

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

ASSOCIATION OF SURGICAL)
ASSISTANTS,)
)
Plaintiff,)
)
v.)
)
THE NATIONAL BOARD OF SURGICAL)
TECHNOLOGY AND SURGICAL)
ASSISTING; JEFF BIDWELL;)
BEN PRICE)

Case No. 2022CV02355

COMPLAINT

Plaintiff, Association of Surgical Assistants (“ASA” or “Plaintiff”), by and through undersigned counsel, brings this action against The National Board of Surgical Technology and Surgical Assisting (“NBSTSA”); Jeff Bidwell; and Ben Price (together NBSTSA, Jeff Bidwell, and Ben Price are collectively referred to as “Defendants”), and states and alleges as follows:

JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction under 15 U.S.C. § 1331, 28 U.S.C.A. § 1332, and 15 U.S.C.A. § 15, and supplemental jurisdiction under 28 U.S.C. § 1367.

2. Venue is proper in this District under 28 U.S.C.A. § 1391 because Defendants are registered to conduct business in the State of Colorado, and Defendants directed and committed infringing activities into this District, or a substantial part of the events or omissions giving rise to the claims asserted occurred in this District.

THE PARTIES

3. Plaintiff is a nonprofit corporation organized and existing under the laws of the

state of Colorado, having a registered place of business at 12110 N. Pecos Street, Suite 220, Westminster, CO 80234.

4. Defendant NBSTSA is a nonprofit corporation organized and existing under the laws of the state of Colorado, having a registered principal place of business at 3 West Dry Creek Circle, Littleton, CO 80120.

5. Defendant Jeff Bidwell is an individual and resident of , with an address of

6. Defendant Ben Price is an individual and resident of , with an address of

FACTUAL BACKGROUND

7. ASA and the American Association of Surgical Technicians (“AST”) are separate and independent entities that generate a substantial percentage of their revenue from membership dues from paying members.

8. Until December 2020, ASA was affiliated with AST.

9. Until December 2020, ASA and AST had a business agreement whereby ASA members could earn continuing education and credential renewal credits through AST.

10. AST was and is accredited as a provider of continuing education and credential renewal credits by NBSTSA.

11. AST was and is the only accredited provider of continuing education and credential renewal credits for surgical assistants and surgical technologists.

12. NBSTSA is the only agency that provides accreditation for continuing education and renewals of the Certified Surgical Technologist and Certified Surgical First Assistant national credentials.

13. AST and NBSTSA have enjoyed a longstanding mutually beneficial relationship.

14. After ASA determined its affiliation with AST was no longer in the interests of its

members, ASA terminated its relationship with AST in December 2020.

15. Since then, ASA has attempted to offer its members continuing education courses and credential renewal credits but has been unsuccessful in seeking accreditation from NBSTSA.

16. On or about September 15, 2021, ASA contacted NBSTSA to be recognized as an approver and processor of continuing education credits on behalf of NBSTSA.

17. On or about October 22, 2021, Jeff Bidwell ("Mr. Bidwell") and Ben Price ("Mr. Price"), NBSTSA's President and CEO, respectively, responded to the request on behalf of NBSTSA.

18. NBSTSA's response provided two options for ASA.

19. The first option was to avoid "reinventing the wheel," whereby ASA could negotiate an arrangement with AST for AST to continue processing the continuing education credits for ASA members, just as it did before December 2020.

20. The other option was for ASA to provide NBSTSA with substantial proprietary and financial information without any indication that the provision of this information was required for the accrediting process.

21. Indeed, after ASA questioned the relationship between the requested information and the accreditation process, Mr. Price, on behalf of NBSTSA, responded on February 23, 2022, "NBSTSA has not proposed any 'approval process' for ASA at this time" and further clarified the previous requests for information "did not define any process that ASA could or should meet."

22. Mr. Price also reaffirmed NBSTSA's position that "the only real pathway for ASA is to work with AST to approve and process credits for CSFAs."

23. Under NBSTSA's proposal, ASA members would be required to pay AST additional sums to earn and process continuing education credits.

24. In other words, NBSTSA has refused to even consider ASA as a processor and provider of continuing education credits and has refused to provide ASA with any guidelines, criteria, or any other pathway for ASA to become an independent and accredited provider of continuing education to its members.

25. NBSTSA's refusal to provide any criteria by which ASA could obtain accreditation under NBSTSA's standards prevents ASA from even attempting to pursue accreditation.

26. NBSTSA's refusal to provide any criteria by which ASA could obtain accreditation under NBSTSA's standards amounts to a refusal to accredit ASA without cause or justification.

27. NBSTSA's refusal to accredit or otherwise provide any criteria by which ASA could obtain accreditation under NBSTSA's standards results in AST being the sole national provider and processor of continuing education credits for surgical technicians and surgical assistants without competition in the marketplace.

28. NBSTSA's actions restrict ASA from competing with AST in the marketplace for providing and processing continuing education credits for surgical technicians and surgical assistants nationwide.

29. NBSTSA's refusal to accredit or otherwise provide any criteria by which ASA could obtain accreditation under NBSTSA's standards devalues the benefit of ASA to its members and deprives ASA of a critical revenue stream. Moreover, it diverts additional funds away from ASA to AST.

30. Providing and processing continuing education requirements is crucial to ASA's ability to retain and gain new members.

31. NBSTSA's attempts to push ASA back to AST are deliberate and intentional, as

evidenced by NBSTSA's repeated requests that ASA direct its members back to AST for continuing education credits.

COUNT I
15 U.S.C.A. §§ 1, 15 (Against Mr. Bidwell, Mr. Price and NBSTSA)

32. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

33. Mr. Bidwell and Mr. Price, by agreement, as evidenced by the October 22, 2021 letter, prevented NBSTSA from obtaining, let alone applying for, accreditation.

34. By agreement, Mr. Bidwell and Mr. Price caused NBSTSA to engage in anticompetitive conduct designed to keep AST as the sole provider and processor of continuing education credits for surgical technicians and surgical assistants.

35. As the October 22, 2021 letter and the subsequent February 23, 2022 correspondence demonstrate, Mr. Bidwell and Mr. Price conspired to cause NBSTSA to effectively boycott ASA.

36. Mr. Bidwell, Mr. Price, and NBSTSA's actions have caused an unreasonable restraint on trade in the market space for continuing education credits for surgical technicians and surgical assistants by ensuring AST is the sole provider and processor of these credits in the nation.

37. Mr. Bidwell, Mr. Price, and NBSTSA's actions have damaged ASA by devaluing the ASA membership and have prevented ASA from engaging in its business of providing and processing continuing education credits for surgical technicians and surgical assistants.

38. Mr. Bidwell, Mr. Price, and NBSTSA's actions have damaged ASA by injuring the reputation of ASA amongst its members and prospective members.

WHEREFORE ASA requests this Court's determination that Mr. Bidwell, Mr. Price, and NBSTSA's actions constitute restraint of trade and that damages including attorney's fees and

costs enter in an amount to be proven at trial.

COUNT II
15 U.S.C.A. § 2 (Against NBSTSA, Mr. Bidwell, and Mr. Price)

39. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

40. By agreement, Mr. Bidwell and Mr. Price caused NBSTSA to exclude ASA from seeking accreditation as a provider and processor of continuing education credits for surgical technicians and surgical assistants.

41. As a result, Mr. Bidwell, Mr. Price, and NBSTSA ensured AST maintains the entire market share for providing and processing continuing education credits for surgical technicians and surgical assistants nationwide.

42. NBSTSA has a longstanding relationship with AST, as referenced in the October 22, 2021 letter. NBSTSA stands to benefit by keeping AST as the sole provider and processor of continuing education credits for surgical technicians and surgical assistants.

43. By refusing to allow ASA to apply for accreditation, Mr. Bidwell, Mr. Price, and NBSTSA have created a monopoly in favor of AST by ensuring AST retains one hundred percent of the market share for providing and processing continuing education credits for surgical technicians and surgical assistants nationwide.

WHEREFORE ASA respectfully requests this Court enter an order that Mr. Bidwell, Mr. Price, and NBSTSA are participating to create a monopoly to and for the benefit of AST and to the exclusion of ASA and any other competitors and that this Court enter damages as proven at trial including attorney's fees and costs, and for such other and further relief as is just and appropriate under the circumstances.

COUNT III
15 U.S.C.A. § 26 (Against NBSTSA)

44. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

45. NBSTSA has violated the US antitrust laws.

46. ASA has suffered damages in the form of lost revenue and injury to its reputation with its members and prospective members due to NBSTSA's actions.

47. ASA is entitled to injunctive relief by requiring NBSTSA to provide ASA with the specific criteria required for ASA to apply for accreditation and requiring NBSTSA to give objective consideration to ASA's application for accreditation

WHEREFORE ASA seeks this Court's order enjoining or otherwise compelling NBSTSA to provide ASA with specific criteria required for ASA to apply for accreditation and requiring NBSTSA to give objective consideration to ASA's application for accreditation, and for such other and further relief as is just and appropriate under the circumstances.

COUNT IV
Tortious Interference with Business Relations and Prospective Business Advantage
(Against NBSTSA)

48. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

49. NBSTSA has tortiously interfered with its membership and ability to provide accreditation by usurping prospective business advantage by forcing accreditation to through AST or otherwise be subject to the approval of AST, a separate legal entity from Plaintiff.

50. The actions of NBSTSA tortiously interferes with the business of ASA and its membership by requiring concomitant commitment to a separate organization, AST, and in precluding accreditation separate and apart from the approval of AST.

WHEREFORE, NBSTSA's tortious interference with business relations have damaged the Plaintiff and that this Court enter an award of damages including attorney's fees and costs in an amount determined after trial, and for such other and further relief as is just and appropriate under the circumstances.

COUNT V

Colorado Antitrust Act – C.R.S. § 6-4-104 (Against Mr. Bidwell, Mr. Price and NBSTSA)

51. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

52. Under C.R.S. § 6-4-114, any person injured by violation of the Colorado Antitrust Act has standing to pursue a civil claim.

53. Mr. Bidwell and Mr. Price, by agreement, as evidenced by the October 22, 2021 letter, prevented NBSTSA from obtaining, let alone applying for, accreditation.

54. By agreement, Mr. Bidwell and Mr. Price caused NBSTSA to engage in anticompetitive conduct designed to keep AST as the sole provider and processor of continuing education credits for surgical technicians and surgical assistants.

55. As the October 22, 2021 letter and the subsequent February 23, 2022 correspondence demonstrate, Mr. Bidwell and Mr. Price conspired to cause NBSTSA to effectively boycott ASA.

56. Mr. Bidwell, Mr. Price, and NBSTSA's actions have caused an unreasonable restraint on trade in the market space for continuing education credits for surgical technicians and surgical assistants by ensuring AST is the sole provider and processor of these credits in the nation.

57. Mr. Bidwell, Mr. Price, and NBSTSA's actions have damaged ASA by devaluing the ASA membership and have prevented ASA from engaging in its business of providing and

processing continuing education credits for surgical technicians and surgical assistants.

58. Mr. Bidwell, Mr. Price, and NBSTSA's actions have damaged ASA by injuring the reputation of ASA amongst its members and prospective members.

WHEREFORE ASA requests this Court's determination that Mr. Bidwell, Mr. Price, and NBSTSA's actions constitute restraint of trade and that damages, including attorney's fees and costs, enter in an amount to be proven at trial.

COUNT VI
Colorado Antitrust Act – C.R.S. §6-4-104 (Against NBSTSA and AST)

59. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

60. By agreement, Mr. Bidwell and Mr. Price caused NBSTSA to exclude ASA from seeking accreditation as a provider and processor of continuing education credits for surgical technicians and surgical assistants.

61. As a result, Mr. Bidwell, Mr. Price, and NBSTSA ensured AST maintains the entire market share for providing and processing continuing education credits for surgical technicians and surgical assistants nationwide.

62. NBSTSA has a longstanding relationship with AST, as referenced in the October 22, 2021 letter. NBSTSA stands to benefit by keeping AST as the sole provider and processor of continuing education credits for surgical technicians and surgical assistants.

63. By refusing to allow ASA to apply for accreditation, NBSTSA has created a monopoly in favor of AST by ensuring AST retains one hundred percent of the market share for providing and processing continuing education credits for surgical technicians and surgical assistants nationwide.

WHEREFORE ASA respectfully requests this Court enter an order that NBSTSA is

participating in combination with AST to create a monopoly to and for the benefit of AST and to the exclusion of ASA and any other competitors and that damages including attorney's fees and costs as demonstrated at trial be awarded to Plaintiff, and for such other and further relief as is just and appropriate under the circumstances.

COUNT VII

Colorado Antitrust Act – C.R.S. § 6-4-113 (Injunctive Relief against NBSTSA)

64. Plaintiff adopts and incorporates the allegations of each of the preceding paragraphs of this Complaint as if fully set forth herein.

65. NBSTSA has violated the US antitrust laws.

66. ASA has suffered damages in the form of lost revenue and injury to its reputation with its members and prospective members due to NBSTSA's actions.

67. ASA is entitled to injunctive relief by requiring NBSTSA to provide ASA with the specific criteria required for ASA to apply for accreditation and requiring NBSTSA to give objective consideration to ASA's application for accreditation

WHEREFORE ASA seeks this Court's order enjoining or otherwise compelling NBSTSA to provide ASA with specific criteria required for ASA to apply for accreditation and requiring NBSTSA to give objective consideration to ASA's application for accreditation, and for such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted on September 13, 2022 by:

CASTLE, LANTZ, MARICLE, LLC

/s/ Robert D. Lantz

Robert D. Lantz

4100 E. Mississippi Ave., Ste 410

Denver, CO 80246

rlantz@clmatty.com

Counsel for the Plaintiff