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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

F.F.T., LLC,)	
)	
Plaintiff,)	CAUSE NO. 1:19-cv-3027
)	
v.)	
)	
THOMAS SEXTON, PH.D., et al.,)	
)	JURY TRIAL DEMANDED
Defendants.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff F.F.T., LLC (“Plaintiff” or “F.F.T.”), by counsel, and pursuant to Fed. R. Civ. P. 15(a)(1) and this Court’s Order [CM/ECF Doc. No. 34] dated October 2, 2019, respectfully submits its First Amended Complaint against Defendants Thomas Sexton, Ph.D. (“Sexton”), Functional Family Therapy Associates, Inc. (“Functional Family Therapy Associates”), Astrid Van Dam (“Van Dam”), and New-Party Defendant FFT Partners, LLC (“FFT Partners”) (collectively “Defendants”), alleging and averring as follows:

NATURE OF THE ACTION

1. This action arises from Defendant Sexton’s breach of contract and all of the Defendants’ false advertising, unfair competition, and service mark infringement resulting from Defendants’ unauthorized use of Plaintiff F.F.T.’s registered and common law intellectual property rights in Plaintiff’s unique and original family therapeutic protocols and F.F.T.’s development, testing, training, and marketing thereof.

2. F.F.T. asserts its claims under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, Washington common law, and Indiana statutory and common law.

THE PARTIES

3. F.F.T., LLC, is a limited liability company organized and existing under the laws of the State of Nevada.

4. F.F.T. is registered as a Foreign Limited Liability Company authorized to do business in the state of Washington and maintains its principal place of business at 1251 NW Elford Drive, Seattle, Washington.

5. F.F.T. is an organization dedicated to training psychotherapists in the “Functional Family Therapy” protocol that its founder, Dr. James F. Alexander, developed through decades of research and practical application.

6. F.F.T.’s Functional Family Therapy protocol helps troubled youth and their families overcome a variety of behavioral problems that affect the children.

7. F.F.T. provides services in thirty-three U.S. states and in ten foreign countries around the world.

8. Defendant Sexton is a former member of F.F.T.

9. Defendant Sexton is an individual above the age of eighteen.

10. Upon information and belief, Defendant Sexton resides at 1221 S. Dunn Street, Bloomington, Indiana 47401.

11. Upon information and belief, Defendant Functional Family Therapy Associates is a corporation of the State of Indiana and has a principal place of business at 1221 S. Dunn Street, Bloomington, Indiana 47401.

12. Upon information and belief, Defendant Van Dam is an individual above the age of eighteen.

13. Upon information and belief, Defendant Van Dam resides at 1221 S. Dunn Street, Bloomington, Indiana 47401.

14. Upon information and belief, Defendant FFT Partners is a limited liability company of the State of Indiana and has a principal place of business at 1221 S. Dunn Street, Bloomington, Indiana 47401.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) and (b).

16. This Court also has jurisdiction over the related state and common law claims pursuant to 28 U.S.C. § 1338(b) and supplemental jurisdiction under 28 U.S.C. § 1367.

17. This Court has personal jurisdiction over Defendant Sexton because, upon information and belief, Defendant Sexton is domiciled within the State of Indiana and this Judicial District.

18. Defendant Sexton also contractually consented to jurisdiction in this State and Judicial District.

19. This Court has personal jurisdiction over Defendant Functional Family Therapy Associates because, upon information and belief, Defendant Functional Family Therapy Associates is domiciled within the State of Indiana and this Judicial District.

20. This Court has personal jurisdiction over Defendant FFT Partners because, upon information and belief, Defendant FFT Partners is domiciled within the State of Indiana and this Judicial District.

21. This Court has personal jurisdiction over Defendant Van Dam because, upon information and belief, Defendant Van Dam is domiciled within the State of Indiana and this Judicial District.

22. Upon information and belief, Defendants committed related acts of service mark infringement, false advertising, and unfair competition that caused harm to Plaintiff and consumer confusion in this State and District.

23. Venue is proper in this District and Division pursuant to 28 U.S.C. §§ 1391(b)(1)–(2) and 1391(c)(1) and (2).

FACTUAL BACKGROUND

Dr. Alexander Develops Functional Family Therapy and Founds Plaintiff F.F.T.

24. Commencing in the 1960s, James F. Alexander, Ph.D. (“Dr. Alexander”), a Professor of Psychology at the University of Utah, conducted a series of psychology outcome studies to examine the effectiveness of a family-based method of interventions for adolescents with delinquency and other behavioral problems.

25. Dr. Alexander’s early studies developed and shaped a therapy protocol that was originally referred to as Systems-Behavioral Intervention.

26. In 1982, Dr. Alexander began to refer to his therapy model as Functional Family Therapy (“Functional Family Therapy”).

27. Dr. Alexander’s first book on the Functional Family Therapy protocol, which book was titled “Functional Family Therapy,” was published in 1982.

28. FUNCTIONAL FAMILY THERAPYSM is a systematic, evidence-based, manual-driven, family-based treatment program that is successful in treating a wide range of

problems affecting families, including but not limited to drug use and abuse, conduct disorder, mental health concerns, truancy, and related family programs.

29. Dr. Alexander's Functional Family Therapy protocol is known, respected, and trusted internationally because, among other things: the protocol has been clinically tested; the testing has been peer-reviewed; and the protocol is evidence-based.

30. The Functional Family Therapy protocol has become so successful and revered that today it has come to be referred to by consumers and practitioners simply as "FFT."

31. The Blueprints for Healthy Youth Development program is a project within the Institute of Behavioral Science at the University of Colorado Boulder.

32. The Blueprints for Healthy Youth Development program identifies, recommends, and disseminates programs for youth, families, and communities that, based on scientific evaluations, have strong evidence of effectiveness.

33. The Blueprints for Healthy Youth Development program certified Dr. Alexander's Functional Family Therapy protocol as a model program based upon the Functional Family Therapy protocol's satisfaction of numerous criteria considered and evaluated by the Blueprints for Healthy Youth Development program.

34. True and correct copies of pages from the Blueprints for Healthy Youth Development website regarding certification of the Functional Family Therapy protocol program are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit A.¹

¹ To reduce the filings in the action, Plaintiff F.F.T. is not resubmitting herewith exhibits that it included with its original unredacted Complaint [CM/ECF Doc. No. 5]. The exhibit designations herein correspond to the exhibit designations in Plaintiff's original Complaint as found at <https://ecf.insd.uscourts.gov/doc1/07307392155>. The only exhibits referenced herein that were not also referenced in Plaintiff's original Complaint are Exhibits DD, EE, and FF, which Exhibits Plaintiff has attached hereto.

35. In 1998, Dr. Alexander, along with Richard Harrison and Defendant Sexton, formed FFT, Inc.

36. Dr. Alexander et al. formed FFT, Inc. to implement a delivery system to train therapists to administer the Functional Family Therapy protocol competently to families while adhering to the Functional Family Therapy protocol's evidence-based standards.

37. In 2002, Mr. Harrison sold his shares to FFT, Inc., and Mr. Douglas Kopp entered the company as CEO and Managing Member.

38. Plaintiff F.F.T., LLC was formed to pursue the former efforts of FFT, Inc., which corporation was subsequently administratively dissolved.

39. F.F.T. currently provides services to clients in 33 U.S. states and 10 foreign countries.

40. Dr. Alexander and F.F.T. continue to provide to consumers the Blueprint Certified Model of Functional Family Therapy as well as other iterations of the Functional Family Therapy protocol that they developed, including but not limited to Functional Family Therapy Child Welfare ("FFT-CW[®]"), Functional Family Therapy Probation and Parole ("FFP[®]"), Functional Family Therapy Gang ("FFT-GSM"), and Functional Family Therapy Coming into Adulthood ("FFT-CIASM").

F.F.T.'s Service Marks

41. FFTSM and FUNCTIONAL FAMILY THERAPYSM have long been used as brands to refer to Dr. Alexander and F.F.T.'s Functional Family Therapy protocol.

42. Scientists, therapists, researchers, and other professionals recognize the brand FFTSM and the brand FUNCTIONAL FAMILY THERAPYSM as signifying the goodwill

associated with the source of the evidence-based, scientifically supported model program developed by Dr. Alexander and owned by F.F.T.

43. Consumers of the Functional Family Therapy protocol specifically ask for the FFTSM and/or the FUNCTIONAL FAMILY THERAPYSM protocol when researching and buying a program to help troubled youth and their families overcome a variety of behavioral problems that affect the youth because these consumers want to buy Plaintiff's Functional Family Therapy protocol.

44. A true and correct copy of a letter from Defendant Sexton and Mr. Edward Myers Hayes on behalf of Defendant FFT Partners, which, upon information and belief, is a joint business effort by Defendant Functional Family Therapy Associates and Cayuga Centers, addressed to a potential client, Valley Youth House, dated April 9, 2012, is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit B.

45. Of note, Exhibit B includes Defendants' admission: "You may not have realized there was another option [besides F.F.T.] in the FFT world; we're here to tell you *there is*." Exhibit B (emphasis in original).

46. Defendant Sexton, Defendant Functional Family Therapy Associates, and Defendant FFT Partners therefore recognized at least as early as April 9, 2012, that the FFTSM brand was a strong source indicator for Plaintiff F.F.T.

47. Upon information and belief, Defendants sent letters similar to Exhibit B to most or all of F.F.T.'s customers.

48. As a result of its widespread, continuous, and exclusive use of the FFTSM and FUNCTIONAL FAMILY THERAPYSM marks since at least as early as 1998 to identify F.F.T.

as the source of the Functional Family Therapy protocol, F.F.T. owns common law rights in the FFTSM and FUNCTIONAL FAMILY THERAPYSM brands, which rights go back decades.

49. F.F.T. also owns a related federal registration for FFT-CW[®] and has a pending federal trademark application for registration of FFT-GSM.

50. Specifically, F.F.T. owns incontestable U.S. Service Mark Registration No. 4,389,569 for the mark FFT-CW[®] registered for use with the International Class (“IC”) 041 services: “Training services in the field of intervention for dysfunctional youth” (“FFT-CW[®] Registration”).

51. The FFT-CW[®] Registration claims a first use date in commerce of January 1, 2010.

52. The FFT-CW[®] Registration has been in continuous use since at least as early as January 1, 2010.

53. True and correct copies of the Certificate of Registration for the FFT-CW[®] Registration and the Trademark Status and Document Retrieval (“TSDR”) report for the FFT-CW[®] Registration are attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit C.

54. F.F.T. also owns incontestable U.S. Service Mark Registration No. 4,435,321 for the mark FFP[®] registered for use with the IC 045 services: “Case management services, namely, coordinating legal, physical, social and psychological services in the field of intervention for dysfunctional youth” (“FFP[®] Registration”).

55. The FFP[®] Registration claims a first use date in commerce of January 1, 2005.

56. The FFP[®] Registration has been in continuous use since at least as early as January 1, 2005.

57. True and correct copies of the Certificate of Registration for the FFP[®] Registration and the TSDR report for the FFP[®] Registration are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit D.

58. F.F.T. owns U.S. Service Mark Registration No. 5,267,897 for the mark FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] registered for use with the IC 041 services: "Training services in the field of psychotherapy family-based intervention services for dysfunctional youth" ("FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration").

59. The FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration claims a first use date in commerce of February 10, 2009.

60. The FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration has been in continuous use since at least as early as February 10, 2009.

61. True and correct copies of the Certificate of Registration for the FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration and the TSDR report for the FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit E.

62. F.F.T. owns U.S. Service Mark Application No. 88/318,043 for the mark FFT-GSM claiming an intent to use the mark with the IC 041 services: "Training services in the field of psychotherapy family-based intervention for youth at risk of gang involvement" ("FFT-GSM Application").

63. The United States Patent and Trademark Office has allowed F.F.T.'s application to register FFT-G as a federal trademark and has accepted F.F.T.'s statement of use therein. The

FFT-GSM Application, when it registers, will have a constructive first use date of February 27, 2019.

64. A true and correct copy of the TSDR report for the FFT-GSM Application is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit F.

65. The FFT-CW[®] Registration, the FFP[®] Registration, and the FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration are prima facie evidence of F.F.T.'s ownership of the respective marks and F.F.T.'s exclusive right to use these marks in connection with the services identified in the registrations.

66. The FFT-CW[®] Registration, the FFP[®] Registration, and the FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration acquired source-indicating secondary meaning through Plaintiff F.F.T.'s longstanding use of these marks in commerce.

67. The FFT-CW[®] Registration and the FFP[®] Registration are registered on the Principal Register, which Principal Register placement provides evidence that the FFT-CW[®] and the FFP[®] marks are not merely descriptive of the identified services.

68. The FFT-CW[®] Registration, the FFP[®] Registration, the FUNCTIONAL FAMILY THERAPY CHILD WELFARE[®] Registration, the FFTSM mark, the FUNCTIONAL FAMILY THERAPYSM mark, and the FFT-GSM Application are hereinafter collectively referred to as "F.F.T. Marks."

69. F.F.T. expended substantial time, money, and resources developing, marketing, advertising, and promoting the services it provides under the F.F.T. Marks.

70. F.F.T.'s marketing, advertising, and promotion efforts include, but are not limited to, advertising through the www.fftlc.com website.

71. The www.fftlc.com website promotes the high-quality, scientifically driven, and distinctive qualities of F.F.T.'s Functional Family Therapy protocols.

72. True and accurate copies of webpages from the www.fftlc.com website demonstrating this advertising are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit G.

73. Other examples of F.F.T.'s promotional efforts include high-profile partnerships resulting in collaborative research studies and endorsements by a number of national organizations, including but not limited to the U.S. Department of Justice and the Centers for Disease Control and Prevention.

74. True and accurate copies of examples of F.F.T.'s promotional efforts regarding high-profile partnerships are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit H.

75. F.F.T. engaged in a number of marketing and research collaborations at the state level.

76. One such collaboration, between F.F.T., the Oregon Research Institute, and The New York Foundling Hospital, resulted in the publication of an article in the scientific journal *Child Abuse & Neglect* titled "Summary of Comparison Between FFT-CW® and Usual Care Sample from Administration for Children's Services."

77. A true and accurate copy of the article "Summary of Comparison Between FFT-CW® and Usual Care Sample from Administration for Children's Services," *Child Abuse & Neglect*, 69 (2017): 85-95, is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit I.

78. F.F.T.'s promotional efforts for the F.F.T. Marks resulted in substantial sales exceeding \$4 million per year of the protocols offered and sold in connection with the F.F.T. Marks.

79. As a result of F.F.T.'s long and successful use of the F.F.T. Marks in connection with F.F.T.'s substantial sales, advertising, and promotion of the associated methods, F.F.T. built up extremely valuable goodwill in the F.F.T. Marks.

80. The F.F.T. Marks have become strong and distinctive, and both the consuming public and F.F.T.'s industry recognize the F.F.T. Marks as being solely associated with F.F.T.

81. Plaintiff derives significant commercial value and goodwill from the ownership and use of the F.F.T. Marks.

82. To maintain this value and goodwill, F.F.T. took great care and exercised substantial skill to ensure that the protocols offered in connection with the F.F.T. Marks are supported by competent, reliable, scientific evidence.

83. As a result, the F.F.T. Marks are extremely strong identifiers of the source of Plaintiff F.F.T.'s services.

F.F.T.'s Copyrighted Works

84. F.F.T. owns the copyright in and to two collective works concerning the FFT protocol training and implementation materials.

85. The copyright registrations and the respective underlying collective works are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibits J and K.

86. The registrations in Exhibits J and K create a statutory presumption that F.F.T. owns those materials.

87. F.F.T.'s protocols, as described in Exhibits J and K and elsewhere, relate directly to several of the claims that F.F.T. asserts herein, including, but not limited to, F.F.T.'s claims that Defendants have falsely and unfairly compared Defendants' protocols to F.F.T.'s peer-reviewed and tested protocols.

88. Exhibits J and K also are directly relevant to F.F.T.'s claims that certain Defendants used F.F.T.'s intellectual property without a license and that Defendant Sexton continued to use F.F.T.'s intellectual property after his license to do so terminated.

89. Specifically, F.F.T. owns valid and subsisting rights in Copyright Registration TX 8-663-011 titled "FFT CW," which copyright was registered on October 22, 2018 ("FFT CW Copyright").

90. The FFT CW Copyright covers text published on September 1, 2009.

91. True and accurate copies of the Copyright Registration certificate for the FFT CW Copyright and its deposit material are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit J.

92. F.F.T. owns valid and subsisting rights in Copyright Registration TX 8-664-527 titled "FFT CIA," which copyright was registered on October 22, 2018 ("FFT CIA Copyright").

93. The FFT CIA Copyright covers text published on November 30, 2015.

94. True and accurate copies of the Copyright Registration certificate for the FFT CIA Copyright and its deposit material are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit K.

95. F.F.T. owns valid and subsisting rights in Copyright Registration TX 8-696-584 titled "FFT CIA," which copyright was registered on January 23, 2019 ("FFT CIA II Copyright").

96. The FFT CIA II Copyright covers text published on December 31, 2012.

97. True and accurate copies of the Copyright Registration certificate for the FFT CIA II Copyright and its deposit material are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit L.

98. The FFT CW Copyright, the FIA CIA Copyright, and the FIA CIA II Copyright are collectively referred to as the "F.F.T. Copyrighted Works."

99. The F.F.T. Copyrighted Works are original and copyrightable subject matter under the laws of the United States.

100. F.F.T. has been and still is the sole proprietor of all rights, title, and interest in and to the F.F.T. Copyrighted Works.

101. F.F.T. placed and continues to place copyright management information on the F.F.T. Copyrighted Works, including ownership information.

102. F.F.T. complied in all respects with the Copyright Act of 1976, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyrights in the F.F.T. Copyrighted Works.

103. The F.F.T. Copyrighted Works are distributed publicly in both paper and digital form.

104. Portions of the F.F.T. Copyrighted Works are available for public viewing on Plaintiff's website located at [/www.fftlc.com/](http://www.fftlc.com/).

Defendants' Unauthorized Use of F.F.T.'s Works and Property

105. In April 2007, while Defendant Sexton was a member of F.F.T., Sexton and Defendant Van Dam formed Defendant Functional Family Therapy Associates.

106. Defendant Functional Family Therapy Associates purports to be a training and implementation organization offering the Functional Family Therapy protocol.

107. True and accurate copies of webpages obtained from Defendant Functional Family Associates' website describing the protocols offered by Functional Family Associates are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit M.

108. In October 2007, six months after forming Defendant Functional Family Therapy Associates, which entity competes with F.F.T., Defendant Sexton surrendered his membership interest in F.F.T. pursuant to the terms of a confidential written Settlement Agreement between, *inter alia*, F.F.T. and Sexton.

109. A true and accurate copy of the October 31, 2007 Settlement Agreement between Defendant Sexton, F.F.T., Mr. Douglas Kopp, and Dr. Alexander is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit N ("Settlement Agreement").

110. Among other things, the Settlement Agreement granted Defendant Sexton, individually, a personal license to use F.F.T.'s then-existing Functional Family Therapy training materials so long as Defendant Sexton did not reference F.F.T., Mr. Kopp, or Dr. Alexander in connection with Defendant Sexton's use of these training materials. *See* Exhibit N, Settlement Agreement at § 1.6.

111. Pages from the Australian Association of Family Therapy's website (<https://aceo.eventsair.com/QuickEventWebsitePortal/aaft2019/aaft19/ExtraContent/ContentPage?page=4>) attached hereto as Exhibit DD evidence Defendants' misrepresentations to other therapy organizations and consumers that Defendant Sexton is the "developer of Functional Family Therapy." Exhibit DD at p. 54.

112. Additionally, despite the clear prohibitions of the Settlement Agreement and Defendant Sexton's admitted understanding of the obligations they create, Defendant Sexton has routinely referenced Dr. Alexander and F.F.T. in connection with Defendant Sexton's use of the FFTSM training materials. See, e.g., Exhibit DD at pp. 5, 42, 43.

113. Exhibit EE hereto contains true and accurate copies of webpages from Cayuga Centers' website listing Defendant FFT Partners as "[t]he Functional Family Therapy (FFT) training and consultation organization we started with Dr. Thomas Sexton."

114. Similarly, Defendant Sexton's own LinkedIn profile falsely describes Defendant Sexton as the "Functional Family Therapy Model Developer" and the "Functional Family Therapy Model Developer & Trainer." See Exhibit FF attached hereto.

115. True and accurate copies of a webpage from Defendant Functional Family Therapy Associates' website and true and accurate copies of training documents provided on Functional Family Therapy Associates' website reflecting Defendant Sexton's references to Dr. Alexander and F.F.T. in breach of these obligations are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit O.

116. A true and accurate copy of Defendant Functional Family Therapy Associates' website documenting Defendant Sexton's admission that his right to train others using the Functional Family Therapy protocol is governed by the Settlement Agreement is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit P.

117. This admission confirms a second breach of the Settlement Agreement by Defendant Sexton, namely, a breach of the confidentiality requirements of the Settlement Agreement. Exhibit N, Settlement Agreement at § 6.2.

118. Upon information and belief, Defendant Sexton breached §§ 1.6. and 6.2. of the Settlement Agreement in his oral communications and presentations as well.

119. The Settlement Agreement confirms that “[n]othing in this Agreement is intended, nor shall it be construed, to confer any rights, benefits or obligations upon any person other than the parties hereto.” *Id.* at § 6.10.

120. Upon information and belief, Defendant Sexton allowed Defendants Van Dam, Functional Family Therapy Associates, and FFT Partners to utilize the training materials made available to Sexton individually under the Settlement Agreement.

121. In at least one report that Defendant Sexton co-authored, Defendant Van Dam was designated as an “accredited FFT trainer,” which suggests to consumers that Van Dam was using FFTSM training materials.

122. A true and accurate copy of this report titled *Putting Families First: An Evaluation of Functional Family Therapy* is attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit Q.

123. Upon information and belief, Defendant Sexton also permitted Defendants Functional Family Therapy Associates and FFT Partners to use F.F.T.’s materials in a manner that is contrary to the Settlement Agreement. *See* Exhibit Q.

124. Since the termination of Defendant Sexton’s membership in F.F.T., Sexton has promoted himself as a developer of the FUNCTIONAL FAMILY THERAPYSM protocol. *See e.g.*, Exhibit DD.

125. True and accurate copies of webpages obtained from Defendant Functional Family Associates’ website describing Defendant Sexton as a developer are attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit R.

126. Upon information and belief, Defendant Sexton continues to develop and advocate a form of family counseling and therapy (the “Sexton Derivative”) that he claims is an alternative to the FFTSM protocol.

127. Upon information and belief, Defendants continue to develop and advocate the Sexton Derivative that they claim is an alternative to the FFTSM protocol.

128. The Sexton Derivative deviates materially from the FUNCTIONAL FAMILY THERAPYSM protocol used by F.F.T.

129. A true and accurate copy of the California Institute for Mental Health’s comparison between the FFTSM protocol and the Sexton Derivative is attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit S.

130. Despite the material differences between the Sexton Derivative and the FFTSM protocol, Defendants continue to promote the Sexton Derivative by, among other things, asserting and representing that the long history of evidence-based, peer-reviewed studies assessing and validating the FFTSM protocol support and validate the Sexton Derivative.

131. Defendants make these claims without acknowledging the material differences between the Sexton Derivative and the FFTSM protocol.

132. True and accurate copies of webpages from Defendant Functional Family Associates’ website claiming that the Sexton Derivative model is evidence-based and therapeutically equivalent to the FFTSM protocol are attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit T.

133. Defendants claim that Defendant Functional Family Therapy Associates is a “fully authorized training organization” using the most current FFT Clinical Model.

134. True and accurate copies of documents bearing Defendants' claims to be authorized to use the most current FFTSM protocol are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit U.

135. In particular, Defendants claim that Defendant Functional Family Therapy Associates provides Blueprint Certified Functional Family Therapy training. *Id.*

136. As shown in Exhibit A, however, the Blueprints for Healthy Youth Development program website does not list Defendants or their protocols in any training or developmental capacity.

137. A true and accurate copy of a letter from Dr. Charles Turner to the Blueprints for Healthy Youth Development program dated April 7, 2010 is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit V.

138. Dr. Turner is a Senior Scientist for the Oregon Research Institute and is not affiliated with F.F.T.

139. Dr. Turner's letter states that the evidence used by Defendant Sexton in the article that Defendant Sexton co-authored with Dr. Turner does not support the Sexton Derivative.

140. In pertinent part, Dr. Turner's letter states:

I am a co-author of an upcoming manuscript to be published in the Journal of Family Psychology (Sexton & Turner, 2010, in press). This manuscript reports the findings from a secondary data analysis of a relatively large scale study (n ~ 900) that compared Functional Family Therapy (FFT) to usual probation services. The participants were male and female adolescents referred for services through the Juvenile Justice System in the state of Washington. Although this study is just now being published, the cases were enrolled between January 1999 and September 2000.

I am writing to make you aware of some constraints around the interpretation of the implementation and findings of this study. My concern is that the findings of the Washington study may be misinterpreted in the Blueprints Review Process as providing evidence for the verification of an alternative version of FFT. The findings from the Sexton and Turner (2010, in press) study provide support for the

FFT model endorsed by the Blueprints Program (1998, 2000). However, these results do not provide support for alternative versions of the FFT model.

....

Although Tom Sexton was a co-author on the 2000 Blueprints publication, he was not involved in any of the published research projects from the University of Utah prior to 2000. Thus, he does not have a basis for claiming the he contributed substantively to the clinical model described in the 2000 Blueprints document. By 1998, Tom Sexton had begun his own research on FFT at the University of Nevada in Las Vegas. None of these studies had been published by 2000, and his empirical work could not have served as the foundation for a modification of the FFT clinical model. He continued his research at Indiana University when he moved there. In short, Tom Sexton did not have any published research on FFT to serve as a basis for the implementation of the FFT model in Washington. Tom Sexton had begun to explore supervision models for FFT that were different from the approaches used in the FFT efficacy trials. Although Tom Sexton's published research did not contribute to the 2000 Blueprints, his ideas and experience concerning supervision approaches were reflected in the 2000 publication.

....

I am not aware of any scientific evidence to support the effectiveness of the alternative supervision model that Tom Sexton developed for implementing FFT. To my knowledge, the entire body of published research used the Supervision approach developed by James Alexander.

....

In short, the Sexton and Turner (2010) study does not provide either supportive or contradictory empirical evidence for the supervision approach developed by Tom Sexton after the Washington study. This study also does not provide supportive or contradictory evidence for a version of the FFT model that is different from the one developed at the University of Utah.

141. Defendants' assertions of the equivalence of the Sexton Derivative with the FFTSM protocol are intended to trade unlawfully on the goodwill and reputation associated with the FFTSM protocol and F.F.T.

142. Defendants' assertions of the effectiveness of the Sexton Derivative are not supported by peer-reviewed research.

143. Long after F.F.T.'s adoption of the F.F.T. Marks, Defendants began advertising, offering for sale, distributing, and selling the Sexton Derivative using the name "Functional Family Therapy" and the FFTSM mark without authorization from F.F.T. (all unauthorized uses

of the name “Functional Family Therapy” and the FFTSM mark by Defendants are hereinafter referred to as the “Infringing FFT Marks”).

144. Defendants’ entire line of services incorporates the unauthorized use of the Infringing FFT Marks.

145. Defendants’ Infringing FFT Marks include, and may not be limited to, FUNCTIONAL FAMILY THERAPY, FFT, FFT-Foster Care, FFT-Therapeutic Case Management (“FFT-TCM”), and FFT-Behavioral Health (“FFT-BH”).

146. A true and accurate copy of a webpage from Defendant Functional Family Therapy Associates’ website that demonstrates Defendants’ pervasive use of the Infringing FFT Marks is attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit W.

147. Upon information and belief, Defendants intend for the Infringing FFT Marks to be source identifiers for Defendants’ services.

148. F.F.T. entered into contracts with The New York Foundling Hospital for services related to Plaintiff’s FFT-CW[®] programs in 2009.

149. Additionally, F.F.T. entered into a licensing agreement with The New York Foundling Hospital Implementation Support Center (“New York Foundling”) for services related to Plaintiff’s FFTSM, FFP[®], and FFT-CW[®] programs in September of 2015.

150. A true and accurate copy of this Agreement (“New York Foundling Agreement”) between F.F.T. and New York Foundling is attached to Plaintiff’s original Complaint [CM/ECF Doc. No. 5] as Exhibit X.

151. As part of this New York Foundling Agreement, New York Foundling assigned all of New York Foundling’s intellectual property in the FFTSM, FFP[®], and FFT-CW[®] methods to F.F.T.

152. As part of the New York Foundling Agreement, New York Foundling had access to the F.F.T. Copyrighted Works, intellectual property, and confidential information, including, but not limited to, refinements to the FFTSM, FFP[®], and/or FFT-CW[®] methods.

153. The New York Foundling Agreement between F.F.T. and New York Foundling terminated on or about August 2, 2018.

154. A true and accurate copy of a letter from F.F.T.'s counsel to New York Foundling dated August 14, 2018 confirming the termination and outlining the terms upon which F.F.T. believes the New York Foundling Agreement was terminated is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit Y.

155. Upon information and belief, New York Foundling agreed in post-termination correspondence sent in response to the letter of Exhibit Y not to use any intellectual property owned by F.F.T. or to provide FFTSM-Model, FFP[®]-Model, FFT-CW[®], or FFT-CIASM services after termination of the New York Foundling Agreement.

156. Upon information and belief, almost immediately after termination of its New York Foundling Agreement with F.F.T., New York Foundling partnered with Defendants for the use of Defendants' FFT-TCM model.

157. True and accurate copies of LinkedIn webpages from two individuals listing themselves as current FFT-TCM Trainers at New York Foundling are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit Z.

158. Upon information and belief, New York Foundling is presenting Defendants' FFT-TCM model using the name Functional Family Therapy/Integrated Clinical Case Management ("FFT-ICCM").

159. A true and accurate copy of an article written by New York Foundling's Bill Baccaglini and Sylvia Rowlands referring to the study reported in the *Child Abuse & Neglect* journal (article attached as Exhibit I) and claiming that the results from that study were achieved using New York Foundling's FFT-ICCM method is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit AA.

160. Upon information and belief, FFT-ICCM was an early name for FFT-TCM.

161. Defendants reference the *Child Abuse & Neglect* article in their materials regarding the efficacy of their FFT-TCM program.

162. A true and accurate copy of the materials from Defendant Functional Family Therapy Associates' website claiming that the results achieved in the study reported in the *Child Abuse & Neglect* journal were obtained using the Sexton Derivative FFT-TCM model are attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit BB.

163. Defendants' misrepresentations on Defendant Functional Family Therapy Associates' website have not gone unnoticed in the behavioral services industry.

164. Upon learning of Defendants' activities, Dr. Turner, the principal investigator and senior scientist for the study of the Functional Family Therapy protocol reported in the *Child Abuse & Neglect* journal, wrote to Defendant Sexton and New York Foundling to demand that the information be corrected to either cite the FFTSM protocol that was actually used in the study or to remove the reference to that study completely from Defendant Functional Family Therapy Associates' website.

165. A true and accurate copy of the email from Dr. Turner to Defendant Sexton and New York Foundling dated July 10, 2019 is attached to Plaintiff's original Complaint [CM/ECF Doc. No. 5] as Exhibit CC.

166. Upon information and belief, in addition to New York Foundling, Defendants did business with, and/or currently do business with, other former F.F.T. customers.

167. VisionQuest National Ltd. (“VisionQuest”), for example, was a customer of F.F.T.’s for almost a decade until sometime in 2016 or 2017 when Defendants began selling FFT training services to VisionQuest.

168. Defendants now list VisionQuest as a “Partner.” *See* Exhibit T.

169. Upon information and belief, Defendants sent letters, such as Exhibit B, to VisionQuest while F.F.T. was providing VisionQuest with Functional Family Therapy protocol training.

170. Cayuga Centers likewise was a customer of F.F.T. for nearly a decade.

171. Now, on information and belief, Cayuga Centers offers the Sexton Derivative through Defendant FFT Partners, which Cayuga Centers created with Defendant Sexton.

172. Cayuga Centers claims on its website (pages attached as Exhibit EE) that it is offering the FFTSM Blueprint-certified protocol belonging to Plaintiff F.F.T.

173. Although Cayuga Centers was a customer of Plaintiff F.F.T. for years, Cayuga Centers now, as a result of its partnership with Dr. Sexton and possibly other Defendants including FFT Associates, expressly views Plaintiff F.F.T. as “competition” for the offering of Plaintiff’s own FUNCTIONAL FAMILY THERAPYSM training and consultation protocols. *See* Exhibit EE attached hereto.

COUNT I
(Breach of Contract)

174. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

175. F.F.T.'s Settlement Agreement with Defendant Sexton provided a personal license for Sexton, individually, to use F.F.T.'s then-existing training materials, but only so long as Defendant Sexton's use of the materials did not refer to F.F.T., Mr. Kopp, or Dr. Alexander.

176. The Settlement Agreement specifically provides that "[n]othing in this Agreement is intended, nor shall it be construed, to confer any rights, benefits or obligations upon any person other the parties hereto." Exhibit N, Settlement Agreement at § 6.10.

177. Defendant Sexton breached and continues to breach his obligations to F.F.T. under the Settlement Agreement by referencing Dr. Alexander and F.F.T. in the materials on Defendant Functional Family Therapy Associates' website.

178. Defendant Sexton breached and continues to breach his obligations to F.F.T. under the Settlement Agreement by referring to the terms of the Settlement Agreement on Defendant Functional Family Therapy Associates' website.

179. Defendant Sexton breached and continues to breach his obligations to F.F.T. under the Settlement Agreement by allowing Defendants Van Dam and Functional Family Therapy Associates to use the training materials that were licensed only to Sexton.

180. Defendant Sexton's actions outlined herein constitute breaches of the Settlement Agreement, which breaches result in the revocation of his personal license to use the training materials.

181. F.F.T. performed all of its obligations to Sexton under the Settlement Agreement.

182. The breaches by Defendant Sexton are causing, and will continue to cause, F.F.T. to suffer harm to its business, in an amount to be determined at trial.

183. F.F.T. has been damaged as a result of Defendant Sexton's conduct.

184. F.F.T. suffered irreparable harm as a result of Defendant Sexton's unauthorized use and dissemination of F.F.T.'s materials and Sexton's other conduct.

185. F.F.T. will continue to suffer irreparable harm unless this Court enjoins Defendant Sexton from continuing to engage in such conduct.

COUNT II

(Wrongful Interference with Business Relationships and Prospective Business Advantages)

186. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

187. F.F.T. has longstanding business relationships with its clients and spent significant time and resources in developing and maintaining those relationships. For example, companies with which F.F.T. had existing or prospective business relationships included, as alleged herein, Valley Youth House, VisionQuest, Cayuga Centers, and New York Foundling.

188. F.F.T. provided its Functional Family Therapy protocol services to and had longstanding business relationships with VisionQuest and Cayuga Centers.

189. F.F.T. had a legitimate expectancy in a continuing business relationship and a future business relationship with each of these entities.

190. Similarly, having done business with New York Foundling since 2009, F.F.T. had a legitimate expectancy in a future business relationship.

191. Consequently, F.F.T. has a legitimate expectancy in maintaining those relationships and developing future ones.

192. As a former member of F.F.T., Defendant Sexton knew of F.F.T.'s business relationships with existing and prospective clients and, upon information and belief, subsequently informed the other Defendants.

193. Upon information and belief, Defendants, or any of them, are aware of many of F.F.T.'s client relationships, including, but not limited to those identified herein, and of F.F.T.'s expectancy in maintaining its relationships with its clients.

194. F.F.T.'s clients are primarily publicly funded organizations or state agencies that are charged with providing behavioral and therapy services to troubled youth.

195. Upon information and belief, Defendants sent letters to potential clients like Valley Youth House, representing or insinuating that Defendants could offer the unique Functional Family Therapy training and implementation as "another option" besides F.F.T. *See* Exhibit B.

196. Upon information and belief, Defendants Sexton and FFT Associates conspired with Cayuga Centers to form Defendant FFT Partners for the express purpose of monetizing Plaintiff F.F.T.'s FUNCTIONAL FAMILY THERAPYSM protocols in direct competition with Plaintiff F.F.T., notwithstanding the fact that Cayuga Centers had previously offered Plaintiff F.F.T.'s FUNCTIONAL FAMILY THERAPYSM protocols as a customer of Plaintiff F.F.T.

197. Upon information and belief, Defendants, or any of them, imposed unlawful pressures upon existing clients of F.F.T., such as New York Foundling, VisionQuest, and Cayuga Centers with the intent of coercing such clients to give projects and/or business to Defendants instead of F.F.T.

198. Upon information and belief, Defendants, or any of them, imposed unlawful pressures upon prospective business advantages of F.F.T., such as business with Valley Youth House, with the unlawful intent to take projects and business away from F.F.T.

199. Upon information and belief, Defendants, or any of them, threatened certain F.F.T. clients and prospective clients with legal action if those clients did not recognize and

acknowledge the Sexton Derivative as having equivalent value and results to the value and results experienced when using Plaintiff's F.F.T.'s FUNCTIONAL FAMILY THERAPYSM protocol.

200. Upon information and belief, Defendants, or any of them, interfered with one or more of F.F.T.'s client relationships by providing misleading information and improperly soliciting clients to stop doing business with F.F.T. and to start doing business instead with Defendants.

201. Upon information and belief, Defendants' interference included their unlawful misrepresentations and deceitful practices of, for example, asserting the equivalence of the Sexton Derivative with the FFTSM protocol with the intent to trade unlawfully on the goodwill and reputation associated with the FFTSM protocol and F.F.T. Defendants continue to promote the Sexton Derivative by, among other things, asserting and representing that the long history of evidence-based, peer-reviewed studies assessing and validating the FFTSM protocol support and validate the Sexton Derivative.

202. Upon information and belief, Defendants' complained-of interference proximately caused F.F.T.'s clients to terminate or reduce their business relationships with F.F.T.

203. Upon information and belief, Defendants, or any of them, acted maliciously and without justification by interfering with F.F.T.'s relationship with one or more of F.F.T.'s clients.

204. Defendants' wrongful interference with F.F.T.'s business relationships with F.F.T.'s clients as alleged herein directly and proximately damaged F.F.T.

205. F.F.T. will be irreparably harmed unless Defendants are enjoined from engaging in any such further conduct.

COUNT III
(Wrongful Interference with Contractual Relationships)

206. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

207. F.F.T. had a contractual relationship with New York Foundling to provide a variety of FUNCTIONAL FAMILY THERAPYSM services.

208. The New York Foundling Agreement assigned all of New York Foundling's intellectual property in the FFTSM, FFP[®], and FFT-CW[®] methods to F.F.T.

209. Although F.F.T. and New York Foundling terminated the Agreement in 2018, obligations, such as New York Foundling's restriction from sharing F.F.T.'s Functional Family Therapy protocol continue through today.

210. Separately, upon information and belief, New York Foundling agreed in post-termination correspondence with F.F.T. not to use any intellectual property owned by F.F.T. or to provide FFTSM-Model, FFP[®]-Model, FFT-CW[®], or FFT-CIASM services after termination of the New York Foundling Agreement.

211. Upon information and belief, Defendants, or any of them, had knowledge of the contractual relationship between F.F.T. and New York Foundling.

212. Upon information and belief, Defendants, or any of them, induced and continue to induce, New York Foundling's breach of its contractual obligation to assign its intellectual property in the FFTSM, FFP[®], and FFT-CW[®] methods to F.F.T.

213. Upon information and belief, Defendants, or any of them, induced and continue to induce, New York Foundling to breach the New York Foundling Agreement by New York Foundling preparing derivative works based on the FFTSM, FFP[®], and/or FFT-CW[®] methods, and/or based on F.F.T.'s Copyrighted Works.

214. Upon information and belief, Defendants, or any of them, induced and continue to induce, New York Foundling to breach the New York Foundling Agreement by New York Foundling continuing to use F.F.T.'s confidential information and intellectual property, including, but not limited to, further refinements of the FFTSM, FFP[®], and/or the FFT-CW[®] methods, post-termination.

215. Defendants acted intentionally, maliciously, and without justification in inducing and aiding New York Foundling's breach(es) of the residual obligations under the New York Foundling Agreement and the post-termination agreement.

216. Defendants' ongoing interference with the New York Foundling Agreement was, and is, willful, wanton, and in disregard of F.F.T.'s rights.

217. Defendants' conduct alleged in this Count III directly and proximately damaged F.F.T.

218. F.F.T. suffered irreparable harm as a result of Defendants' conduct and will continue to suffer irreparable harm unless this Court enjoins Defendants from engaging in any such further conduct.

COUNT IV
(Unfair Competition – Lanham Act, 15 U.S.C. § 1125(a))

219. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

220. Defendants' statements and actions intentionally misrepresent the effectiveness of the Sexton Derivative in achieving desired outcomes.

221. Defendants' statements and actions falsely attempt to equate the Sexton Derivative with the demonstrated results achieved through use of the FUNCTIONAL FAMILY THERAPYSM protocol owned by F.F.T.

222. Defendants' misrepresentations fail to address the material differences between F.F.T.'s FUNCTIONAL FAMILY THERAPYSM protocol and Defendants' Sexton Derivative.

223. Defendants' statements, including, but not limited to those on Defendant Functional Family Therapy Associates' website, falsely assert that the Sexton Derivative is equivalent in efficacy to F.F.T.'s FUNCTIONAL FAMILY THERAPYSM protocol.

224. Defendants' statements falsely assert that the Sexton Derivative is Blueprint Certified.

225. Defendants' claims are not supported by peer-reviewed scientific studies.

226. Defendants' representations and non-disclosures regarding the Sexton Derivative and Defendants' attempts to equate the Sexton Derivative to F.F.T.'s FFTSM protocol misrepresent the nature of the Sexton Derivative and, therefore, constitute unfair competition, in violation of 15 U.S.C. §1125(a)(1)(A).

227. Additionally, in Defendants' advertisements regarding their FFT-TCM adaptation, Defendants falsely allege that a study completed with New York Foundling showed the efficacy of Defendants' adaptation.

228. Instead, the study Defendants reference was the result of collaboration between the Oregon Research Institute, New York Foundling, New York Administration of Children's Services, and F.F.T., and the study utilized the FFT-CW[®] model developed and owned by F.F.T.

229. Despite receiving third-party admonitions against perpetuating their claims, Defendants continue to falsely advertise their services as being supported by clinical studies that actually relate to F.F.T.'s services and programs instead.

230. Defendants' statements are likely to deceive consumers and influence the purchasing decision of consumers because, among other things, these statements imply that

Defendants can supply comparable or substitute services and that Defendants utilize methods that passed an incredibly high level of clinical rigor and review.

231. These high quality, peer-reviewed characteristics for behavioral services programs are often important to consumers, particularly when those consumers are evaluating behavioral services programs for large scale implementation.

232. Upon information and belief, Defendants' conduct actually and proximately injured F.F.T. because Defendants' conduct incorrectly influenced the decisions of consumers and potential consumers of FUNCTIONAL FAMILY THERAPYSM protocol services, diverted sales and potential sales of F.F.T.'s services to Defendants, and damaged the substantial goodwill associated with F.F.T. and its F.F.T. Marks.

233. Upon information and belief, as a proximate cause of their unlawful conduct, Defendants have or will receive substantial profits to which they are not entitled.

234. Defendants competed unfairly with F.F.T. and realized unjust profits in an amount to be established at trial.

235. Defendants' actions are intentional, willful, and calculated to cause confusion, mistake, and/or deception, entitling F.F.T. to treble damages and attorneys' fees under 15 U.S.C. § 1117.

236. Defendants' actions caused irreparable injury to F.F.T.'s reputation and goodwill and, unless enjoined, Defendants will continue their acts of unfair competition.

237. F.F.T. has no adequate remedy at law for Defendants' conduct and, therefore, is entitled to injunctive relief.

COUNT V
(False Advertising – Lanham Act, 15 U.S.C. § 1125(a))

238. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

239. The statements and actions by Defendants alleged herein intentionally misrepresent the FUNCTIONAL FAMILY THERAPYSM protocol used and disseminated by F.F.T., as well as the demonstrated results of Defendants’ use of their “Functional Family Therapy” protocol.

228. Defendants’ misrepresentations regarding Defendants affiliation with F.F.T.’s FUNCTIONAL FAMILY THERAPYSM protocol constitute false advertising under 15 U.S.C. § 1125(a).

229. Defendants’ conduct, including, but not limited to Defendant Sexton’s portrayal of himself in Defendants’ marketing materials as a developer of F.F.T.’s FUNCTIONAL FAMILY THERAPYSM protocol, upon information and belief, caused and will likely continue to cause confusion, mistake, or deception as to the source or origin of Defendants’ services.

230. Defendant Sexton’s conduct falsely portrays him as a developer of F.F.T.’s FUNCTIONAL FAMILY THERAPYSM protocol.

231. While at the University of Utah, Dr. Alexander published his first book on the FUNCTIONAL FAMILY THERAPYSM protocol while Defendant Sexton was still a graduate student at Florida State University.

232. Upon information and belief, Defendant Sexton did not perform any work related to the FUNCTIONAL FAMILY THERAPYSM protocol until the mid- to late 1990s, nearly twenty-five years after Dr. Alexander’s first publication on the subject.

233. Defendants also falsely assert that Defendant Functional Family Therapy Associates is a “fully authorized training organization” that uses the most recent Blueprint Functional Family Therapy Manual.

234. The Blueprints for Healthy Youth Development organization website, however, does not include any mention of Defendants with regard to approved trainers for the FUNCTIONAL FAMILY THERAPYSM protocol.

235. The Blueprints for Healthy Youth Development organization website only recommends Plaintiff F.F.T. and Dr. Alexander for information regarding training for the FUNCTIONAL FAMILY THERAPYSM protocol.

236. Defendants caused these false statements to enter interstate commerce by, including but not limited to, posting these statements on Defendant Functional Family Therapy Associates' website.

237. Upon information and belief, Defendants' conduct caused and is likely to continue to cause confusion, mistake, or deception as to whether Defendants' services are associated, affiliated, or connected with, or approved or sponsored by, F.F.T., which conduct constitutes false advertising under 15 U.S.C. § 1125(a).

238. Defendants' actions are intentional, willful, and calculated to cause confusion, mistake, and/or deception, entitling F.F.T. to treble damages and attorneys' fees under 15 U.S.C. § 1117.

239. Defendants' actions caused irreparable injury to F.F.T.'s reputation and goodwill and, unless enjoined, Defendants will continue their acts of unfair competition.

240. F.F.T. has no adequate remedy at law for Defendants' conduct and, therefore, is entitled to injunctive relief.

Count VI

(Service Mark Infringement –15 U.S.C. § 1114 and 15 U.S.C. § 1125(a))

241. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

242. F.F.T. has continuously used the F.F.T. Marks in interstate commerce in connection with its associated training and therapy methods since at least as early as 2013.

243. F.F.T. has priority of use over Defendants' use of the Infringing FFT Marks.

244. Defendants' protocol naming conventions are confusingly similar to Plaintiff's F.F.T. Marks in appearance, commercial impression, and meaning.

245. Defendants' Infringing FFT Marks are confusingly similar to Plaintiff's F.F.T. Marks in appearance, commercial impression, and meaning.

246. F.F.T.'s and Defendants' services are highly related, in direct competition with one another, and are marketed to, likely to be utilized by, and actually utilized by, the same clients and potential clients.

247. Defendants' use of the Infringing FFT Marks caused and is likely to continue to cause consumer confusion, mistake, or deception as to the source, origin, sponsorship, affiliation, association, or approval of Defendants' services.

248. Defendants' use of the Infringing FFT Marks is likely to mislead consumers of Plaintiff's and Defendants' respective services to F.F.T.'s detriment.

249. Defendants' adoption and use of the Infringing FFT Marks is not authorized or licensed by F.F.T.

250. Defendants acted with full knowledge of F.F.T.'s rights in and to the F.F.T. Marks and with the intent to usurp F.F.T.'s rights therein.

251. Defendants' adoption and use of the Infringing FFT Marks constitute an attempt to unlawfully trade on the goodwill and reputation associated with the FFTSM protocol and F.F.T.

252. Defendants' unauthorized use of the Infringing FFT Marks constitutes infringement of F.F.T.'s exclusive rights in and to the F.F.T. Marks, including but not limited to infringement of F.F.T.'s federally registered service marks in violation of 15 U.S.C. § 1114.

253. Defendants' unauthorized use of the Infringing FFT Marks constitutes infringement of F.F.T.'s exclusive rights in and to the F.F.T. Marks, including but not limited to infringement of F.F.T.'s common law service marks in violation of 15 U.S.C. § 1125.

254. Defendants' adoption and use of the Infringing FFT Marks resulted in injury and will continue to injure F.F.T. because it influenced the purchasing decisions of consumers and potential consumers of family and youth psychotherapy and counseling services, diverted sales and potential sales to Defendants, and damaged the substantial goodwill associated with F.F.T. and the F.F.T. Marks.

255. Upon information and belief, as a proximate cause of their unlawful conduct, Defendants have or will receive substantial profits to which they are not entitled.

256. Defendants' actions were and continue to be, intentional, willful, and calculated to cause confusion, mistake, or deception, entitling F.F.T. to enhanced damages and attorneys' fees under 15 U.S.C. § 1117.

257. Defendants' conduct caused, and will continue to cause, damage and irreparable harm to F.F.T. unless this Court enjoins Defendants.

258. F.F.T. has no adequate remedy at law for such conduct, and F.F.T. is entitled to injunctive relief.

COUNT VII
(Common Law Unfair Competition / Service Mark Infringement)

259. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

260. F.F.T. has continuously used its FFTSM and FUNCTIONAL FAMILY THERAPYSM brands in interstate commerce, including but not limited to in Indiana, in connection with family-based therapy interventions since at least as early as 1998.

261. F.F.T. has priority of use over Defendants' use of the Infringing FFT Marks.

262. Defendants' Infringing FFT Marks are confusingly similar to Plaintiff F.F.T.'s FFTSM and FUNCTIONAL FAMILY THERAPYSM brands in appearance, commercial impression, and meaning.

263. Further, Plaintiff's and Defendants' services are highly related, in direct competition with one another, and are marketed to, likely to be utilized by, and actually utilized by, the same clients and potential clients.

264. Defendants' unauthorized adoption and use of the Infringing FFT Marks, upon information and belief, caused and will likely continue to cause confusion, mistake, or deception as to the source or origin of Defendants' services, and caused and is likely to continue to cause confusion, mistake, or deception concerning whether Defendants' services are associated, affiliated, or connected with, or are approved or sponsored by F.F.T., which activities constitute unfair competition and service mark infringement in violation of the common law of the State of Indiana.

265. Upon information and belief, as a proximate cause of their unlawful conduct, Defendants have or will receive substantial profits to which they are not entitled.

266. F.F.T. suffered damages as a result of Defendants' infringing conduct.

267. Defendants caused irreparable injury to F.F.T.'s reputation and goodwill and, unless enjoined, Defendants will continue their acts of unfair competition.

268. F.F.T. has no adequate remedy at law for this conduct and is, therefore, entitled to injunctive relief.

COUNT VIII
(Unjust Enrichment)

269. F.F.T. incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth here.

270. F.F.T. derives significant commercial value and goodwill from the ownership and use of the F.F.T. Marks.

271. Pursuant to the Settlement Agreement, F.F.T. conferred on Defendant Sexton, individually, the benefit of a personal license to use F.F.T.'s then-existing FUNCTIONAL FAMILY THERAPYSM training materials so long as Sexton did not reference F.F.T., Mr. Kopp, or Dr. Alexander in connection with Sexton's use of the training materials. *See* Exhibit N.

272. The Settlement Agreement limited Defendant Sexton's benefit to himself and expressly did not confer any rights, benefits, or obligations upon any person other than F.F.T. and Sexton.

273. However, Defendants, through their actions as alleged herein, obtained for themselves, and at F.F.T.'s expense, use of F.F.T.'s then-existing FUNCTIONAL FAMILY THERAPYSM training materials – a benefit that F.F.T. would not confer to others without compensation.

274. To create the benefit of its FUNCTIONAL FAMILY THERAPYSM training materials, F.F.T. spent substantial time, money, and resources developing, marketing, advertising, and promoting the services it provides under the F.F.T. Marks.

275. Nevertheless, Defendants were unjustly enriched by enjoying, and continuing to enjoy, benefits of the license that F.F.T. conveyed solely to Sexton under the Settlement Agreement.

276. Moreover, Defendants' misleading advertisements, referencing F.F.T., Mr. Kopp, and/or Dr. Alexander in connection with Sexton's use of the training materials, conveys a substantial benefit on Defendants that without payment to F.F.T. – which payment every other consumer provides to F.F.T. in order to benefit from such materials – would be unjust.

277. Based upon the foregoing, it would be unjust for Defendants to retain these benefits without restitution to F.F.T.

278. Defendants' conduct alleged herein constitutes unjust enrichment of Defendants at F.F.T.'s expense, in violation of the common law of the State of Indiana.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff F.F.T. respectfully requests that the Court:

A. Enter judgment declaring that Defendant Sexton breached the terms of his Settlement Agreement with F.F.T.;

B. Enter judgment declaring that Defendants wrongfully interfered with F.F.T.'s current and prospective business relationships including, but not limited to, F.F.T.'s current and prospective business relationships with Valley Youth House, VisionQuest, Cayuga Centers, and New York Foundling;

C. Enter judgment declaring that Defendants wrongfully interfered with F.F.T.'s contractual relationships, including, but not limited to, F.F.T.'s contractual relationships with Valley Youth House, VisionQuest, Cayuga Centers, and New York Foundling;

D. Enter judgment declaring that Defendants competed unfairly with F.F.T.;

- E. Enter judgment declaring that Defendants committed false advertising;
- F. Enter judgment that Defendants infringed F.F.T.'s rights in the F.F.T. Marks, or any of them;
- G. Enter judgment declaring that Defendants' actions resulted in unjust enrichment of Defendants;
- H. Enter judgment declaring that Defendants' wrongful actions were willful;
- I. Enter judgment declaring that Defendants' actions made this an exceptional case;
- J. Permanently enjoin Defendant Sexton from further breaches of the terms of his Settlement Agreement with F.F.T.;
- K. Permanently enjoin Defendants from interfering wrongfully with F.F.T.'s current and prospective business relationships;
- L. Permanently enjoin Defendants from interfering wrongfully with F.F.T.'s contractual relationships;
- M. Permanently enjoin Defendants from competing unfairly with F.F.T.;
- N. Permanently enjoin Defendants from committing false advertising regarding Defendants' programs and Defendants' relationship with F.F.T.;
- O. Permanently enjoin Defendants from using the F.F.T. Marks, the Infringing FFT Marks, and any mark confusingly similar to the F.F.T. Marks in connection with any of Defendants' psychotherapy or family counseling services;
- P. Order Defendants to pay to F.F.T. the actual damages that F.F.T. suffered as a result of Defendant Sexton's breach of contract; Defendants' wrongful interference with F.F.T.'s current and prospective business relationships, including, but not limited to, Defendants'

wrongful interference with F.F.T.'s contractual relationship with New York Foundling; Defendants' unfair competition with F.F.T.; Defendants' false advertising; Defendants' infringement; and Defendants' unjust enrichment, each of the foregoing in the amount demonstrated at trial;

Q. Order Defendants to disgorge all profits attributable to their breach of contract, their wrongful interference with F.F.T.'s current and prospective business relationships, their wrongful interference with F.F.T.'s contractual relationship with New York Foundling and with F.F.T.'s other clients and customers, their unfair competition with F.F.T., their false advertising, infringement, and their unjust enrichment;

R. Order Defendants to pay F.F.T. treble and enhanced damages, F.F.T.'s attorneys' fees, and F.F.T.'s costs as provided for by federal and state statutes;

S. Permanently enjoin Defendants from issuing false statements regarding F.F.T.'s services and/or the clinical data that support F.F.T.'s services;

T. Order Defendants to pay F.F.T. prejudgment and post-judgment interest on all monetary awards at the highest rate allowed under applicable law; and

U. Grant F.F.T. such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiff F.F.T. demands a jury trial on all issues so triable.

Dated: October 11, 2019

Respectfully submitted,

/s/ Holiday W. Banta

Holiday W. Banta

T. Earl LeVere *pro hac vice*

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Attorneys for Plaintiff F.F.T., LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on October 11, 2019, the foregoing Plaintiff's First Amended Complaint was filed electronically using the CM/ECF system. Service of this filing will be made via first class mail or, for all ECF-registered counsel, by operation of the Court's electronic filing system. Such parties may access this filing through the Court's system.

Garry L. Founds
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