

QUESTION NO. 1:

Do you find that the term “Texans for Vaccine Choice” is eligible for protection as a trademark?

Answer “Yes” or “No.”

Answer: Yes

If you answered “Yes” to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 2:

Do you find that Vaccine Choice currently owns the trademark “Texans for Vaccine Choice”?

Vaccine Choice has the burden of establishing its right to exclusive use of the trademark. The first one to use a mark is generally held to be the “senior” user and is entitled to enjoin other “junior” users from using the mark.

Answer “Yes” or “No”.

Answer: Yes

If you answered “Yes” to Question No. 2, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 3:

Do you find that the common law trademark “Texans for Vaccine Choice” has been infringed by any Defendant?

Vaccine Choice must prove by a preponderance of the evidence that a defendant’s use of a mark creates a likelihood of confusion in the minds of potential consumers as to the source, affiliation, or sponsorship of Texans for Vaccine Choice.

Answer “Yes” or “No”.

a. Texans for Vaccine Choice PAC

Answer: Yes _____

b. Texans for Vaccine Freedom

Answer: No _____

c. Jackie Schlegel

Answer: Yes _____

QUESTION NO. 4:

Did Ms. Schlegel fail to comply with the Agreement?

A failure to comply must be material. The circumstances to consider in determining whether a failure to comply is material include:

1. the extent to which the injured party will be deprived of the benefit which he reasonably expected;
2. the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
3. the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
4. the likelihood that the party failing to perform or to offer to perform will cure her failure, if any, taking into account the circumstances including any reasonable assurances;
5. the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Answer "Yes" or "No".

Answer: Yes

If you answered "Yes" to Question No. 4, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 5:

What sum of money, if any, paid now in cash, would fairly and reasonably compensate Vaccine Choice for the damages, if any, that resulted from such failure to comply?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any. You are instructed that remote, contingent, speculative, or conjectural damages are to be excluded from your calculations.

Answer in dollars and cents for damages, if any.

Answer: \$5,403.66

QUESTION NO. 6:

Did Ms. Schlegel fail to comply with her fiduciary duty to Vaccine Choice?

To prove Ms. Schlegel failed to comply with her duty, Vaccine Choice must show—

1. The transactions in question were not fair and equitable to Vaccine Choice; and
2. Ms. Schlegel did not make a reasonable use of the confidence that Vaccine Choice placed in her; and
3. Ms. Schlegel failed to act in the utmost good faith and exercised the most scrupulous honesty toward Vaccine Choice; and
4. Ms. Schlegel placed her own interests before Vaccine Choice's, used the advantage of her position to gain a benefit for herself at the expense of Vaccine Choice, or placed herself in a position where her self-interest might conflict with her obligations as a fiduciary; and
5. Ms. Schlegel failed to fully and fairly disclose all important information to Vaccine Choice concerning the transactions.

Answer “Yes” or “No”.

Answer: Yes

If you answered "Yes" to Question No. 6, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 7:

What sum of money, if any, paid now in cash, would fairly and reasonably compensate Vaccine Choice for the damages, if any, that were proximately caused by such conduct?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer in dollars and cents for damages, if any.

Answer: \$0

If you answered Question No. 5, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 8:

What is a reasonable fee for the necessary legal services of Vaccine Choice's attorney (not including fees related to defending against Defendants' Texas Citizens Participation Act ("TCPA") motion to dismiss), stated in dollars and cents?

A reasonable fee is the reasonable hours worked, and to be worked, multiplied by a reasonable hourly rate for that work.

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer in dollars and cents, if any.

1. For representation in the trial court.

Answer: \$ 375,313.99

2. For representation through appeal to the court of appeals.

Answer: \$75,000

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$50,000

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$50,000

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$25,000

QUESTION NO. 9:

What is a reasonable fee for the necessary legal services of Vaccine Choice's attorney related to defending against Defendants' Texas Citizens Participation Act ("TCPA") motion to dismiss, stated in dollars and cents?

A reasonable fee is the reasonable hours worked, and to be worked, multiplied by a reasonable hourly rate for that work.

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer in dollars and cents, if any.

Answer: \$186,756.25