

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: **07-10974 CA04**

ITZHAK DANILAROV, individually
and as owner of KING OF THE
GOLD CROWNS II, INC., a
Florida Corporation,

Plaintiffs,

vs.

THE FLORIDA DEPARTMENT OF HEALTH,
and THE FLORIDA BOARD OF DENTISTRY,
government agencies of the State of
Florida

Defendants.

THE ORIGINAL FILED
ON APR 17 2007
IN THE OFFICE OF
CIRCUIT COURT DADE CO FL
CIVIL DIVISION

COMPLAINT AND DEMAND FOR DECLARATORY JUDGMENT
AND PERMANENT INJUNCTION and EMERGENCY PETITION
FOR EMERGENCY TEMPORARY INJUNCTION

COMES NOW the Plaintiff, ITZHAK DANILAROV, individually and as owner of KING OF THE GOLD CROWNS II, INC. (hereinafter collectively referred to as "KING"), by and through undersigned counsel, and files this Complaint and Demand for a Declaratory Judgment. Further the Plaintiff seeks an Emergency Injunction Order pursuant to Rule 1.610, Fla.R.Civ.P., enjoining the Defendants, FLORIDA DEPARTMENT OF HEALTH ("DOH"), and FLORIDA BOARD OF DENTISTRY ("FBD"), from further illegal enforcement of Florida Statutes §§466.003(3) and §466.024(1), et. al. prohibiting Plaintiffs and others similarly situated from the sale and fabrication of teeth jewelry know as "Grillz". As grounds therefore, the Plaintiffs

state as follows:

JURISDICTION AND VENUE

1. This is an action for Declaratory Judgment filed pursuant to Chapter 86 of the Florida Statutes.
2. This action for Declaratory Judgment has been filed for the purpose of determining the scope and application of Florida Statute §§466.003(3) and §466.024(1), et. al., as it pertains to the sale and fabrication of removable teeth jewelry commonly known as "Grillz", and the legislative authority, or the lack thereof, for the Board of Dentistry to prevent or limit the sale and fabrication of "Grillz".
3. This action for emergency temporary injunction, and subsequently for permanent injunction, pursuant to Rule 1.610, Fla.R.Civ.P., has been filed to protect the Plaintiffs from any further unlawful action by the Defendants during the pendency of this action.
4. At all times material hereto, the Plaintiff, ITZHAK DANIAROV ("DANIAROV"), was and is a resident of Miami-Dade County, Florida, and is *sui juris*. DANIAROV is the owner of the co-Plaintiff, KING OF THE GOLD CROWNS II, INC.
5. At all times material hereto, the Plaintiff, KING OF GOLD

CROWNS II, INC., was and is a Florida corporation, authorized and doing business in Miami-Dade County, Florida.

6. Upon information and belief, at all times relevant hereto, the Defendant, THE FLORIDA DEPARTMENT OF HEALTH, was and is a government agency of the State of Florida.
7. Upon information and belief, at all times relevant hereto, the Defendant, THE FLORIDA BOARD OF DENTISTRY, was and is a government agency of the State of Florida whose authority over the profession of dentistry is limited to that specifically mandated and restricted by the Florida legislature.
8. Venue is proper in this jurisdiction pursuant to Fla. Stat. §47.011 (2007).

"GRILLZ"

9. At all times material hereto, KING was and intends to be engaged in the business of selling and fabricating custom removable teeth jewelry commonly referred to as "Grillz" popular in the hip-hop culture. "Grillz" are widely available throughout the United States through a variety of outlets including, but not limited to, internet sales and advertising. (See Exhibit "A" attached hereto).
10. At all times material hereto, "Grillz" are custom made

through a process in which an impression is taken of the purchaser's teeth. Next, a plaster model or "study cast" is then made by filling the impression negative with a gypsum product. The "Grillz" are fabricated on the resultant model that closely duplicates the natural contours of the purchaser's teeth. Lastly, the "Grillz" are inserted onto the person's natural teeth. Improperly fabricated "Grillz" either cannot be placed onto the teeth (i.e. too small), or in the alternative, once placed do not stay on the purchaser's teeth (i.e. too large). Improperly fabricated "Grillz" require a new impression and re-fabrication.

11. As such, the taking of an impression, subsequent fabrication, and eventual use of "Grillz" is a remedialable non-invasive event and thus poses no risk to the purchaser. In fact, there are no reported cases of injury involving "Grillz" in Florida jurisprudence. (See the attached affidavit of Robert J. Fish, D.D.S., F.A.G.D.).
12. The fabrication and use of this jewelry neither constitutes nor involves in any way dental surgery, alteration, healing or any restorative process of the oral cavity or dentition of the purchaser. "Grillz" are

not in any way an intra-oral restoration nor are they an orthodontic appliance.

13. "Grillz" are freely inserted, and freely removed by the user at will from the user's mouth. Specifically, as a matter of functionality, "Grillz" cannot be worn while eating.

14. "Grillz" are made of precious metals, often silver, gold, or platinum, and can be inlaid with precious stones.

BACKGROUND FACTS GIVING RISE TO CAUSE OF ACTION

15. At all times material hereto, KING is a jewelry store that has been engaged by a Florida licensed dentist to provide management and auxiliary services for the fabrication and sale of "Grillz". (See the attached affidavit of the Plaintiff, DANIAROV).

16. As a means of promoting and advertising its "Grillz", the credentials of the Florida licensed dentist have been prominently placed and displayed in KING's place of business.

17. In addition, for the sole purpose of promoting efficient and cost effective fabrication of "Grillz", KING's staff members are formally trained in impression taking by a graduate dentist for this specific purpose. Having received formal training, KING's staff members are

qualified as dental assistants for the specific purpose of taking impressions for the fabrication of gypsum models intended for the ultimate construction of "Grillz".

18. Notwithstanding the above, in September 2006, local law enforcement, working in conjunction with and at the behest of the Defendants, arrested one of KING's trained and certified staff members and charged him with the unlicensed practice of dentistry. This prosecution stemmed solely from the sale of "Grillz". Recently, this prosecution was dismissed by a Miami-Dade Criminal Court Judge. See State of Florida v. Oleg Daniarov, Case No. F06034176).
19. Additionally, the Defendants are presently investigating the Florida licensed dentist and are considering administrative charges based on the same events.
20. KING is presently unable to continue with the sale of "Grillz" for fear of re-arrest and prosecution. KING has suffered serious financial losses associated with the State's unlawful enforcement and prosecution.
21. Based on the clear definition of "Dentistry" as defined by the Florida statute, and the applicable subparts thereto, KING has a substantial likelihood of success on

the merits since there is no basis in law or fact for the State's actions against KING and its employees.

22. KING will be irreparably harmed unless the State is enjoined from further unlawful enforcement and prosecution. This outrageous and unconscionable conduct is tantamount to tortious interference with KING's lawful business activities.
23. If forced out of business, KING will have no adequate remedy at law.
24. A temporary injunction will serve the public interest in allowing the continuation of legitimate business enterprise and sale of consumer goods by KING and others similarly situated and will cause no harm to the State since there has never been any harm reported in Florida due to the sale, use, and/or production of "Grillz."

"GRILLZ" DO NOT CONSTITUTE DENTISTRY AND DO NOT FALL WITHIN THE JURISDICTION AND PURVIEW OF THE BOARD OF DENTISTRY

25. Florida Statute §466.003(3) states in pertinent part:

"Dentistry" means the healing art which is concerned with the examination, diagnosis, treatment planning, and care of conditions within the human oral cavity and its adjacent tissues and structures. . . . The term dentistry shall also include the following:

- (a) The taking of an impression of the human tooth, teeth, or jaws directly or indirectly and by any means or method.

(b) Supplying artificial substitutes for the natural teeth or furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, appliance, or any other structure designed to be worn in the human mouth except on the written work order of a duly licensed dentist.

(c) The placing of an appliance or structure in the human mouth or the adjusting or attempting to adjust the same.

26. "Grillz" are decorative teeth jewelry. Their fabrication and eventual use by the purchaser do not constitute a "healing art". "Grillz" are not used in the field of Dentistry to prevent, heal, or treat any dental condition.
27. "Grillz" in no way whatsoever involve ". . . examination, diagnosis, treatment planning, and care of conditions within the human oral cavity and its adjacent tissues and structures"
28. Although the subparts of F.S. §466.003(3) listed above can arguably be read and interpreted to include "Grillz", said interpretation cannot ignore the plain meaning of the definition of Dentistry under which the subparts are listed. Such a reading would violate statutory construction and interpretation. Any statute, including its subparts, must be read *in pari materia*.
29. A fundamental tenet of statutory construction requires

that statutory language be given its plain and ordinary meaning unless the words are defined in the statute or by the clear intent of the legislature. Green v. State, 604 So.2d 471, 473 (Fla. 1992). Courts are required to interpret statutory language to give effect to the evident legislative intent, regardless of whether such construction varies from the statute's literal meaning. Arthur Young & Co. v. Mariner Corp., 630 So.2d 1199, 1202 (Fla. 4th DCA 1994). Further, when a subsection is so closely related to another pertinent statutory specification, it is necessary to apply the *in pari material* canon of statutory construction which recognizes that statutory provisions will be considered together when "two different statutory provisions deal with the same specific subject or with subjects so connected that the meaning of the one informs the other." Brown v. State, 848 So.2d 361, 364 (Fla. 4th DCA 2003). See also, Morris v. Dollar Tree Store and Specialty Risk Services, 869 So.2d 704 (Fla. 1st DCA 2004). F.S. §466.003(3) explicitly limits the practice of dentistry to "the healing art which is concerned with . . . conditions within the human oral cavity and its adjacent tissues and structures" See also, Spiro v. Highlands General

Hospital, 489 So.2d 802 (Fla. 2nd DCA 1986). In Spiro, the Court found that §466.017(1), Fla. Stat., providing that a dentist shall have a right to administer anesthesia or sedation had to be read in the context of the express limitation of a dentist's practice under §466.003(3), Fla. Stat. (i.e. anesthesia only as it related to "dentistry" as defined). The dentist is Spiro was prohibited from administering anesthesia beyond the scope of "dentistry" as strictly defined by §466.003(3), Fla. Stat.

30. In this instance, the subparts of F.S. §466.003(3), cannot be read and interpreted outside or in contradiction with the clear and unambiguous definition of Dentistry contained within the Statute under which they are listed.

31. As such, "Grillz" falls outside the definition of Dentistry as defined by §466.003(3), Fla. Stat., and outside the jurisdiction and purview of the Florida Board of Dentistry.

IN THE ALTERNATIVE, IF IT IS DETERMINED THAT "GRILLZ" FALL WITHIN THE PURVIEW OF DENTISTRY, THE TAKING OF AN IMPRESSION FOR THE FABRICATION OF "GRILLZ" MAY BE PERFORMED BY A DENTAL ASSISTANT AS A MATTER OF LAW.

32. Florida Statute §466.024(1) provides: "[a] dentist may

delegate remediable tasks to a dental hygienist or dental assistant when such tasks pose no risk to the patient."

Among those tasks that are "by law found to be remediable and delegable" are:

"(a) Taking impressions for study casts, but not for the purpose of fabricating any intra-oral restorations or orthodontic appliance."

33. Thus, in the instant case, KING's taking of impressions for the fabrication of "Grillz" for its customers is a permissible and lawful act given the undeniable fact that "Grillz" are neither intra-oral restorations nor orthodontic appliances.
34. As specifically provided by F.S. §466.024(1), F.S., a Florida licensed dentist may lawfully delegate to KING's staff, who are specifically trained dental assistants, the task of taking impressions for the purpose of fabricating "Grillz".
35. Notwithstanding, the Defendants have conspired with law enforcement authorities to violate the rights of KING and to deny them the ability to engage in lawful business activities as provided by Florida law, to wit, the sale and fabrication of "Grillz" for its customers.

APPLICABLE LAW

A. Injunctive Relief Pursuant to Rule 1.610, Fla.R.Civ.P.

Injunctive relief is proper and should be granted in the present case. A temporary injunction will be granted where there is a showing of:

(1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law. In the present action, if a temporary injunction is not granted, KING will be forced out of business and will have no adequate remedy at law once it prevails at final hearing;

(2) the substantial likelihood of success on the merits. Given the foregoing facts and the applicable law, KING has more than a substantial likelihood of success on the merits;

(3) that the threatened injury to petitioner outweighs any possible harm to the respondent. Here, KING faces bankruptcy while the State can demonstrate no reported dental cases involving harm to the public related to "Grillz"; and

(4) that the granting of the preliminary injunction will not disserve the public interest. Cosmic Corp. v. Miami-Dade County, 706 So.2d 347 (Fla. 3rd DCA 1998). A trial court has wide discretion to grant a temporary injunction. Alachua County v. Lewis Oil Co., Inc., 516 So.2d 1033 (Fla. 1st DCA 1987). As noted in the above outlined facts, the State's unlawful

enforcement and prosecution of KING will cause KING irreparable harm for which there is no adequate remedy at law. Additionally, there is no basis in fact or law to support the State's unlawful enforcement and prosecution of KING. As a result, KING will suffer grave financial losses. A temporary injunction will serve the public interest by allowing the continuation of legitimate business enterprise and sale of consumer goods by KING and others similarly situated. Further, a temporary injunction will not disserve the public interest since there has never been any reported cases in Florida jurisprudence associated with the sale, use, and/or production of "Grillz."

B. Declaratory Relief

To be entitled to declaratory relief, a party must show he is in doubt as to some right or status and that he is entitled to have such doubt removed. See Section 86.021, Fla. Stat. (2006), Kelner v. Woody, 399 So.2d 35, 37 (Fla. 3rd DCA 1981). In the present case, KING is presently unable to continue with the sale of "Grillz" for fear of re-arrest and prosecution of its owner and employee. KING needs the Court to declare its rights and status to sell "Grillz" and to prohibit the Defendants from any further unlawful prosecution or interference of its business activities related to "Grillz". As such, KING is entitled to

declaratory relief to clarify its legal rights and duties with respect to the sale of "Grillz."

RELIEF SOUGHT

WHEREFORE, the Plaintiffs, KING, respectfully request that this Court to enter a declaratory judgment finding that:

A. "Grillz" do not constitute dentistry as defined by Florida Statutes and Rules, and as such fall outside the purview and jurisdiction of the Florida Department of Health and the Board of Dentistry.

Or, in the alternative, if the Court finds that "Grillz" constitute the practice of dentistry, to enter a declaratory judgment finding that:

B. "Grillz" are neither intra-oral restorations nor orthodontic appliances. Thus, the taking of an impression by a dental assistant for this specific purpose constitutes a remedial and delegable intra-oral task that poses no risk for the purchaser pursuant to Florida Statute §466.024(1) and is thus legally permissible.

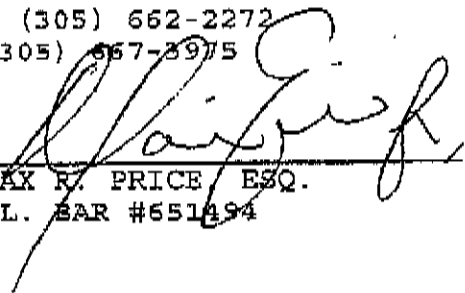
FURTHER, Plaintiffs petition this Court to enter an emergency preliminary injunction enjoining the Defendants from further action prohibiting, or conspiring with others to prohibit the lawful activity of selling and fabricating "Grillz" by KING during the pendency of this action. Upon entering rulings in favor of the

Plaintiffs, the Plaintiffs further seek a permanent injunction for KING and others similarly situated from any further unlawful action by the Defendants pertaining to the sale of "Grillz".

This Court may and should dispense with the bond requirement pursuant to Rule 1.610(b), Fla.R.Civ.P., and grant any other such relief as the Court deems just and proper.

Dated this 17th day of April, 2007.

LAW OFFICES OF MAX R. PRICE, P.A.
6701 Sunset Drive
Suite #104
Miami, Florida 33143
Tel.: (305) 662-2272
Fax: (305) 667-8975

BY: 
MAX R. PRICE ESQ.
FL. BAR #651494