

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GODDARD SYSTEMS, INC.
1016 W. Ninth Avenue,
King of Prussia, Pennsylvania 19406.

Plaintiff

v.

IBITOLA HARRIS
312 Sagewood Court
Monroe, Ohio 45050

and

OLUDOTUN SHONUBI
312 Sagewood Court
Monroe, Ohio 45050

and

ADEYINKA HARRIS
9023 Regal Point
Richmond, Texas 77469

and

OLUWATOYIN HARRIS
9023 Regal Point
Richmond, Texas 77469

and

THS INC.
2613 Legends Way
Crestview Hills, Kentucky 41017

Defendants.

CIVIL ACTION NO.

JURY TRIAL NOT DEMANDED

COMPLAINT FOR MONETARY AND OTHER RELIEF

THE PARTIES

1. Goddard Systems, Inc. ("GSI") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 1016 W. Ninth Avenue, King of Prussia, Pennsylvania 19406.

2. Upon information and belief, Defendants Ibitola Harris and Oludotun Shonubi are residents and citizens of the State of Ohio, with a home address of 312 Sagewood Court, Monroe, Ohio 45050.

3. Upon information and belief, Defendants Adeyinka Harris and Oluwatoyin Harris are residents and citizens of the State of Texas, with a home address of 9023 Regal Point, Richmond, Texas 77469.

4. Ibitola Harris, Oludotun Shonubi, Adeyinka Harris and Oluwatoyin Harris are collectively referred to as the "Individual Defendants".

5. Defendant THS, Inc. ("THS") is a Kentucky corporation with a principal business located at 2613 Legends Way, Crestview Hills, Kentucky 41017.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 and 15 U.S.C. § 1116(a) because Defendants are engaging in activities that infringe GSI's trademarks under Sections 32 and 43 of the Lanham Act, 15 U.S.C. § 1114(1), § 1125(a).

7. This Court also has subject matter jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) because Plaintiff and Defendants are residents of different states, and the amount in controversy (including, without limitation, the value of the rights at issue in this dispute) exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district.

9. Jurisdiction and venue are also proper in this court under the terms of the applicable Franchise Agreement dated November 29, 2012 (*see Exhibit 1*, ¶ 24B).

BACKGROUND

10. GSI is the franchisor of THE GODDARD SCHOOL® preschools, which specialize in offering to the public preschool early education programs for children.

11. Through years of experience, GSI has developed an operating system consisting of (among other things) specially designed standards and specifications, business information, curricula, advertising and marketing materials, identification schemes, training programs, management programs, interior and exterior accessories, and GSI-approved equipment and equipment layouts (the “Goddard System”).

12. GSI is the owner of all of the right, title and interest in and to certain trade names, trademarks and service marks, including the mark THE GODDARD SCHOOL® and other related marks (the “Proprietary Marks”), which are utilized in the operation of the Goddard System. GSI owns numerous registrations for the mark THE GODDARD SCHOOL®, and related marks. Each of these registrations has been properly registered by GSI on the Principal Register in the United States Patent and Trademark Office and is in full force and effect.

13. The registered Proprietary Marks are famous and have acquired secondary meaning in that they are widely recognized by the general consuming public of the United States as a designation of source of the goods or services of GSI and its licensed franchisees.

14. The mark THE GODDARD SCHOOL® and the other Proprietary Marks are utilized in interstate commerce.

15. GSI has developed proprietary know-how, trade secrets and unique and successful methods of early childhood education, and has developed a unique, uniform system relating to the operation of THE GODDARD SCHOOL® preschools (the "Franchised Business"). Distinguishing characteristics of the Franchised Business include the Proprietary Marks, the latest available data and information concerning market analysis, procurement of students, sales and merchandising methods, training of franchisees and school personnel, advertising techniques, record-keeping and business management.

16. The Franchised Business also includes a system of maintaining uniform high standards of quality, appearance and service in each of THE GODDARD SCHOOL® preschools, an operations manual containing standards, specifications and procedures for operating THE GODDARD SCHOOL® preschool, training and instruction in the operation of the franchise, business guidance provided by GSI, and assistance in promoting the Franchised Business.

17. Maintenance of the highest standards of quality, appearance and service is essential to the development and maintenance of the reputation and goodwill of THE GODDARD SCHOOL® preschools. These standards are important to GSI and to each franchisee.

18. The goodwill and reputation associated with the Proprietary Marks are impaired when a franchisee fails to maintain standards and operates a non-conforming or unsafe business under THE GODDARD SCHOOL® trademarks and service marks.

19. GSI and its franchises have for many years spent substantial sums of money promoting THE GODDARD SCHOOL® preschools. As a result of this extensive promotion, valuable goodwill has been developed for the Proprietary Marks and for THE GODDARD

SCHOOL[®] preschools, products and services that bear the Proprietary Marks and thus identify GSI as their sponsor and source.

20. The business relationship between GSI and its franchisees is governed by the terms and conditions of a written franchise agreement between GSI and each franchisee.

21. There are over 425 GSI franchisees nationwide, each licensed to use the Proprietary Marks and to operate under GSI's business system, utilizing specially designed standards and specifications, business information, curricula, advertising and marketing materials, identification schemes, training programs, management programs, interior and exterior accessories, and GSI-approved equipment and equipment layouts.

THE FRANCHISE AGREEMENT

22. On or about November 29, 2012, the Individual Defendants entered into a Franchise Agreement with GSI, under which they were granted the right and undertook the obligation to operate THE GODDARD SCHOOL[®] preschool at 2613 Legends Way, Crestview Hills, Kentucky 41017 (the "School"). See Franchise Agreement (the "Franchise Agreement"), attached as **Exhibit 1**.

23. On or about November 29, 2012, the Individual Defendants entered into an Amendment to the Franchise Agreement (the "Amendment") which amended certain paragraphs of the Franchise Agreement. See Amendment attached as **Exhibit 2**.

24. On or about November 29, 2012, the Individual Defendants and THS (collectively, the "Franchisees" or "Defendants") executed an Assignment and Assumption Agreement, under which the Individual Defendants assigned all of their rights and obligations under the Franchise Agreement to THS, and THS assumed all of the rights and obligations of the Individual Defendants under the Franchise Agreement. Under the Assignment, the Individual

Defendants expressly agreed to continue to be personally bound by the Franchise Agreement and to be the unconditional guarantors of all of the obligations of THS. *See* Assignment attached as **Exhibit 3**.

25. On or about November 29, 2012, the Franchisees also entered into an Addendum to the Franchise Agreement in order to, among other things, meet a lending condition then required by the U.S. Small Business Administration (“SBA”) for obtaining SBA-assisted financing. *See* Addendum attached as **Exhibit 4**.

26. The initial term of the Franchise Agreement commenced on the date of the Franchise Agreement (November 29, 2012) and was set to last for an initial term of 15 years (until November 29, 2027). *See* Franchise Agreement (Ex. 1), ¶2.A; Amendment (Ex. 2), ¶ 1.A.

27. Under the terms of the Franchise Agreement and the Assignment, Franchisees received a limited license during the term of the Franchise Agreement to use the Proprietary Marks and Goddard operating system, to utilize GSI’s latest available data and information concerning early childhood education, and to employ the unique system of operation developed and owned by GSI.

28. In order to protect the goodwill and value of the Proprietary Marks, the Franchise Agreement required the Franchisees to attend initial and continuing training, operate the School according to the operations manual, and to devote full time, energy and efforts to the management and operation of the School. *See* Franchise Agreement (Ex. 1), ¶¶ 6, 8, 16.A.

29. The Franchise Agreement contains acknowledgments and agreements by the Franchisees concerning the importance of maintaining GSI’s standards for quality, appearance and service. For example, the Franchise Agreement recites that “Franchisee understands and acknowledges the importance of GSI’s high and uniform standards of quality and service and the

necessity of operating the business franchised hereunder in conformity with GSI's standards and specifications." Franchise Agreement (Ex. 1) at 1.

30. Under the terms of the Franchise Agreement, Franchisees were required to comply with all quality assurance standards prescribed by GSI, as well as with all applicable laws. *See* Franchise Agreement, attached as Exhibit 1, at ¶¶ 6(C), 6(I), and 18(B).

31. Indeed, Paragraph 6 of the Franchise Agreement (Ex. 1) provides, in relevant part:

B. You shall develop the School in the manner prescribed by Goddard for The Goddard School, including, without limitation, the implementation of the System as directed by Goddard, and shall use in the operation of the School only those brands and types of equipment and supplies which meet Goddard's standards and specifications.

...

C. You must investigate, keep informed of and strictly comply, at your expense, with all applicable local, state, and federal laws, rules, regulations, ordinances, standards, and directives in effect at any time related to the construction and operation of the School and the construction or the use of any furniture, fixtures, equipment and signs.

...

G. You shall maintain the School in the highest degree of sanitation, repair and condition, and shall perform such periodic repainting, repairs to impaired equipment and replacement of obsolete signs as Goddard may reasonably direct. ...

...

I. You shall comply with all quality assurance and service standards we prescribe from time to time.

Franchise Agreement (Ex. 1), ¶ 6.B, C, G and I.

32. Under the Franchise Agreement, the Franchisees' right to use the Proprietary Marks is limited. For example, Paragraph 7 of the Franchise Agreement (Ex. 1) provides, in relevant part:

A. Franchisee's right to use the Proprietary Marks is derived solely from this Agreement and is limited to the conduct of the business by Franchisee pursuant to and in compliance with this Agreement. Franchisee agrees that all usage of the Proprietary Marks and any goodwill established thereby shall inure to the exclusive benefit of GSI. Franchisee acknowledges that this Agreement does not confer any goodwill or other interest in the Proprietary Marks upon Franchisee. ...

B. Franchisee agrees that after termination or expiration of this Agreement he or she will not directly or indirectly at any time or in any manner identify himself or any business as a current or former Goddard School or as otherwise associated with [GSI], or use in any manner or for any purpose the Proprietary Marks or any colorable imitation thereof.

Franchise Agreement (Ex. 1), ¶ 7.A and B.

33. Under the Franchise Agreement, the Franchisees agreed, among other things, not to use GSI's trade secrets and confidential and proprietary information for unauthorized purposes (the "Covenant of Confidentiality"):

Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association or corporation, any trade secrets or confidential information, knowledge, or know-how concerning the methods of operation of a School which may be communicated or disclosed to Franchisee, or of which Franchisee may be apprised, by virtue of Franchisee's operation under the terms of this Agreement.

Franchise Agreement (Ex. 1), ¶ 9.

34. The Franchise Agreement provides that GSI is entitled to terminate the Franchise Agreement immediately "[i]f a threat or danger to public health or safety or to the health or safety of the children and/or adults at the School results from the maintenance or operation of the School, including [Franchisees] failure to comply with quality assurance standards. See Franchise Agreement (Ex. 1), ¶ 13(A)(8).

35. The Franchise Agreement also provides that GSI is entitled to terminate the Franchise Agreement upon notice if the Franchisees "fail on 2 or more occasions within any 12

month period to comply with any one or more provisions of this Agreement, whether or not those failures to comply are corrected after notice thereof is delivered to you.” *See* Franchise Agreement (Ex. 1), ¶ 13(A)(11).

36. The Franchise Agreement further provides that GSI is entitled to terminate the Franchise Agreement if the Franchisees fail to comply with any provision of the Franchise Agreement “or any specification, standard, quality assurance standard or operating procedure prescribed by GSI” and fail to correct their noncompliance after the applicable notice period provided for under the Franchise Agreement. *See* Franchise Agreement (Ex. 1), ¶ 13.B.

37. Upon termination or expiration of the Franchise Agreement, the Franchisees must, among other things: (a) immediately cease to operate the business franchised under the Franchise Agreement, and not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Goddard; (b) immediately and permanently cease to use, by advertising or in any manner whatsoever, any equipment, confidential methods, procedures and techniques associated with the System; the trade and service mark “The Goddard School,” and any Proprietary Marks and distinctive forms, slogans, signs, symbols or device associated with the Goddard System; (c) promptly pay all amounts due to GSI; and (d) immediately turn over to GSI all manuals, including the Manual, records, files, instructions, correspondence, all materials related to operating the franchised business including, without limitation, brochures, agreements and any and all other materials relating to the operation of the School in Franchisee’s possession. Franchise Agreement (Ex. 1), ¶¶ 14.A, B, E and G.

38. The Franchisees also agreed that for a period of three (3) years after the expiration or termination of the Franchise Agreement, regardless of the cause of termination, or the date upon which Franchisee ceases to operate the franchised business, whichever is later, they would

not, either directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, persons, partnership or corporation: (i) divert or attempt to divert any business or customer of the School to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with GSI's trade names, trademarks, proprietary marks or business system; (ii) employ or seek to employ any person who is at that time employed by GSI or by any other franchisee of GSI or otherwise directly or indirectly induce such person to leave his or her employment; and (iii) own, maintain, engage in, be employed by or have any interest in any child day care or pre-school learning center or business (other than another duly licensed THE GODDARD SCHOOL® franchise) within a ten-mile radius of the School or any existing or proposed THE GODDARD SCHOOL® location. Franchise Agreement (Ex. 1), ¶ 17.C.

39. Under paragraph 24.E of the Franchise Agreement, the Franchisees agreed that, in any action brought to enforce GSI's rights under the Franchise Agreement, GSI is entitled to recover, in addition to any other recovery, reasonable attorneys' fees together with court costs and expenses of litigation.

THE FRANCHISEES BREACH THE FRANCHISE AGREEMENT

40. Notwithstanding the Franchisees' promises to GSI under the Franchise Agreement and the Assignment, the Franchisees failed to comply with their obligations under the Franchise Agreement.

41. As a result, GSI sent the Franchisees a letter dated March 11, 2013 (the "March 11, 2013 Letter"), advising Franchisees, among other things, of GSI's concern regarding the operation of the School, particularly relating to Franchisees' Quality Assurance ("QA") deficiencies and their non-compliance with GSI's standards and Kentucky state regulations. See the March 11, 2013 Letter, attached as **Exhibit 5**.

42. The March 11, 2013 Letter also advised Franchisees that they had failed to submit their verification plan demonstrating correction of each QA deficiency (the "Verification"), identified in the January 29, 2013 QA assessment, which plan was due March 1, 2013.

43. Nevertheless, Franchisees failed the Health & Safety section of their next QA assessment, on May 27, 2013. GSI sent Franchisees a Notice of Default (the "First Default Notice") on June 27, 2013, notifying them of their default and advising them of the actions required by Franchisees to cure the existing defaults that existed at the School as follows: (i) correct all deficiencies identified in the May 21, 2013 QA within thirty days of the date of the First Default Notice and provide evidence of same to GSI; (ii) prepare and implement a written plan to improve the School's QA compliance going forward and submit same to GSI; (iii) Franchisees and staff participation in GSI's mandatory health and safety training within thirty days of the date of the First Default Notice; (iv) Franchisees and staff participation in GSI's other supplemental training programs that GSI deemed necessary; and (v) achieve a passing grade in all sections of the next QA review conducted at the School (including the Health & Safety section). See the First Default Notice attached as **Exhibit 6**.

44. Franchisees cured their default and, for about two years, substantially complied with GSI's QA standards.

45. In June 2015, Franchisees again began to fail to meet their obligations to GSI under the Franchise Agreement to, among other things, maintain a safe, healthy and nurturing environment for children, in compliance with GSI's QA standards.

46. The School failed the Health & Safety section of the QA assessment conducted on June 2, 2015.

47. In or about August 2015, GSI became aware of a number of operational problems in the School, including the fact that a high number of staff departures had rendered it difficult for the School to maintain staff-to-student ratios required by the Commonwealth of Kentucky.

48. Consequently, during August and September 2015, GSI's Operations and Education Support teams spent a significant amount of time in the School in order to assist the Franchisees in ensuring that the School was operated in accordance with the System and within acceptable health and safety standards.

49. GSI personnel observed numerous serious operational and health and safety issues in the School.

50. On September 23, 2015, GSI sent Franchisees a Second Notice of Default (the "Second Default Notice") regarding their failure to comply with GSI's QA standards at the School, specifically Franchisees' failure to maintain a safe, healthy and nurturing environment. See Second Default Notice attached as **Exhibit 7**.

51. Due to the serious nature of the deficiencies in the School, GSI required that Franchisees cure their defaults by, among other things, curing all QA deficiencies at the School, within seven days from the date of the Second Default Notice (i.e., by October 1, 2015).

52. On October 2, 2015, GSI conducted another QA review, which Franchisees again failed by a wide margin. The low QA scores and additional observations made during the October 2, 2015 QA review once again demonstrated that the School presented a potential threat to the health and safety of the students and others at School.

THE FRANCHISE AGREEMENT IS TERMINATED PURSUANT TO ITS TERMS

53. The incidents and observations set forth above, and Franchisees' response to them, demonstrated to GSI that Franchisees were not ensuring the health and safety of children

in the School, that Franchisees were not complying with applicable laws, and that Franchisees were putting the valuable goodwill associated with THE GODDARD SCHOOL[®] brand at risk.

54. Franchisees' repeated failures to meet and comply with GSI's quality assurance standards and with applicable laws, are serious breaches of the Franchise Agreement.

55. On October 5, 2015, GSI sent Defendants a Notice of Termination of Franchise Agreement ("Notice of Termination") for, among other things, failure to cure the defaults identified under the Second Default Notice within the applicable cure period. *See* Notice of Termination attached as **Exhibit 8**.

56. As of October 5, 2015, the Franchisees had no further rights under the Franchise Agreement or applicable law with regard to the franchise or other rights granted under the Franchise Agreement.

57. During two telephone conferences on October 6, 2015, GSI informed Franchisees that it was willing to allow the School to remain open until the end of the month, on the condition that Franchisees cooperated with GSI in effecting an orderly closure of the School as of October 30, 2015 and that GSI's own representatives be present every day with Franchisees to help ensure the children's health and safety.

58. In cooperation with GSI, Franchisees informed staff members and parents on October 12, 2015 that the School would close as of October 30, 2015.

59. Within days, however, Franchisees were not coming to the School regularly, resulting in additional operational and health and safety issues such as a lack of qualified staff members to administer children's medication and a lack of School employees with keys to open or close the building at the beginning and end of the day.

60. Consequently, GSI has become concerned that Franchisees are no longer cooperating with GSI in effecting an orderly closure of the School.

COUNT I

Declaratory Judgment – Termination of Franchise Agreement

61. GSI incorporates the allegations contained in the preceding paragraphs as if fully set forth in this paragraph.

62. Franchisees' failure to comply with the terms of the Franchise Agreement creates an actual controversy between GSI and Franchisees concerning the rights and obligations contained in the Franchise Agreement. GSI, therefore, requests that the Court declare Franchisees to be in material breach and violation of the Franchise Agreement.

63. Pursuant to 28 U.S.C. §§ 2201 and 2202, the Court has jurisdiction to determine disputes between GSI, on the one hand, and Franchisees, on the other, concerning the parties' respective obligations and performance under the Franchise Agreement regarding GSI's termination of the Franchise Agreement and requirement that the School be closed as of October 30, 2015.

64. A dispute currently exists between the parties as to whether Franchisees have properly discharged their duties and obligations under the Franchise Agreement regarding termination. To resolve this dispute, GSI requests that the Court declare that: (a) Franchisees materially breached their obligations under the Franchise Agreement and Assignment by failing to comply in material respects with GSI's QA standards; and (b) GSI had a right to terminate the Franchise Agreement and require that the School cease operations, effective as of October 30, 2015; and (c) the Franchise Agreement has been properly terminated as described above.

65. GSI further requests that the Court order the Franchisees to pay GSI its costs and reasonable attorney's fees incurred in enforcing the termination of the Franchise Agreement

and the Assignment and, to the extent required, the de-identification and cessation of operation of their formerly franchised business as provided in the Franchise Agreement and the Assignment.

COUNT II

Breach of Franchise Agreement – Lost Future Royalties

66. GSI incorporates the allegations contained in the preceding paragraphs as if fully set forth in this paragraph.

67. Franchisees' failures to comply with the terms of the Franchise Agreement as set forth above constituted a material breach of the Franchise Agreement and the Assignment. As the result of such breach, GSI terminated the Franchise Agreement.

68. Under the terms of the Franchise Agreement and the Assignment, GSI had anticipated receiving continuing revenue from Franchisees' royalty payments until November 29, 2027.

69. Franchisees' breach of the Franchise Agreement and the Assignment has damaged GSI in that GSI no longer has the potential to receive future royalties and payments for the remaining twelve-year term of the Franchise Agreement.

WHEREFORE, Plaintiff Goddard Systems, Inc. demands judgment in its favor and against Defendants Ibitola Harris, Oludotun Shonubi, Adeyinka Harris, Oluwatoyin Harris, and THS Inc., jointly and severally, as follows:

- (a) a declaratory judgment that: (1) Defendants were in default of and otherwise materially breached their obligations under the Franchise Agreement and the Assignment; (2) GSI had a right to terminate the Franchise Agreement and the Assignment and require that the School cease operations, effective

as of October 30, 2015; and (c) the Franchise Agreement has been properly terminated and Franchisees have no further rights with respect to the Franchise Agreement and the Assignment;

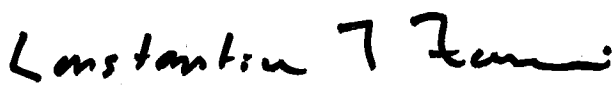
- (b) Money damages attributable to Defendants' breaches of the Franchise Agreement and the Assignment;
- (c) Compensatory damages;
- (d) Consequential damages;
- (e) An accounting by Defendants of the profits to which GSI may be entitled;
- (f) Attorney's fees;
- (g) Costs of this action;
- (h) Pre-judgment and post-judgment interest; and
- (i) Such further relief as this Court deems appropriate.

Respectfully submitted,

GODDARD SYSTEMS, INC.

Dated: October 26, 2015.

By:


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