

LLC (as defined in this Order) have engaged in and are likely to engage in acts and practices that violate §§ 17.46(a) and (b) of the DTPA.

3. The Court FINDS that this action is in the public interest and a Temporary Restraining Order should be issued to restrain and prevent the continuing acts and practices of Defendants HAPPY FOOT SPA and 702 W. SAM HOUSTON LLC that may be violating the DTPA. DTPA § 17.47(b).

4. The Court FINDS from the evidence set forth in Plaintiff's Original Petition, the affidavits, and attached exhibits that unless Defendants HAPPY FOOT SPA and 702 W. SAM HOUSTON LLC are immediately restrained from the acts prohibited below, Defendants HAPPY FOOT SPA and 702 W. SAM HOUSTON LLC will continue to commit such acts before notice can be given and a hearing can be held on Plaintiff's request for a temporary injunction. The State will suffer the following immediate and irreparable injury, loss or damage: interference with the public health, safety, peace, comfort and convenience of its citizens caused by the Defendants HAPPY FOOT SPA's and 702 W. SAM HOUSTON LLC's ownership, operation, maintenance, and advertising of an unlicensed massage establishment that is also in violation of Chapter 455 of the Texas Occupations Code and applicable local ordinances for massage establishments. This injury is irreparable because the sale and offering for sale of unlicensed massage therapy services is harmful to the public and the public health and is unlawful. The Court FINDS that there is good cause to believe irreparable loss or injury would occur unless Defendants HAPPY FOOT SPA and 702 W. SAM HOUSTON LLC are immediately enjoined. DTPA § 17.47(a). Issuance of this Temporary Restraining Order is in the public interest.

5. The Court FINDS that prior notice of Plaintiff's Original Petition and Application for Temporary Restraining Order is not required before entry of this Order because the Court finds

there is good cause to believe Defendants HAPPY FOOT SPA and 702 W. SAM HOUSTON LLC would evade service of process if prior contact were made or Defendants HAPPY FOOT SPA and 702 W. SAM HOUSTON LLC would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order. *Id.*

6. The Court FINDS this Temporary Restraining Order may be issued without bond posted by the State. DTPA § 17.47(b).

7. With respect to the Plaintiff's claims to abate a common nuisance under Chapter 125 of the Texas Civil Practice & Remedies Code, the Court FINDS Plaintiff is likely to succeed on the merits under § 125.002 and that a temporary restraining order is necessary to prevent the Defendants from maintaining a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.045(a). The Court further FINDS that the Plaintiff is not required to post a bond in support of injunctive relief, and the Plaintiff is not required to verify the allegations in support of its petition to abate the nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(a); Tex. Civ. Prac. & Rem. Code § 6.002.

8. Finally, with respect to the Plaintiff's claims under Chapter 455 of the Texas Occupations Code, this Court FINDS that there is good cause to believe Defendant HAPPY FOOT SPA is in violation of and/or threaten to violate Chapter 455 and/or is the owner or operator of an establishment that offers massage therapy or other massage services regulated by this chapter.

II. DEFINITIONS

9. For purposes of this Temporary Restraining Order, the following definitions shall apply:
- a. "Defendants" shall mean HAPPY FOOT SPA; 702 W. SAM HOUSTON LLC; THE REAL PROPERTY KNOWN AS 702 W. SAM HOUSTON PARKWAY S.,

HOUSTON, TEXAS also known as THE REAL PROPERTY KNOWN AS 704 W. SAM HOUSTON PARKWAY S., HOUSTON, TEXAS.

b. “Massage establishment” means a place of business that advertises or offers massage therapy or other massage services. The term includes a place of business that advertises or offers any service described by a derivation of the terms “massage therapy” or “other massage services.” Tex. Occ. Code § 455.001(5).

c. “Massage therapist” means a person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles. Tex. Occ. Code § 455.001(7).

d. “Massage therapy” means the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. The terms “massage,” “therapeutic massage,” “massage technology,” “myotherapy,” “body massage,” “body rub,” or any derivation of those terms are synonyms for “massage therapy.” Tex. Occ. Code § 455.001(8).

e. “Other massage services” are “any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath.” Tex. Occ. Code § 455.001(11).

III. PROHIBITED BUSINESS CONDUCT

10. **IT IS ORDERED** that the Defendants and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this order by personal service or otherwise, are hereby restrained from engaging in the following conduct until further order of this Court:

- a. Deleting any data or communications relating to owning, operating, maintaining or advertising a massage establishment, or the provision of massage therapy or other massage services on any phones or electronic devices used by any Defendants;
- b. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to owning, operating, maintaining, or advertising a massage establishment, or the provision of massage therapy or other massage services, that are currently or hereafter in any of the Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- c. Transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by any of the Defendants, insofar as such property relates to, arises out of or is derived from the business operations of Defendants except in response to further orders by the Court; or
- d. Owning, operating, maintaining, or advertising a massage establishment that fails to comply with the licensing or other requirements of Texas Occupations Code, Chapter

455.

e. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of services by owning, operating, maintaining, or advertising an unlicensed massage establishment or having persons on the premises who provide massage services without a license;

f. Representing that massage services have sponsorship, approval, characteristics, or benefits which they do not have by owning, operating, maintaining, or advertising an unlicensed massage establishment or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not, specifically, a license under Texas Occupations Code, Ch. 455;

g. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law including, but not limited to, allowing any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;

h. Failing to publicly and appropriately display, within sight of the main entrance of the establishment, the license of the establishment and the license of any individual on the premises who provides massage therapy or other massage services;

i. Denying any agent of the Texas Department of Licensing and Regulation, the Texas Attorney General's Office, a peace officer, or any other agent of the State access to any massage establishment owned, operated or maintained by Defendants;

j. Interfering with an inspection of a massage establishment by any agent of the Texas Department of Licensing and Regulation, the Texas Attorney General's Office, a peace officer, or any other agent of the State, including the failure to maintain and make available

to the inspector the initial consultation documents, session notes, and related billing records for each client;

k. Failing to preserve video surveillance of the Defendants' store premises and to maintain and operate video surveillance of the premises and provide copies of the video surveillance to Plaintiff's counsel upon request;

l. Employing an individual who is not a United States citizen or a legal permanent resident with a valid work permit at a massage establishment;

m. Allowing a nude or partially nude employee to provide massage therapy or other massage services to a customer;

n. Allowing any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;

o. Allowing any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual, including wearing lingerie; and,

p. Allowing any individual, including a student, license holder, or employee, to reside on the premises of the massage establishment.

q. Happy Foot Spa is ordered closed until the Temporary Injunction Hearing.

IV. EXPEDITED DISCOVERY REQUIRED

11. Within five days of receipt of this order, the Defendants shall produce to Plaintiff a copy of any agreements between the Defendants or their agents, including but not limited to, all lease agreements, service agreements, maintenance agreements, and/or any other contractual obligation related to 702 W. Sam Houston Parkway S., Houston, TX 77042.

V. SCHEDULING OF TEMPORARY INJUNCTION HEARING

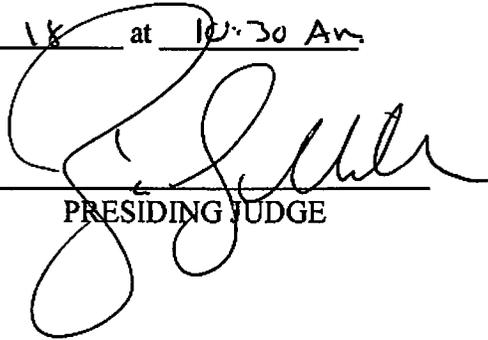
12. IT IS ORDERED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14th) day after entry or until further Order of this Court.

13. The Clerk of the above-entitled Court shall forthwith issue a Temporary Restraining Order in conformity with the law and the terms of this Order.

14. This Order shall be effective without the execution and filing of a bond because Plaintiff are exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001 and DTPA § 17.47(b).

A temporary injunction hearing is set for March 18 at 10:30 Am.

Signed: March 5, 2020
DATE at 2:25 p.m.



PRESIDING JUDGE

STATE OF TEXAS
COUNTY OF HARRIS
I, Marilyn Bump, County Clerk of Harris County, Texas, certify that
this is a true and correct copy of the original as filed and or recorded
in my office, electronically or hard copy, as it appears on this date.
Witness my hand and seal of office this

MARILYN BUMP, COUNTY CLERK
HARRIS COUNTY, TEXAS
Deputy

