING ATTORNEY



Int. Cls.: 35, 41, and 42

Prior U.S. Cls.: 100, 101, 102, and 107

Reg. No. 3,029,854

Registered Dec. 13, 2005

United States Patent and Trademark Office

**SERVICE MARK  
PRINCIPAL REGISTER**

**SHARING OUR PASSION**

THE FLORIDA GOLF SCHOOL, INC. (FLORIDA CORPORATION), DBA UNITED STATES GOLF TEACHERS FEDERATION, 295 S.E. PORT ST. LUCIE BLVD. PORT ST. LUCIE, FL 34952

FOR: ASSOCIATION SERVICES, NAMELY, PROMOTING THE INTEREST AND OBJECTIVES OF GOLF INSTRUCTORS AND GOLF INSTRUCTION PROVIDERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-2004; IN COMMERCE 1-1-2004.

FOR: ENTERTAINMENT IN THE NATURE OF GOLF TOURNAMENTS AND COMPETITIONS IN THE FIELD OF GOLF; ORGANIZING GOLF EXHIBITIONS FOR SPORTING AND ENTERTAINMENT PURPOSES; EDUCATIONAL SERVICES, NAMELY CONDUCTING CLASSES, SEMINARS, CONFERENCES, WORKSHOPS IN THE FIELD OF GOLF FOR PROFESSIONAL INSTRUCTORS AND DISTRIBUT-

ING COURSE MATERIALS IN CONNECTION THEREWITH; EDUCATIONAL DEMONSTRATION FOR INSTRUCTORS IN THE FIELD OF GOLF, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 1-1-2004; IN COMMERCE 1-1-2004.

FOR: TESTING, ANALYSIS AND EVALUATION OF THE GOLF INSTRUCTION SERVICES OF OTHERS FOR THE PURPOSE OF CERTIFICATION, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2004; IN COMMERCE 1-1-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 76-569,466, FILED 1-12-2004.

CARRIE ACHEN, EXAMINING ATTORNEY



# The United States of America



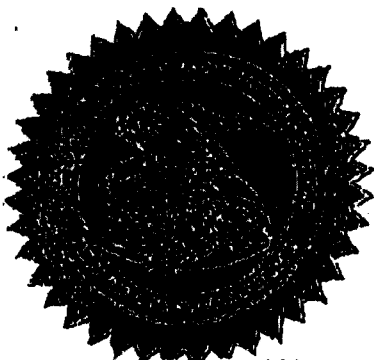
## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)*



Director of the United States Patent and Trademark Office

# BEUSSE WOLTER SANKS MORA & MAIRE, P.A.

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September 20, 2006

Mr. Joe Steranka  
The PGA of America  
100 Avenue of the Champions  
Palm Beach Gardens, FL 33418

Re: Trademark – SHARE YOUR PASSION

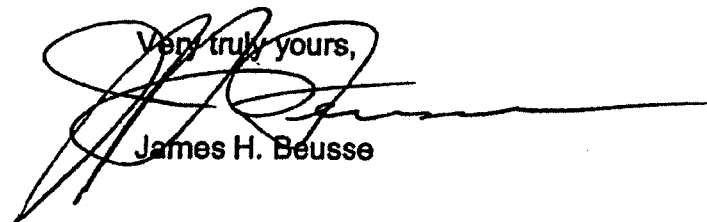
Dear Mr. Steranka:

We are contacting you on behalf of The Florida Golf School, Inc., dba United States Golf Teachers Federation Corporation Florida.

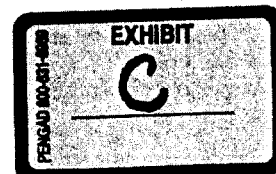
It is our understanding that the PGA authorized broadcast of a television segment during a recent golf tournament in which the phrase "SHARE THE PASSION" was prominently displayed. This letter is to advise you that the Florida Golf School, Inc. owns a federal trademark registration for the mark "SHARE YOUR PASSION for use in golf related matters, Registration No. 3,104,392 issued June 13, 2006.

We believe that the PGA would not disrespect a trademark of others and therefore assume that the PGA was not aware of the prior registration of this mark. Clearly, Share The Passion is confusingly similar to the registered mark SHARE YOUR PASSION. Accordingly, we request that you take whatever action is necessary to preclude any further use of the phrase SHARE THE PASSION or any similar phrase that might be confused with the registered mark.

Please confirm that you will comply with this request. Should the PGA have any questions, please contact the undersigned attorney.

Very truly yours,  
  
James H. Beusse

JHB/sg



RECEIVED

JAN 08 2007  
BEUSSE WOLTER SANKS  
MORA & MAIRE, P.A.



January 2, 2007

James H. Beusse, Esquire  
Beusse Wolter Sanks Mora & Maire, P.A.  
390 N. Orange Avenue, Suite 2500  
Orlando, FL 32801

Subject: "SHARE YOUR PASSION"

Dear Mr. Beusse:

Mr. Steranka forwarded your latest correspondence to me for response. Please be advised that the PGA of America removed the reference to "Share The Passion" from its not-for-profit public service announcement following the conclusion of 2006 PGA Championship in the middle of August.

100 AVENUE OF THE CHAMPIONS  
BOX 109601  
PALM BEACH GARDENS  
FLORIDA 33410-9601

We trust that this matter is concluded.

Sincerely,

  
Christine M. Garrity  
Managing Director & General Counsel

TELEPHONE: (561) 624-8400  
FAX: (561) 624-8452  
www.PGA.com

cc: Joseph P. Steranka, CEO

BRIAN WHITCOMB, PGA  
President

JIM REMY, PGA  
Vice President

ALLEN WRONOWSKI, PGA  
Secretary

ROGER WARREN, PGA  
Honorary President

JOSEPH P. STERANKA  
Chief Executive Officer





JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Sept. 18, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS

THE FLORIDA GOLF SCHOOL, INC., d/b/a THE UNITED STATES GOLF TEACHER'S ASSOCIATION

(b) County of Residence of First Listed Plaintiff St. Lucie (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Joseph L. Gufford, III, Brandt & Gufford, 516 S.W. Camden Ave., Stuart, Florida 34994, 772-221-1922

DEFENDANTS

THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, d/b/a The PGA of America

County of Residence of First Listed Defendant Palm Beach (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

Wendy S. Leavitt, Ackerman, Link & Sartory, P.A., 222 Lakeview Ave., Suite 1250, West Palm Beach, FL 33401, 561-838-4100

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

Handwritten: 08CV14333 SEM/FJL

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed- (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO
(See instructions second page): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1331 and 1337. The Complaint is based on violations of the Lanham Trademark Act, 15 U.S.C. § 1051, et seq.
LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Handwritten signature: Wendy S. Leavitt DATE: 9/18/08

FOR OFFICE USE ONLY

AMOUNT 350.00 RECEIPT # 724744