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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Civil Action No. 99C 7183

ANAT BANIEL,
Plaintiff,

VS.

THE Feldenkrais GUILD,
Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND CANCELLATION OF TRADEMARK REGISTRATIONS**

THE PARTIES

1. Plaintiff, Anat Baniel ("Ms. Baniel"), is a United States citizen residing at
2. Defendant, The Feldenkrais Guild ("the Guild"), is a not-for-profit corporation organized under the laws of California and having a principal place of business at 524 Ellsworth Street, SW, Albany, Oregon 97321-2363.

JURISDICTION AND VENUE

3. This is an action for declaratory judgment pursuant to 28 U.S.C. § 220 1, and this Court's jurisdiction arises from the fact that this is

an action arising under the Trademark Laws of the United States, 15 U.S.C. § 1051–1127, jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a).

4. A substantial part of the events or omissions giving rise to the claims occurred or will occur in this judicial district, and venue is proper therefore under 28 U.S.C. § 1391 (b) and (c).

BACKGROUND

The Feldenkrais Method

5. The Feldenkrais Method was created by the late Dr. Moshe Feldenkrais, an Israeli physicist and engineer.

6. In the 1940's, suffering from a chronic knee injury, Dr. Feldenkrais began studying human movement and behavior, focusing on neurology, biology, child development, and motor functions.

7. As a result of this study, Dr. Feldenkrais developed an educational method that uses gentle physical movements to increase a person's functional awareness of how his or her body accomplishes physical movements and to increase communication between muscles and the central nervous system. The enhanced communication and awareness fostered by the method facilitates greater freedom and fluidity of movement.

8. The Guild has stated in its "Standards of Practice" that: "The Feldenkrais Method is an educational system that develops a functional awareness of the self in the environment. This is done by expanding the self-image through movement sequences that bring attention to the parts of the self that are out of awareness and uninvolved in functional actions."

9. Dr. Feldenkrais' educational method became known as the "Feldenkrais Method" prior to the Guild's incorporation.

10. Feldenkrais and Feldenkrais Method are terms that identify the educational method created by Dr. Feldenkrais. The terms Feldenkrais and Feldenkrais Method are primarily understood as identifying the educational method created by Dr. Feldenkrais and not as identifications of source.

12. The terms Feldenkrais and Feldenkrais Method are the only terms available to identify the educational method created by Dr. Feldenkrais

Anat Baniel

13. Anat Baniel studied the Feldenkrais Method under Dr. Moshe Feldenkrais in the 1970's and was one of approximately 60 people to train under Dr. Feldenkrais in the United States during the 1970's.

14. Ms. Baniel has been practicing the Feldenkrais Method since her graduation from Dr. Feldenkrais' training in August, 1977, and she has taught others to be Feldenkrais practitioners. Ms. Baniel has conducted or taught in numerous trainings and seminars nationwide, and many of these educational offerings have been in Chicago.

The Feldenkrais Guild

15. The Feldenkrais Guild was incorporated in 1978 to serve as a membership organization of Feldenkrais practitioners.

16. In its Articles of Incorporation, the Guild stated that the terms Feldenkrais and Feldenkrais Method, ("the Terms"), were "trademarks of Dr. Moshe Feldenkrais" prior to the Guild's incorporation.

17. In June, 1983, the Guild filed service mark applications for the Terms with the United States Patent and Trademark Office ("USPTO"). In connection with such applications, the Guild, through its officer and agent David Bersin (AKA/ David Zemach-Bersin, hereinafter "Bersin"), represented to the USPTO that the Guild was the "owner"

of the Terms, and that "no person, firm, corporation or association" other than the Guild had the right to use the Terms. In connection therewith, Bersin confided in writing on such applications his understanding that his "willful false statements" regarding the Guild's ownership of the Terms would subject him to "fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful statements may jeopardize the validity of ... [the Guild's] registration" of the terms.

18. Based in material part on Bersin's representation that the Guild owned the Terms, the USPTO issued service mark registrations to the Guild as follows:

Service mark	Registration Number	Services Registered
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FELDENKRAIS	1,374,266	Education services—namely the teaching of individuals and groups of individuals the techniques of bringing about better maturation of the nervous system using the reversible relationship of the muscular and nervous systems to perfect strength and flexibility of its skeleton and muscles as well as to create a profound change in the self-image and the quality of self-direction.
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FELDENKRAIS METHOD	1,436,759	education services, namely the teaching of individuals and groups of individuals the techniques of bringing about better maturation of the nervous system using the reversible relationship of the muscular and nervous systems to perfect strength and flexibility of its skeleton and muscles as well as to create a profound change in the self-image and the quality of self-direction
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19. In October 1993, the Guild's Registration No. 1,436,759 was declared abandoned.

20. In November 1994, the Guild filed a service mark application for the term Feldenkrais Method with the USPTO. In connection with such application, the Guild, through its officer and agent Michael Purcell (hereinafter "Purcell") represented to the USPTO that the

Guild was the "owner" of the term Feldenkrais Method and that "no person, firm, corporation or association" other than the Guild had the right to use the Terms. In connection therewith, Purcell confirmed in writing on such application his understanding that his "willful false statements" regarding the Guild's ownership of the Terms would subject him to "fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful statements may jeopardize the validity of... [the Guild's] registration" of the Terms.

21. In an attached declaration, Purcell reasserted the Guild's claim of ownership in the term Feldenkrais Method as claimed in registration no. 1,436,759. Specifically, Purcell stated that the Guild was the "owner of the service mark Feldenkrais Method that was registered on April 14, 1987 and assigned registration number 1,436,759,"

22. Based in material part on Purcell's representation that the Guild owned the term Feldenkrais Method, the USPTO issued a service mark registration to the Guild as follows:

Service mark	Registration Number	Services Registered
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FELDENKRAIS METHOD	1,982,044	Educational services, namely, conducting individual sessions, classes, courses, workshops and/or seminars for teaching the techniques of bringing about better maturation of the nervous system using the reversible relationship off the muscular and nervous systems to perfect strength and flexibility of its skeleton and muscles as well as to create a profound change in the self-image and the quality of self-direction.
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23. Through its claim of ownership and registrations of the Terms, the Guild claims the right to determine which training organizers, practitioners and students of the Feldenkrais Method may use the Terms to inform consumers and others that they offer services in the Feldenkrais Method.

24. Because the terms Feldenkrais and Feldenkrais Method are the only terms available to identify the educational method created by

Dr. Feldenkrais, no Feldenkrais trainer, practitioner, or student can adequately and properly inform the public of what services he or she provides or has received without using the Terms.

THE PARTY'S DISPUTE

25. The Guild has created and imposes what it calls "certification" requirements on all Feldenkrais practitioners, and the Guild prohibits by threat of suit the use of the Terms by any practitioner who has not received the Guild's consent to use the Terms by satisfying the Guild's certification" requirements.

26. Persons wishing to practice the Feldenkrais Method cannot become "certified" and use the Terms without graduating from a Guild "accredited" training program.

27. Persons cannot attend a Guild "accredited" training without also purchasing a membership in the Guild. The membership requirement is imposed without regard to any trainee's preference toward Guild membership.

28. The Guild imposes what it calls "accreditation" requirements on all trainings that teach people to be Feldenkrais practitioners, and the Guild prohibits by threat of suit the use of the Terms in connection with any training that is not Guild "accredited."

29. Two preconditions of Guild "accreditation" for trainings is that the training organizer pay accreditation fees and student membership fees for each trainee to the Guild.

30. In the past, Ms. Baniel has been required to pay and has paid the Guild accreditation and student membership fees for each trainee enrolled in her trainings.

31. Over the past several years, and based on her training with Dr. Feldenkrais and her long and extensive experience as a Feldenkrais practitioner and trainer, Ms. Baniel has come to the conclusion that Guild's control of the Terms does not foster the goals of the

Feldenkrais method of education or serve the Feldenkrais profession.

32. Ms. Baniel publicly has announced that she will offer a non-Guild accredited Feldenkrais training in Chicago, Illinois and that she intends to use the Terms in connection with the marketing and provision of the training to identify the educational method being taught.

33. The Guild through its legal counsel has informed Ms. Baniel that the Guild: (a) will sue Ms. Baniel for willful infringement if she uses the Terms without Guild approval; and (b) will sue Ms. Baniel's students and graduates if they use the Terms without Guild approval.

COUNT I

The Guild's Registrations of The Terms Were Procured By Fraud Upon the United States Patent and Trademark Office.

34. Ms. Baniel realleges, and incorporates by this reference, each and every allegation set forth in Paragraphs 1-9 and 15-22.

35. Bersin's June, 1983 representations to the USPTO as described in 18, above, were materially false, as Bersin and the Guild well knew.

36. Bersin and the Guild intended that the USPTO would rely on such misrepresentations in determining whether to register the Terms on behalf of the Guild.

37. The USPTO, in fact, did rely on Bersin's and the Guild's misrepresentations in registering the Terms on behalf of the Guild (Registrations Nos. 1,374,266; and 1,436,759), in that the USPTO would not have registered the Terms on behalf of the Guild had it known that the Guild did not own the Terms.'

38. Moshe Feldenkrais died in June, 1984.

39. Following the death of Dr. Feldenkrais, and in order to assure that the Guild's fraud on the USPTO would succeed, the Guild repeatedly deceived the USPTO about its nonownership of the Terms. For example:

a) On or about July 18, 1984, in order to persuade the USPTO to reverse its January 19, 1984 refusal to approve the Guild's application to register the Terms as service marks, the Guild authorized its agent, attorney Frederick B. Goldberg, to advise the USPTO, as he did, that "[t]he" Feldenkrais Method" has been taught to more than 400 individuals who themselves are known as practitioners of the "Feldenkrais Method." The terms "Feldenkrais Method" and "Feldenkrais" have been used professionally by so many over the period of years as to have become a distinctive term." The Guild, however, knowingly concealed from the USPTO the material fact that the Guild did not own the Terms.

b) On or about November 7, 1984, the Guild authorized its agent, attorney Frederick B. Goldberg, to advise the USPTO, as he did, that a so-called written consent of Moshe Feldenkrais is applicable [the Guild's application to register the Terms as service marks]." The Guild, however, knowingly concealed from the USPTO the material fact that the Guild did not own the Terms.

c) On or about February 11, 1985, the Guild authorized its agent, attorney Frederick B. Goldberg, to submit "an affidavit as to distinctiveness" to the USPTO, as he did, in order to persuade the USPTO to approve the Guild's application for service mark registration of the Term "Feldenkrais." The accompanying affidavit was executed and sworn to by Bersin. In doing so, Bersin, for the second time, expressly confirmed in writing his understanding that his "willful false statements" would subject him to "Fine or imprisonment, or both (18 USC 1001) and may jeopardize the validity [of the Guild's] registration" of the Terms. In fact, however, Bersin's affidavit was false and misleading in that it omitted to disclose the material fact that the Guild did not own the Term "Feldenkrais," as Bersin and the Guild well knew.

d) On or about May 30, 1985, the Guild authorized its agent, attorney Frederick B. Goldberg, to submit a second affidavit to the USPTO, as he did, in support of the Guild's application for service mark registration of the Term "Feldenkrals." The second affidavit was executed and sworn to by Bersin. Bersin's second affidavit was false and misleading in that it omitted to disclose the material fact that the Guild did not own the Term "Feldenkrals," as Bersin and the Guild well knew.

e) In a memo marked "confidential" to the Guild's Board of Directors dated June 4, 1985, Guild agent and officer Bonnie Humiston stated in pertinent part:

I'm sure that in the fall last year, I was very much taken with the notion of owiu*ng a service mark, and all the power and implications that went with that, and I was responding positively to Fred Goldberg's position that we were the owners of the FI mark and we should do all we could to keep it. However, several weeks ago, I began being haunted by the question, "Are we really the owner of the marks?" My stomach churned.... these are Moshe's marks, how can we call them ours... . By what authority do we call ourselves owners – maybe we need another legal opinion; what legal grounds do we have to call ourselves owners. Frankly I was scared.

Further, Humiston disclosed that attorney Thomas Silk advised as early as February 1, 1984 that "the service marks are the property of Moshe Feldenkrais and he has allowed us (guild) use of the terms 'under his supervision.

Nonetheless, the Guild did not reveal to the USPTO the material fact that the Guild did not own the Terms.

40. On December 3, 1985 and April 14, 1987 the United States Patent and Trademark Office registered on behalf of the Guild the Terms Feldenkrais and Feldenkrais Method, assigning them Registration Nos. 1,374,266; and 1,436,759 respectively. The Guild acquiesced in such registrations while: (a) c:oncealing from the

USPTO the material fact that the Guild did not own the Terms; and (b) knowing that the USPTO would not have registered the Terms on behalf of the Guild if the USPTO had known the truth, viz, that the Guild did not own the Terms.

41. On or about November 22, 1991, the Guild authorized its agent, attorney David B. Connell, to submit a "combined affidavit of use and incontestability" with regard to Registration No. 1,374,266 to the United States Commissioner of Patents and Trademarks, as he did, in order to further the Guild's continuing fraud upon the USPTO. The accompanying affidavit was executed and sworn to by the Guild's agent and then President Purcell, and stated that the Guild "is the owner of the service mark Feldenkrais that was registered December 3, 1985 and assigned registration number 1,374,266." Mr. Purcell's affidavit was false because the Guild did not own the Term "Feldenkrais," as the Guild well knew.

42. The Guild furthered its fraud in November, 1994 when it filed an application in the USPTO to replace its abandoned Registration No. 1,436,759 for Feldenkrais Method. Purcell's representations in that application and an accompanying declaration that the Guild owned the term Feldenkrais Method, as described in 121 above, were materially false as the Guild well knew.

43. The Guild intended that the USPTO would rely on such misrepresentations in determining whether to register the term Feldeakrais Method on behalf of the Guild.

44. The USPTO, in fact, did rely on the Guild's misrepresentations in registering the term Feldenkrais Method for a second time on behalf of the Guild (Registration No. 1,982,044), in that the USPTO would not have registered the term on behalf of the Guild had it known that the Guild did not own the term.

45. The Guild's registrations for the terms Feldenkrais and Feldenkrais Method, Registration Nos. 1,374,266 and 1,982,044 must be canceled pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

WHEREFORE, Ms. Baniel prays that:

1. This Court declare that:

a. the Guild's registrations of the Terms Feldenkrais and Feldenkrais Method, Nos. 1,374,266 and 1,982,044, were procured by fraud on the United States Patent and Trademark Office; and,

2. This Court order:

a. the United States Patent and Trademark Office to cancel Registration Nos. 1,374,266 and 1,982,044;

b. the Guild to pay to Baniel the costs of this action, together with Baniel's reasonable attorneys' fees and disbursements incurred;

3. This Court grant Ms. Baniel all other relief this Court deems just and equitable.

COUNT II

The Guild Has No Rights In The Terms Feldenkrais and Feldenkrais Method Because They Are Generic.

46. Ms. Baniel realleges, and incorporates by this reference, each and every allegation set forth in Paragraphs 1-33.

47. The Terms are generic for the educational method created by Dr. Feldenkrais and for the services of providing lessons in the Feldenkrais Method and teaching others to be Feldenkrais practitioners.

48. The generic Terms Feldenkrais and Feldenkrais Method may not be appropriated as trademarks or service marks by any person or entity.

49. The Guild's Registrations for the Terms Feldenkrais and

Feldenkrais Method, Registration Nos. 1,374,266 and 1,982,044, must be canceled pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

THEREFORE, Ms. Baniel prays that:

1. This Court declare that:

a. the Terms Feldenkrais and Feldenkrais Method are generic for the educational method created by Dr. Moshe Feldenkrais and for the services of providing lessons in the Feldenkrais Method and teaching others to be Feldenkrais practitioners; and,

2. This Court order:

a. the United States Patent and Trademark Office to cancel Registration Nos. 1,374,266 and 1,982,044;

b. the Guild to pay to Baniel the costs of this action, together with Baniel's reasonable attorneys' fees and disbursements incurred;

3. This Court grant Ms. Baniel all other relief this Court deems just and equitable.

ANAT BANIEL

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