

**IN THE UNITED DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

EMBROIDME.COM, INC.,  
a Florida corporation,

Case No.:

Plaintiff,

vs.

GEORGIA A. ACHTERMANN,  
individually,

Defendant.

\_\_\_\_\_ /

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff, EmbroidMe.com, Inc., a Florida corporation, sues Defendant, Georgia A. Achtermann, individually, and alleges:

**JURISDICTION AND VENUE**

1. This is an action for injunctive relief and for damages in excess of \$75,000.00 and Plaintiff invokes this Court's jurisdiction under 28 U.S.C. § 1332(a).

2. Plaintiff, EmbroidMe.com, Inc. ("EmbroidMe"), is a Florida corporation with its principal offices at 2121 Vista Parkway, West Palm Beach, Florida 33411.

3. Defendant, Georgia A. Achtermann ("Achtermann"), is a resident of Ohio, over eighteen years of age and otherwise *sui juris*.

4. Venue is proper in Palm Beach County, Florida because the parties' Franchise Agreement (defined in paragraph 7 below), at Section 26(D), provides that any lawsuit arising out of or relating to the Franchise Agreement shall be brought only in the Courts of the State of Florida in Palm Beach County, Florida or the District Court of the United States, Southern District of Florida and that Achtermann consents to jurisdiction therein.

**FACTUAL BACKGROUND**

5. EmbroidMe is engaged in the business of franchising embroidery and logo-wear businesses which market and sell embroidered goods, including, but not limited to, embroidered logo-wear, screen printed apparel, advertising specialty products, uniforms, and team wear. EmbroidMe has hundreds of retail embroidery stores in several different countries.

6. EmbroidMe has developed trademarks, service marks, customer goodwill, and certain methods of the design, distribution, production, promotion, and marketing of its products used in connection with the sale of its products under its trademarks, which are secret and confidential and are the exclusive property of EmbroidMe (the “EmbroidMe Trade Secrets”). EmbroidMe derives independent economic value from the EmbroidMe Trade Secrets.

7. On or about February 17, 2007, EmbroidMe and Achtermann entered into a Franchise Agreement, a copy of which is attached hereto as Exhibit “A” (the “Franchise Agreement”). The Franchise Agreement, at Section 26(E), provides that it shall be governed and construed in accordance with the laws of the State of Florida without regard to principles of conflicts of laws.

8. Pursuant to the Franchise Agreement, subject to the terms and conditions thereof, EmbroidMe granted Achtermann the right to operate an EmbroidMe franchise, including access to and use of the EmbroidMe Trade Secrets and extensive training and consultation from EmbroidMe.

9. In or about May, 2012, Achtermann stopped reporting her sales to EmbroidMe as required by the Franchise Agreement and stopped paying royalties due to EmbroidMe as required by the Franchise Agreement.

10. On or about July 12, 2012, EmbroidMe and Achtermann entered into a Settlement Agreement, a copy of which is attached hereto as Exhibit “B” (the “Settlement Agreement”).

11. Achtermann is delinquent in her royalty payments due to EmbroidMe pursuant to the Settlement Agreement and has not made any payments due thereunder since December 20, 2012.

12. In or about January, 2013, pursuant to Section 16(A)(ii) of the Franchise Agreement, EmbroidMe terminated the Franchise Agreement as a result of Achtermann abandoning her EmbroidMe store by failing to keep the same open for business for at least ten (10) consecutive days and as a result of Achtermann’s failure to make royalty payments when due in accordance with the terms of the Settlement Agreement.

13. To protect the EmbroidMe Trade Secrets, the Franchise Agreement includes a restrictive covenant, at Section 17(F)(i), which, following EmbroidMe’s termination of the Franchise Agreement, prohibits Achtermann from operating a competing business within ten miles of any other EmbroidMe store or any other business within the EmbroidMe network for a period of two years after termination. In particular, Section 17(F)(i) of the Franchise Agreement provides,

Upon the expiration or termination of this Agreement and for a period of two years thereafter, You [Achtermann] shall not, within a radius of ten miles from the Premises or the premises of any of other EmbroidMe store, be engaged, concerned, or interested in any capacity whatsoever in a business which competes with the EmbroidMe Business or any other business within the EmbroidMe Network (except as the holder of not more than 5% of the shares in any company whose shares are listed or dealt in any Stock Exchange or other recognized public market).

14. Achtermann is in violation of the restrictive covenant contained in Section 17(F)(i) of the Franchise Agreement by operating a competing business within ten (10) miles of another EmbroidMe store. In particular, Achtermann operates an embroidery and promotional

products business under the name “The Achtermann Group” at 8883 Basil-Western Road NW, Suite H, Canal Winchester, Ohio 43110, which is in competition with and is located within ten (10) miles of an EmbroidMe store located at 1142 Hill Road North, Pickerington, Ohio 43147.

15. By letter dated April 2, 2013, EmbroidMe gave Achtermann notice of her being in violation of the restrictive covenants set forth in Section 17(F) of the Franchise Agreement, and copy thereof is attached hereto as Exhibit “C,” specifically as it relates to Achtermann’s operation of a competing business within a radius of ten (10) miles of an existing EmbroidMe store (the “Default Notice”).

16. Following her receipt of the Default Notice, Achtermann has failed and refused to cease and desist operating her new embroidery and promotional products business in violation of the restrictive covenant set forth in Section 17(F)(i) of the Franchise Agreement.

17. The Franchise Agreement, at Section 23, provides for injunctive relief in favor of EmbroidMe. Section 23(A) of the Franchise Agreement provides:

You [Achtermann] recognize that the business franchised hereunder is intended to be one of a large number of businesses identified by the Trademarks in selling to the public the products and services associated with the Trademarks, and hence the failure on the part of a single franchisee to comply with the terms of its franchise agreement is likely to cause irreparable damage to [EmbroidMe], and damages at law would be an inadequate remedy. Therefore, notwithstanding any other provision of this Agreement, You [Achtermann] agree that in the event of a breach or threatened breach of any of the terms of this Agreement by You [Achtermann], [EmbroidMe] shall be entitled to seek an injunction restraining such breach . . . without showing or proving any actual damage, together with the recovery of reasonable attorneys’ fees and costs incurred in obtaining said equitable relief. . . . [EmbroidMe] shall be entitled to seek such relief without the posting of any bond or security, and if a bond shall nevertheless be required by a court of competent jurisdiction, the parties agree that the sum of \$100 shall be a sufficient bond.

18. EmbroidMe has several legitimate business interests justifying the restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement set forth above. These

legitimate business interests include, without limitation: (a) the EmbroidMe Trade Secrets, which constitute EmbroidMe's trade secrets as defined in Section 688.002, Florida Statutes; (b) EmbroidMe's substantial relationships with prospective and existing customers; (c) EmbroidMe's customer goodwill associated with EmbroidMe's trademarks and trade name, a specific geographic location, and specific marketing and trade area; and (d) extraordinary and specialized training.

19. The restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement, including their scope and time, are reasonably necessary to protect the legitimate business interests justifying the restrictions provided for therein.

20. Achtermann's violations of the restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement create a presumption of irreparably injury to EmbroidMe pursuant to Section 542.335(1)(j), Florida Statutes, and EmbroidMe has, in fact, been irreparably injured as a result thereof. EmbroidMe has already lost profits and good will as a result of Achtermann's acts in violation of the restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement.

21. Achtermann's acts in violation of the restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement will continue in the future unless restrained. EmbroidMe has no adequate remedy at law.

22. Section 23(A) of the Franchise Agreement entitles EmbroidMe to an award of attorneys' fees and costs incurred in obtaining the injunctive relief sought in this action.

23. EmbroidMe has retained the law firm of Katz Barron Squitero & Faust, PA to represent its interests in this lawsuit and has agreed to pay said law firm a reasonable fee for its services.

**COUNT I – BREACH OF FRANCHISE AGREEMENT**

24. Plaintiff incorporates and realleges the allegations of paragraphs 1 through 26 by reference as if fully set forth herein.

25. EmbroidMe and Achtermann entered into the Franchise Agreement, which is a valid and enforceable contract.

26. Achtermann breached the Lease by virtue of her violations of the restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement.

27. EmbroidMe has suffered and will continue to suffer damages as a result of Achtermann's breach of the Franchise Agreement.

WHEREFORE, EmbroidMe respectfully requests the Court to enter a preliminary and permanent injunction and judgment against Achtermann enforcing the restrictive covenants of Sections 17(F)(i) and 17(F)(ii) of the Franchise Agreement and enjoining her violation thereof, award EmbroidMe attorneys' fees and costs, and such other and further relief as this Court deems just and proper.

**COUNT II – BREACH OF SETTLEMENT AGREEMENT**

28. Plaintiff incorporates and realleges the allegations of paragraphs 1 through 26 by reference as if fully set forth herein.

29. EmbroidMe and Achtermann entered into the Settlement Agreement, which is a valid and enforceable contract.

30. Achtermann breached the Settlement Agreement by virtue of her failure to make payments due to EmbroidMe thereunder.

31. EmbroidMe has suffered and will continue to suffer damages as a result of Achtermann's breach of the Settlement Agreement.

WHEREFORE, EmbroidMe respectfully requests the Court enter a Judgment in its favor and against Achtermann for compensatory damages, prejudgment interest, attorneys' fees and costs, taxable costs, and such other and further relief as this Court deems just and proper.

