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CHOICE, INC. OF TEXAS d/b/a CAUSEWAY	:	Index No. 04-1581
MEDICAL CLINIC, JAMES DEGUEURCE, M.D.,	:	
On Behalf of Himself and Patients Past, Current and	:	Section "K"
Future, PRISCILLA CABRERA, JANE DOE ONE,	:	
JANE DOE FOUR, <i>et al.</i> , On Behalf of Themselves	:	Hon. Stanwood Duval, Jr.
and All Others Similarly Situated,	:	
	:	
Plaintiffs,	:	<u>FIRST AMENDED</u>
	:	<u>COMPLAINT</u>
v.	:	
	:	
WILLIAM A. GRAHAM,		
Defendant.		
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Plaintiffs Choice Inc. of Texas d/b/a Causeway Medical Clinic; James DeGueurce, M.D., on behalf of himself and patients past, current and future; Priscilla Cabrera; Jane Doe One; and Jane Doe Four, *et al.*, upon personal knowledge as to themselves and upon information and belief as to all other matters, by and through their undersigned attorneys, bring this complaint against the Defendant and his agents, and in support thereof hereby allege as follows:

INTRODUCTION

1. This is an action for trademark infringement, dilution, false advertising, unfair competition, intentional infliction of emotional distress, fraud, detrimental reliance, breach of duty, and tortious interference with business relations, arising out of actions initiated by the Defendant, William A. Graham (“Graham”).

2. Graham repeatedly, willfully and intentionally acted to, and succeeded in, interfering with women's efforts to exercise their constitutionally protected right to obtain an abortion through infringement, false advertising, fraud and various forms of emotional and tortious

manipulation. Graham continues to engage in his willful and malicious tactics in an effort to prevent women from exercising their choice to obtain an abortion.

3. This action arises under the Lanham Act, 15 U.S.C. § 1125(a) (federal statutory trademark infringement and unfair competition); 15 U.S.C. § 1125(a)(1) (federal false advertising or promotion); LA. REV. STAT. ANN. § 51:1404 *et seq.* (2004) (Louisiana unfair competition); LA. REV. STAT. ANN. § 51:223.1 (2004) (Louisiana dilution); LA. REV. STAT. ANN. §§ 51:222(1) & (2) (2004) (Louisiana trademark infringement); as well as various Louisiana statutory tort claims.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of Congress relating to trademarks); and 28 U.S.C. § 1367 (supplemental jurisdiction).

5. Venue for this action is properly founded in this Court under 28 U.S.C. § 1391(b)(2).

PARTIES

I. PLAINTIFFS

6. Choice, Inc. of Texas d/b/a Causeway Medical Clinic (“Causeway”) is a corporation organized and existing under the laws of Texas with its principal place of business at 15531 Kuykendahl, Suite 250, Houston Texas, 77090. Plaintiff Causeway has a registered office in Louisiana which is located at 8550 United Plaza Boulevard, Baton Rouge, Louisiana 70809 and runs an outpatient medical facility with its principal place of business at 3040 Ridgelake Drive, Metairie, Louisiana 70002. Plaintiff Causeway registered CAUSEWAY MEDICAL CLINIC as a trade name with the Louisiana Secretary of State on August 16, 1999. A true and correct copy of the proof of registration is attached hereto as Exhibit A. Plaintiff Causeway first used

CAUSEWAY MEDICAL CLINIC as a trade name in Louisiana on August 5, 1999. Plaintiff Causeway is also known and referred to by consumers as CAUSEWAY. Plaintiff Causeway sues in its capacity as a corporation for false advertising, unfair competition and infringement and dilution of its marks.

7. James DeGueurce, M.D. (“Dr. DeGueurce”) is a board-certified obstetrician/gynecologist licensed to practice medicine in the State of Louisiana. Dr. DeGueurce provides a range of reproductive health care services at Plaintiff Causeway, including abortions, pap smears, contraceptive counseling, and post-operative examinations. Dr. DeGueurce is paid on a “fee for service” basis. Dr. DeGueurce is also an Assistant Professor of Obstetrics and Gynecology at Louisiana State University Medical Center in Shreveport, Louisiana. Dr. DeGueurce sues on his own behalf and on behalf of past, current and future patients who have contacted or will contact Defendant.

8. Priscilla Cabrera (“Cabrera”) is a 33-year old woman who was deceived and misled by Defendant’s false advertising and false representations regarding the provision of abortions and/or abortion referral services. Cabrera sues on behalf of herself and all the past, current and future women who have been or will be deceived and misled by Defendant’s false advertising and false representations that he provides abortions and/or abortion referral services.

9. Jane Doe One (“Doe One”) is a 21-year old college student who was deceived and misled by Defendant’s false advertising and other false representations regarding the provision of abortions and/or abortion referral services. Doe sues on behalf of herself and all the past, current and future women who have been or will be deceived and misled by Defendant’s false advertising and false representations that he provides abortions and/or abortion referral services.

10. Jane Doe Four (“Doe Four”) is a 22-year old mother of one who was deceived and misled by Defendant’s false advertising and other false representations regarding the provision of abortions and/or abortion services. Doe Four sues on behalf of herself and all the past, current and future women who have been or will be deceived and misled by Defendant’s false advertising and false representations that he provides abortions and/or abortion referral services.

II. DEFENDANT

11. Plaintiffs believe, and on that basis allege, that Graham, in his individual capacity, resides at 5216 Meadowdale Street, Metairie, Louisiana 70006. Graham has repeatedly used improper and deceitful means to interfere with a woman’s constitutionally protected right to obtain an abortion. Graham operates under the names “Causeway Center for Women” and/or “Causeway a Women’s Clinic.”

CLASS ACTION ALLEGATIONS

12. Plaintiffs Cabrera, Doe One, and Doe Four (“Individual Plaintiffs”) bring this action as a class action pursuant to Rules 23(a), 23(b)(1)(A) & (B) and 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the class of women (the “Class”) consisting of all persons who have been, who are now, and who will be subjected to various misleading, deceptive, and tortious acts committed by Graham and who have been, are, or will be damaged thereby.

13. The Class is so numerous that joinder of all members is impracticable. Graham has falsely represented himself to Individual Plaintiffs and unnamed women in such Class as someone able to provide abortions or abortion referrals for at least ten years. While the exact number of Class members is unknown to Individual Plaintiffs at this time and can only be ascertained through appropriate discovery, Individual Plaintiffs believe that there are hundreds of women in the Class.

14. Individual Plaintiffs' claims are typical of the claims of the members of the Class; all members of the Class are similarly affected by Graham's wrongful conduct in violation of both federal and state law as complained of herein.

15. Individual Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel who are competent and experienced and have successfully prosecuted several other class actions concerning interference with a woman's legal right to choose abortion. Additionally, the representative parties have no conflict of interest with other members of the Class.

16. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether Graham purposefully and willfully depicted himself as an abortion provider or abortion referral service;

(b) Whether Graham misrepresented, omitted or suppressed material facts as to his ability or intention to provide, or refer women to a provider of, abortions through acts or failures to act as alleged herein;

(c) Whether Graham knew such depictions would induce members of the Class to rely on the aforementioned depictions to their detriment; and

(d) Whether Graham's actions proximately caused harm to the members of the Class.

17. Individual Plaintiffs' claims may be maintained as a class action under Rules 23(b)(1)(A) & (B) because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to Graham.

Additionally, with respect to individual members of the Class, individual adjudications would be dispositive of the interests of other members not party to the adjudications and would create a risk of substantially impairing or impeding their ability to protect their interests.

18. Individual Plaintiffs' claims may be maintained as a class action under Rule 23(b)(2) because Graham has acted or refused to act on grounds generally applicable to the proposed Individual Plaintiffs and the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole. In particular, Graham's conduct is so instantly deleterious in its effect upon all Class Members who are deceived by his misrepresentations that such relief applies generally to all of the members of the Class.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FACTUAL ALLEGATIONS

I. ABORTION PRACTICE AND SAFETY

20. Most abortions performed in Louisiana, as in the rest of the United States, are performed during the first trimester of pregnancy. Approximately 90% of the abortions performed in the United States are performed through the first thirteen weeks of fetal gestation, based on the first day of the woman's last menstrual period ("LMP").

21. Abortions are performed for a variety of compelling reasons, and for women experiencing a variety of medical, social, psychological, and age-related conditions. Some women seeking abortions suffer from medical conditions existing prior to pregnancy, and others

develop serious health problems because of their pregnancies, including gestational diabetes, preeclampsia, pregnancy-induced hypertension, and depression. For such women, carrying a pregnancy to term could endanger their health or lives.

22. Some women seek abortions because they are pregnant as a result of rape or incest, or because there are or may be genetic anomalies in the fetus, including those that may be fatal to the fetus. Others are not prepared, for a variety of reasons, to raise a child.

23. Abortion at any stage of pregnancy is considered one of the safest surgical procedures. Major complications will occur in less than one-half of one percent of abortions.

24. Delay in the performance of an abortion, however, increases the health risk that women face in connection with the procedure. The risk of major medical complications from abortion increases approximately 20% with each week of gestation from seven weeks onward, and the risk of death increases 20% with each week of gestation from eight weeks to fifteen weeks.

25. The cost of an abortion increases incrementally as the pregnancy advances. Accordingly, if Graham's deception delays a woman in obtaining an abortion, it will likely increase the cost of the procedure. For some women, increased cost and delay will make the procedure impossible to obtain.

26. In general, continued pregnancy and childbirth present higher risks to women's health and lives than abortion does, and these risks are even higher for women with preexisting health conditions, such as hypertension, obesity, heart disease, cancer, diabetes, lupus, and other physical and mental health disorders.

27. Carrying an unwanted pregnancy to term may cause the woman to experience severe negative psychological consequences and possibly lifelong distress.

28. Children of unwanted pregnancies are at high risk for abuse, neglect, mental illness and are generally susceptible to experiencing a lowered quality of life.

II. CAUSEWAY MEDICAL CLINIC

29. Plaintiff Causeway began operation in 1978 and operates a women's health care facility in Metairie, Louisiana. Plaintiff Causeway provides a range of reproductive health care services, including abortions up to 24 weeks of pregnancy as of the LMP, non-directive options counseling, contraceptive counseling and services, pap smears, pregnancy testing, referrals for appropriate health services at other facilities, and post-operative examinations and counseling. All services are provided on an outpatient basis.

30. Due to the scarcity of abortion services in the region, women from Mississippi and other surrounding states often utilize Plaintiff Causeway's services, in addition to Louisiana residents.

31. Women who utilize Plaintiff Causeway's services vary greatly in age, race, and socio-economic background. As a result, Plaintiff Causeway serves the obstetrical and gynecological needs of a large cross-section of the Louisiana community and that of surrounding states by providing confidential and safe medical care.

32. Choice Inc. of Texas registered the trade name CAUSEWAY MEDICAL CLINIC with the Louisiana Secretary of State on August 16, 1999.

33. Starting in 1999 until August 2000, Plaintiff Causeway advertised in the BellSouth yellow pages for the New Orleans area ("BellSouth Yellow Pages") under the heading "Abortion Services" as both CAUSEWAY MEDICAL SUITE and CAUSEWAY MEDICAL CLINIC. Both listings had identical telephone numbers and street addresses.

34. Since 2000, Plaintiff Causeway has used only the name CAUSEWAY MEDICAL CLINIC in advertising and phone listings. A true and correct copy of Plaintiff Causeway's 2004 BellSouth Yellow Pages listing is attached hereto as Exhibit B.

III. GRAHAM'S DECEPTIVE AND CONFUSING FALSE ADVERTISING

35. Graham has repeatedly, willfully, and maliciously interfered with, and continues to interfere with, Plaintiff Causeway's provision of services, and women's access to abortion services, through infringement, false advertising, deceit, manipulation, and fraud.

36. In or around January 1993, Graham listed "Causeway A Women's Clinic" in the BellSouth Yellow Pages in direct proximity to the CAUSEWAY advertisement without providing an actual address, and without disclaiming association with Plaintiff Causeway.

37. In or around January 1995, Graham changed his listing in the BellSouth Yellow Pages from "Causeway A Women's Clinic" to "Causeway Center For Women."

38. In or around January 1995 to the present, Graham listed "Causeway Center For Women" in the BellSouth Yellow Pages in direct proximity to Plaintiff Causeway's advertisement without providing an actual address and without disclaiming association with Plaintiff Causeway. A true and correct copy of Graham's 2004 and 2003 listings are attached hereto as Exhibit B & C, respectively.

39. Graham intentionally lists his number under the service identification in the BellSouth Yellow Pages that states:

Businesses at this heading assert that they perform abortions or refer clients to businesses who do.

Graham lists his number in this section with the specific intent of misleading women seeking abortions or abortion referrals into calling his number.

40. Graham intentionally did not list “Causeway Center For Women” under the “Abortion Alternatives” section directly preceding the aforementioned service heading which explicitly states:

Organizations listed at this heading assert that they provide assistance, counseling, and/or information on abortion alternatives and that they do not provide abortion services or counseling or information on the attainment of abortion.

41. Graham’s “clinic” is also listed in the Sunshine Pages for Southern Louisiana yellow pages (“Sunshine Pages”) and, on its website, as “Causeway Center For Women.” A true and correct copy of the Sunshine Pages listing is attached hereto as Exhibit D.

42. Graham intentionally lists his number under the service identification in the Sunshine Pages and the online directory that states: “Abortion Information & Services.” Graham lists his number in this section with the specific intention of misleading women seeking abortions or referrals to abortion providers into calling his number.

43. Graham intentionally did not list his number under the “Abortion Alternatives” service identification in the Sunshine Pages and the online directory.

44. Graham’s “clinic” is listed on the Smartpages.com website as “Causeway Center For Women.” A true and correct copy of the Smartpages.com listing is attached hereto as Exhibit E.

45. Graham intentionally lists his number for “Causeway Center For Women” on Smartpages.com under the service identification “Abortion Providers.” Graham lists his number in this section with the specific intention of misleading women who are seeking abortions or referrals to abortion providers into calling his number.

46. Graham intentionally did not list his number under the “Abortion Alternatives” service identification on the Smartpages.com online yellow pages directory.

47. Graham's "clinic" is listed on the dexonline.com online directory as "Causeway Center For Women." A true and correct copy of the dexonline.com listing is attached hereto as Exhibit F.

48. Graham intentionally lists his number for "Causeway Center For Women" on dexonline.com under the service identification "Abortion Providers." Graham lists his number in this section with the specific intention of misleading women seeking abortions or referrals to abortion providers into calling his number.

49. Graham intentionally did not list his number under the "Abortion Alternatives" service identification on the dexonline.com online yellow pages directory.

50. Graham has intentionally and willfully listed "Causeway A Women's Clinic" and "Causeway Center For Women" in the aforementioned ways in order to confuse women into believing that he is Plaintiff Causeway, is affiliated with or endorsed by Plaintiff Causeway, and/or provides abortions or referrals to abortions.

IV. GRAHAM'S ADDITIONAL MISREPRESENTATIONS OF HIS STATUS AS AN ABORTION PROVIDER OR REFERRAL SERVICE AND HIS MISREPRESENTATIONS ABOUT PLAINTIFF CAUSEWAY

51. In or around January 1995, women began and continue to call "Causeway Center For Women" intending to schedule appointments for abortion procedures, or to obtain referrals for an abortion after finding the number in the yellow pages or after receiving the number from directory assistance. Such women include all of the Individual Plaintiffs, women similarly situated, and the patients represented by Dr. DeGueurce.

52. Graham informs women who call him that his "operation" is an abortion referral service that provides abortions through private obstetricians/gynecologists and other physicians.

53. Graham informs women who call him that he can and will arrange an appointment with a physician who will perform an abortion at a price well below market prices. He further

informs them that the price will remain the same regardless of the stage of pregnancy at which they obtain the abortion.

54. Graham dispenses “medical” advice to women, informing them that, among other things, physical symptoms of pregnancy “will pass,” and that undergoing the procedure later in the pregnancy is “better” for the health of the women. On information and belief, Graham is not licensed as a physician or to provide medical care under the laws of Louisiana or any other jurisdiction.

55. Some women who have phoned and continue to phone Graham’s “service” do so under the mistaken impression that they are phoning Plaintiff Causeway to schedule appointments for abortion procedures or to obtain referrals for an abortion.

56. Some women who have and continue to call Graham have previously made appointments with Plaintiff Causeway and mistakenly phone Graham’s “service” because they are confused by the yellow pages’ or directory assistance listings.

57. For example, Plaintiffs Doe One called Graham believing that they were calling Plaintiff Causeway.

58. Graham convinced the women to either cancel their appointments at Plaintiff Causeway (in the case of Doe One) or to have him “provide” them with abortion services, appointments, or referrals instead (in the case of Doe Four).

59. Graham falsely informs such women that Plaintiff Causeway is unsafe for women who use their services. Graham uses horrifying and false scare tactics, including but not limited to, telling patients: that there are numerous lawsuits pending against Plaintiff Causeway for being a “butcher shop,” that women’s lives are put at risk by going to the clinics, that the clinics are “unsanitary,” and that the clinics do not look after women’s health.

60. Graham falsely informs women that Plaintiff Causeway does not provide reputable services by, among other things, insinuating that doctors at Plaintiff Causeway are those who cannot make it in the real world, that doctors at Plaintiff Causeway are unsafe, and that doctors at Plaintiff Causeway tell women that they are farther along in their pregnancies than they really are in order to charge more money for the procedures.

61. Graham has made or will make some or all of the misrepresentations described herein as well as other misrepresentations to all of the Individual Plaintiffs, women similarly situated, and the patients represented by Dr. DeGueurce.

62. For example, on December 26, 2003, Cabrera phoned 504-834-5483 after looking up “Abortion Providers” in the BellSouth Yellow Pages. Graham answered the phone and told her to call him “Mr. Glenn.”

63. Cabrera told Graham that she wanted to terminate her pregnancy, and Graham told her that she “should go through him to obtain a procedure.” Graham informed Cabrera that he provided “a service that connected women who wanted abortions with private practice physicians.”

64. Graham told Cabrera that clinics that provided abortions were “unsanitary” and “a risk to women.”

65. Graham asked Cabrera if she were suffering any side effects from the pregnancy. Graham then informed her that the side effects that she complained of “would pass.”

66. Graham told Cabrera that he could arrange for her to obtain an abortion until she was 30 weeks pregnant.

67. Graham informed Cabrera that he would set up an appointment for her on or about January 10, 2004, when she would be eight weeks into pregnancy.

68. Similarly, on or around January 30, 2004, Doe One called directory assistance and asked for the number of "Causeway." Doe One was given the number "504-834-5483," the number listed for Graham's "Causeway Center For Women." Graham answered the phone. Doe One asked Graham if she were speaking with Causeway and Graham responded, "Yes."

69. Doe One asked Graham if she could arrange for an abortion through his service. Graham told Doe One that he acted as "a referral service" to put women in contact with private doctors who performed abortions and that he would get Doe One an appointment "with a private OB/GYN."

70. Graham informed Doe One that he had been employed by Plaintiff Causeway.

71. Graham told Doe One that Plaintiff Causeway had "40 to 50 lawsuits filed against them" and that they were "a butcher shop."

72. Graham told Doe One that the Louisiana physicians to whom he referred patients performed the procedure up to the 30th week of pregnancy (in the third trimester).

73. Graham made medical inquiries of Doe One, including the date of her last menstrual cycle.

74. Graham told Doe One, who was at least 18 weeks into her pregnancy, that her procedure would only take one day when she inquired about the duration of the procedure.

75. Graham told Doe One that he would try to schedule an appointment for an abortion for her on January 31, 2003, or otherwise on February 7, 2003, when she would be approximately 24 weeks into her pregnancy.

76. Similarly, in or around December 2003, Doe Four made phone calls to several abortion providers to compare prices and details.

77. Doe Four phoned “504-834-5483” after looking up the abortion providers in the yellow pages.

78. Graham told Doe Four that he arranged appointments with private physicians for women seeking abortions and that he would arrange one for her for the next week.

79. Graham told Doe Four that several clinics in the area had been sued because of the poor medical care they provided.

V. GRAHAM’S INTENT TO PREVENT WOMEN FROM OBTAINING ABORTIONS

80. Graham has intentionally acted and continues to act intentionally to deceive and confuse women into believing that he has and will obtain appointments for them to have abortions.

81. After the initial phone call, Graham subsequently represents to women who have called him that he has scheduled appointments for them with an abortion provider on a specific day. Graham informs the women that, in the interest of their security and that of the abortion provider, he cannot identify the name or the address of the provider, nor the time of the appointment, in advance. Graham explains that he will provide all necessary information to the women on the day of the appointment.

82. Graham does not provide any additional information to the women on the day that he represented to them that the procedure was scheduled. Instead, Graham explains that the provider needed to reschedule the appointment. Graham then repeats the “scheduling” and “rescheduling” routine, with the intent of delaying the women from procuring a procedure until they are well into the third trimester of pregnancy, at which point the women cannot obtain a legal abortion in Louisiana or anywhere else in the United States, and, thus, forcing the women to carry a fetus to term.

83. Based on Graham's representations, women's reliance on his assertions is reasonable.

VI. INTENDED AND ACTUAL RESULTS OF GRAHAM'S ACTIONS

84. Graham's misrepresentations delay some women from obtaining abortions until the third trimester of pregnancy, forcing them to undergo the associated increased risks with continuing a pregnancy to term and to bear a child against their wishes.

85. Graham's misrepresentations force some women to delay the point in time at which they would otherwise have obtained an abortion, increasing the costs associated with the procedure. Women who are delayed in obtaining an abortion incur greater expense and are subject to greater health risks than they otherwise would have been.

86. The delay caused by Graham's actions make the procedure unaffordable for some women. Those women unable to procure the additional funds are forced to undergo the increased risks associated with carrying a pregnancy to term and to bear a child against their wishes.

87. Based on Graham's misrepresentations, some women who carry their pregnancies to term because of Graham's actions fail to obtain pre-natal care due to their belief that they are going to obtain an abortion. The resulting lack of care has compromised the health and safety of the women and their babies during the course of their pregnancies.

88. As a direct result of Graham's misrepresentations, at least one woman was forced to carry her baby to term although she had sought an abortion because she believed that the baby would suffer from a life-threatening, genetic disorder and that she would be unable to properly care for the new baby and her one-year-old son who also suffers from the same disease.

89. By employing some or all of the tactics described herein, Graham has caused and will continue to cause all of the Individual Plaintiffs, the women similarly situated, and the

patients represented by Dr. DeGueurce to delay or forego a desired abortion and to suffer physical, emotional, and economic harm.

FIRST CLAIM FOR RELIEF

(FEDERAL TRADEMARK INFRINGEMENT)

(Plaintiff Causeway)

90. Plaintiffs reallege each allegation set forth in Paragraphs 1 through 89, inclusive, and incorporate them by reference herein.

91. The above acts by Graham constitute trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

92. Graham's wrongful acts have misrepresented and continue to misrepresent the source and nature of the so-called services that he provides through the use of a mark or marks confusingly similar to Plaintiff Causeway's CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks.

93. Graham's actions in violation of Plaintiff Causeway's marks have been deliberate, willful, and in complete disregard of Plaintiff Causeway's rights.

94. As a direct and proximate result of Graham's wrongful conduct, Plaintiff Causeway has been damaged by Graham's wrongful acts directed at patients, and such damage will continue unless the Court enjoins such acts.

95. Plaintiff Causeway has been damaged and will continue to be damaged by Graham's comments about its facilities and reputation.

96. Plaintiff Causeway has been damaged and will continue to be damaged by not being able to serve women who have been and will be diverted and confused by Graham's misrepresentations and infringement.

97. Plaintiff Causeway has no adequate remedy at law for Graham's continuing violation of its rights.

SECOND CLAIM FOR RELIEF

(FALSE ADVERTISING UNDER FEDERAL LAW)

(Plaintiffs Causeway and Dr. DeGueurce on behalf of himself)

98. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 97, inclusive, and incorporate them by reference herein.

99. The above acts by Graham constitute acts of false advertising in violation of the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A) & (B).

100. Graham has used and continues to use in commerce false and misleading descriptions of fact, or false or misleading representations of fact.

101. Graham has misrepresented and continues to misrepresent the nature, characteristics, and qualities of his so-called services to patients.

102. Graham's conduct is likely to cause and has caused confusion.

103. Graham's actions have been and are deliberate and willful.

104. As a direct and proximate result of Graham's wrongful conduct, Plaintiff Causeway and Dr. DeGueurce have been damaged by Graham's wrongful acts directed at women, and such damage will continue unless the Court enjoins these acts.

105. Plaintiff Causeway and Dr. DeGueurce have no adequate remedy at law for Graham's conduct.

THIRD CLAIM FOR RELIEF

(UNFAIR COMPETITION UNDER FEDERAL LAW)

(Plaintiff Causeway)

106. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 105, inclusive, and incorporate them by reference herein.

107. The above acts by Graham constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

108. As a direct and proximate result of Graham's wrongful conduct, Plaintiff Causeway has been and will be deprived of the value of its commercial assets, reputation, and goodwill.

109. As a direct and proximate result of Graham's wrongful conduct, Plaintiff Causeway has been damaged by Graham's wrongful acts directed at its patients, and such damage will continue unless the Court enjoins Graham's acts.

110. Plaintiff Causeway has no adequate remedy at law for Graham's continuing violation of its rights.

FOURTH CLAIM FOR RELIEF

(UNFAIR COMPETITION UNDER STATE LAW)

(All Plaintiffs)

111. Plaintiffs reallege each allegation set forth in Paragraphs 1 through 110, inclusive, and incorporate them by reference herein.

112. The above acts by Graham constitute unfair competition in violation of LA. REV. STAT. ANN. § 51:1401 *et seq.* (2004).

113. Through the use of the CAUSEWAY mark in his advertising and in falsely holding himself out as an abortion referral service, Graham's conduct has and currently creates

false and misleading information about the services he provides, and, thus, makes it possible for him to regularly deceive women seeking abortion services.

114. Graham engages in unfair methods of competition as well as unfair and deceptive acts and practices which offend public policy and which are unethical, oppressive, unscrupulous and substantially injurious to Plaintiffs.

115. As a proximate result of Graham's knowing use of unfair and deceptive actions and practices, the Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce have suffered and will continue to suffer an ascertainable loss of income and financial resources and, in some cases, their constitutionally protected right to obtain an abortion.

116. As a proximate result of Graham's knowing use of unfair and deceptive actions and practices, Plaintiffs Causeway and Dr. DeGueurce have suffered and will continue to suffer an ascertainable loss of fees.

117. As a direct and proximate result of Graham's wrongful conduct Plaintiffs have been damaged, and such damage will continue to be inflicted upon Plaintiffs unless the Court enjoins Graham's acts.

118. Plaintiffs have no adequate remedy at law for Graham's conduct.

FIFTH CLAIM FOR RELIEF

(DILUTION UNDER STATE LAW)

(Plaintiff Causeway)

119. Plaintiffs reallege each allegation set forth in Paragraphs 1 through 118, inclusive, and incorporate them by reference herein.

120. The above acts by Graham constitute trademark dilution in violation of LA. REV. STAT. ANN. § 51:223.1 (2004).

121. Graham's activities complained of herein are likely to injure Plaintiff Causeway's business reputation and to dilute the distinctive quality of its CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks.

122. Graham's use of the Plaintiff Causeway's marks in connection with his activities, which are unconnected to Plaintiff Causeway and which are neither sponsored by Plaintiff Causeway, nor within Plaintiff Causeway's control, is likely to dilute the distinctive quality of its marks in violation of Louisiana's anti-dilution statute, thereby causing injury to Plaintiff Causeway.

123. Such likelihood of injury and dilution entitles Plaintiff Causeway to injunctive relief enjoining Graham from further wrongful conduct.

124. Graham's wrongful conduct has caused and is continuing to cause irreparable injury to Plaintiff Causeway, and, unless enjoined, will cause further irreparable injury, whereby Plaintiff Causeway has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

(STATE TRADEMARK INFRINGEMENT)

(Plaintiff Causeway)

125. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 124, inclusive, and incorporate them by reference herein.

126. The above acts by Graham constitute trademark infringement in violation of LA. REV. STAT. ANN. §§ 51:222(1) & (2) (2004).

127. Graham, without the consent of Plaintiff Causeway, has used and continues to use a colorable imitation of Plaintiff Causeway's CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks to offer his "services" to women who are seeking abortion services.

128. Graham's colorable imitation has caused, currently causes and will continue to cause serious confusion or mistake to callers.

129. Graham has committed and continues to commit these acts with the knowledge and intent that his acts would and will cause confusion and mistakes, as well as deceive women into believing they are calling Plaintiff Causeway.

130. Plaintiff Causeway has been damaged and will continue to be damaged by not being able to serve women who have been and will be diverted by Graham's misrepresentations.

131. Plaintiff Causeway has no adequate remedy at law for Graham's continuing violation of its rights.

SEVENTH CLAIM FOR RELIEF

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

(Individual Plaintiffs, Women Similarly Situated, and Dr. DeGueurce on Behalf of His Patients)

132. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 131, inclusive, and incorporate them by reference herein.

133. The above acts by Graham constitute intentional infliction of emotional distress under LA. CIV. CODE ANN. art. 2315.

134. Graham has acted and continues to act in an extreme and outrageous manner while intentionally and deceitfully seeking to prevent women from obtaining a desired and/or necessary abortion.

135. As a proximate result of Graham's extreme and outrageous misconduct, Individual Plaintiffs, women similarly situated, and the patients of Dr. DeGueurce and their partners and family members have suffered, are suffering, or will suffer severe emotional distress.

136. As a proximate result of Graham's misconduct, some Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce have or will suffer from depression and suicidal ideation and have or will take steps to kill themselves.

137. As a proximate result of Graham's extreme and outrageous misconduct, some Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce have or will be prevented from obtaining a desired and/or necessary abortion.

138. As a proximate result of Graham's extreme and outrageous misconduct, some Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce have or will be forced to have an abortion later in their pregnancies than they otherwise would have had, resulting in increased risks and costs.

139. As a proximate result of Graham's misconduct, Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce have suffered damages and harm, including, but not limited to: being forced to carry unwanted fetuses to term, suffering medical consequences, being forced to delay and possibly forego college education or careers, and accruing financial burdens that were neither anticipated nor desired.

140. As a proximate result of Graham's misconduct, women have failed to obtain prenatal care due to their belief that they were going to obtain abortions. The resulting lack of care has compromised the health and safety of these women during their pregnancies, and the health and safety of their babies who were denied prenatal care.

141. Knowing that women call his "service" with the specific intention of seeking abortions or abortion referrals, Graham knows and/or is substantially certain that severe emotional distress will result from any misrepresentation of his willingness and ability to provide abortion services.

EIGHTH CLAIM FOR RELIEF

(FRAUD)

(Individual Plaintiffs, Women Similarly Situated, and Dr. DeGueurce on Behalf of His Patients)

142. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 141, inclusive, and incorporate them by reference herein.

143. The above acts by Graham constitute fraud in violation of LA. CIV. CODE ANN. art. 1953 (2004).

144. As discussed herein, Graham misrepresented and suppressed the truth in failing to disclose that he was neither a medical doctor, nor an individual licensed and willing to provide abortions, and that he did not provide an abortion referral service.

145. Graham suppressed and misrepresented the truth with the sole intention that women would not be able to obtain an abortion.

146. Graham was silent and did not act when asked to provide such services by women who had relied on his misrepresentations.

147. As a proximate result of Graham's misrepresentations, Doe One and Doe Four were unable to exercise their constitutionally protected right to obtain an abortion and were forced to carry a pregnancy to term and give birth against their wills.

148. As a proximate result of Graham's misrepresentations, Cabrera was forced to delay obtaining an abortion until the second trimester.

149. Graham's wrongful conduct has caused and will continue to cause irreparable injury to women, and, unless enjoined, will cause further irreparable injury, whereby women have no adequate remedy at law.

NINTH CLAIM FOR RELIEF

(DETRIMENTAL RELIANCE)

(Individual Plaintiffs, Women Similarly Situated, and Dr. DeGueurce on Behalf of His Patients)

150. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 149, inclusive, and incorporate them by reference herein.

151. The above acts by Graham induced detrimental reliance in violation of LA. CIV. CODE ANN. art. 1967 (2004).

152. In purposefully and willfully depicting himself as an abortion services provider or abortion referral service, Graham knew that he promised and knows that he continues to promise to provide services he neither could nor would provide.

153. Graham knew that Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce, sought or will seek to obtain abortion services and, thus, that his “medical” advice and his repeated promises to make appointments for them for the procedure would or will induce them to rely on his misrepresentations to their detriment.

154. Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce, have been and will continue to reasonably rely on such representations, because Graham’s “clinic” is listed in various yellow pages and directory services under the heading for services that provide abortions or referrals to clinics that do.

155. Graham’s wrongful conduct has caused and is continuing to cause irreparable injury to Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce, and, unless enjoined, will cause further irreparable injury, whereby Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce have no adequate remedy at law.

TENTH CLAIM FOR RELIEF

(BREACH OF DUTY)

(Individual Plaintiffs, Women Similarly Situated, and Dr. DeGueurce on Behalf of His Patients)

156. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 155, inclusive, and incorporate them by reference herein.

157. The above acts by Graham constitute a breach of duty under LA. CIV. CODE ANN. art. 2315 (2004).

158. Graham proximately has caused and continues to cause harm to Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce.

159. But for Graham's misrepresentations and deceitful actions, Individual Plaintiffs, women similarly situated, and patients of Dr. DeGueurce would have been and will be able to exercise their constitutionally protected right to obtain abortions.

160. Graham's actions have breached and continue to breach that degree of care demanded of individuals who place themselves in the stream of commerce as providing medical services.

161. As discussed herein, Graham's actions and misrepresentations materially, emotionally and physically damaged and will continue to damage those women that were forced or will be forced to delay exercising their right to obtain abortions, or were forced or will be forced to carry to term unwanted pregnancies.

ELEVENTH CLAIM FOR RELIEF

(TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS)

(Plaintiffs Causeway and Dr. DeGueurce, on Behalf of Himself)

162. Plaintiffs reallege each allegation set forth in Paragraphs 1 through 161, inclusive, and incorporate them by reference herein.

163. The above acts by Graham constitute tortious interference with business relations under LA. CIV. CODE ANN. art. 2315 (2004).

164. Graham maliciously induced women to deal with him by making statements to women that were known by him to be false and that were made with reckless disregard for the truth of the statements.

165. Because of Graham's improper and malicious conduct, women were denied their constitutionally protected right and the opportunity to obtain abortion services from both Plaintiff Causeway and Dr. DeGueurce.

166. Plaintiff Causeway and Dr. DeGueurce were harmed by Graham's improper and malicious conduct by not being able to obtain the standard fees recovered by each for supplying abortion services to those in need of them.

WHEREFORE, Plaintiffs Choice Inc. of Texas d/b/a Causeway Medical Clinic, James DeGueurce, M.D., on behalf of himself and patients past, current and future, Priscilla Cabrera, Jane Doe One, Jane Doe Four, and all women similarly situated, pray for relief as follows:

(a) That the Court preliminarily and permanently enjoin Graham from all use of a name that is confusingly similar to and, therefore, infringes upon the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks;

(b) That the Court preliminarily and permanently enjoin Graham from making false and misleading statements about Plaintiff Causeway;

(c) That the Court preliminarily and permanently enjoin Graham from falsely holding himself out as a provider of medical services, abortions, referrals for abortions, or

financial assistance for any of the above-mentioned services, be it orally, in advertising, in any form of telephone directory, or otherwise;

(d) That the Court preliminarily and permanently enjoin Graham from advertising under any name in the yellow pages, in online telephone directories, or otherwise, under the headings “Abortion,” “Abortion Services,” “Abortion Provider,” “Abortion Referrals,” “Abortion Information & Services” or substantially similar heading language that unless he is licensed as an outpatient abortion facility by the Louisiana State Department of Hospitals under the rules, regulations, and licensing standards delineated by the Louisiana Department of Health and Hospitals in accordance with the Administrative Procedure Act pursuant to Louisiana Statute §§ 40:2175(4) & (5), or approved as a health care facility or service that provides or refers abortions pursuant to the Louisiana Public Health and Safety Code § 40:2199, and the services indicated are, in fact, provided;

(e) That the Court order Graham to take all steps necessary to put an intercept operator or similar device or service in place to ensure that persons intending to call Plaintiff Causeway do not reach Graham;

(f) That the Court preliminarily and permanently enjoin Graham from offering medical advice without a valid license to practice medicine or authorization to practice medicine issued by the Louisiana Department of Health and Hospitals;

(g) That the Court award Plaintiff Causeway treble damages pursuant to 15 U.S.C. § 1117(b) or statutory damages pursuant to 15 U.S.C. § 1117(c);

(h) That the Court award Plaintiff Causeway any other remedies to which it may be entitled, including all remedies provided for in 15 U.S.C. § 1117 and under state law;

(i) That the Court award Plaintiff Causeway all other costs and disbursements of this action, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(b);

(j) That the Court award Plaintiff Causeway actual, compensatory, punitive and exemplary damages suffered by it as a direct result of Graham's unlawful conduct in an amount to be determined at trial;

(k) That the Court award Priscilla Cabrera, Jane Doe One, Jane Doe Four, and Dr. DeGueurce in their individual capacities, actual, compensatory, punitive and exemplary damages suffered by them as a proximate result of Graham's tortious conduct in an amount to be determined at trial;

(l) That the Court award Dr. DeGueurce, in his individual capacity and on behalf of the patients he serves, injunctive relief against Graham's tortious conduct;

(m) That the Court award Priscilla Cabrera, Jane Doe One, Jane Doe Four, in their individual capacities, and for those women similarly situated, injunctive relief against Graham's tortious conduct; and

(n) That this Court grant all Plaintiffs such other, further, and different relief as the Court deems just and proper.

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

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CHOICE, INC. OF TEXAS d/b/a CAUSEWAY	:	Index No. 04-1581
MEDICAL CLINIC, <i>et al.</i> ,	:	
	:	Section "K"
	:	
Plaintiffs,	:	Hon. Stanwood Duval, Jr.
v.	:	
	:	
WILLIAM A. GRAHAM,	:	
	:	
Defendant.	:	
	:	
-----X		

CERTIFICATE OF SERVICE

I, William E. Rittenberg, hereby certify that on this ____ day of February, 2006, I caused to be served a true and correct copy of PLAINTIFFS' AMENDED COMPLAINT by First Class United States Mail, addressed as follows:

John Wells
317 Portsmouth Drive
Slidell, Louisiana 70460-8429

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