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IN THE UNITED STATES FEDERAL DISTRICT COURT

FOR THE DISTRICT OF UTAH

YESCO FRANCHISING LLC, a Utah limited liability company, Plaintiff, vs. WILLIAM ROTH DBA SIGNCRAFT, an individual, Defendant.	**COMPLAINT** Civil No. 2:14-cv-00003-RJS Judge: Robert J. Shelby

COMES NOW YESCO Franchising LLC, a Utah limited liability company ("YESCO"), and alleges, avers, and complains of defendant William Roth dba SignCraft ("Roth") as follows:

PARTIES, JURISDICTION, AND VENUE

1. YESCO was at all relevant times herein, and still is, a Utah limited liability company validly organized and in good standing.

2. YESCO is informed, believes, and thereon alleges that defendant William Roth is, and was at all relevant times herein, a resident of North Carolina.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1332 and pursuant to 11 U.S.C. § 1125, *et seq*.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1367 and 1391.

5. Roth has purposefully availed himself of jurisdiction in the State of Utah by engaging in certain minimum contacts with such state and by entering into express contractual provisions that provide for Utah as the forum and venue for this lawsuit. Accordingly, the exercise of personal jurisdiction over Roth in Utah is reasonable and foreseeable under the facts and circumstances of this case.

GENERAL ALLEGATIONS

6. YESCO has commenced this lawsuit to address contractual, statutory, and common-law breaches of promises, covenants, and obligations entered into by Roth that he has breached.

7. YESCO was formed in 2010. YESCO and its affiliates are a family owned group of companies with experience in the sign industry dating back to 1920. YESCO's affiliates' products include outdoor advertising billboards, electric signs, specialty signs, and custom signs. As an example of its products, YESCO's affiliates, YESCO LLC and YESCO Electronics LLC, recently custom manufactured and installed the mammoth HD video monitors for the Utah Jazz organization at Energy Solutions Arena.

8. YESCO operates across the nation and has offered franchises to individuals and entities in various states.

9. On or about November 9, 2012, Roth entered into a Franchise Agreement with YESCO (the "Franchise Agreement").

10. Pursuant to the Franchise Agreement, Roth was granted certain, non-exclusive franchise rights related to a territory defined on Exhibit B of such agreement, which territory primarily included Charlotte, North Carolina and some surrounding areas (the "Territory").

11. Shortly after entering into the Franchise Agreement, Roth also executed a secured promissory note on November 20, 2012, in the face amount of $40,600 (the "Note") in order to repay amounts loaned to him by YESCO pursuant to the Franchise Agreement to pay, *inter alia*, the franchise fee.

12. During the term of the Franchise Agreement, Roth has engaged in various conduct constituting a breach of the Franchise Agreement.

13. By letter dated December 11, 2013, YESCO notified Roth of the various breaches that exist under the Franchise Agreement (the "Default Notice Letter").

14. Roth responded to the Default Notice Letter by making various threats in an email to YESCO representatives, including threats of making defamatory statements about YESCO on social media and also including a thinly veiled threat of violence.

15. In addition to the unfounded, aggressive, and disturbing threats being made by Roth, he is operating his business in a way that violates the Franchise Agreement in numerous ways and also violates statutory and common-law prohibitions.

16. By letter dated January 2, 2014, YESCO notified Roth of its termination of the Franchise Agreement and its intent to enforce its rights under the Franchise Agreement and the Note.

17. Immediately after being notified he had been terminated and losing his YESCO email rights, Roth registered an email address of YESCOcharlotte@gmail.com, which is just one example of how he is infringing on YESCO's trademark and other intellectual property rights.

18. At present, Roth owes YESCO at least $39,474.60 under the Note.

19. In addition, Roth owes YESCO at least $90,000 in past royalty payments.

20. In addition, Roth's conduct has damaged YESCO in amounts that will be proven at trial but are estimated to be in excess of an additional $175,000.

FIRST CLAIM FOR RELIEF
(Breach of Contract – Franchise Agreement and Note)

21. YESCO hereby incorporates paragraphs 1 through 20 of this Complaint by this reference, as if fully set forth herein.

22. Roth entered into the Franchise Agreement with YESCO.

23. Roth has failed to fully perform his obligations under the Franchise Agreement and the Note.

24. Specifically, Roth has breached, *inter alia*, his obligations to pay royalties when due, to continually operate the YESCO franchise business, to achieve certain sales quota and volumes, to maintain a sales force, to license equipment, to use proprietary software provided by YESCO and required to be used, and to implement action items from YESCO administrators who visited the Territory and discussed such action items with Roth.

25. In addition, Roth has failed to repay the Note amounts owed.

26. In addition to the above breaches of the Franchise Agreement and Note, Roth has breached his obligation to safeguard, and not misuse, YESCO proprietary, trade-secret, and confidential information.

27. YESCO has performed all its obligations under the Franchise Agreement and Note.

28. Due to Roth's refusal to perform and honor his obligations, he has breached the Franchise Agreement and Note, breaches that he has failed to remedy.

29. As a direct and proximate cause of Roth's breach of the Franchise Agreement and Note, he is liable to YESCO for all damages incurred and for injunctive relief to preclude continuing and further breaches.

30. YESCO is further entitled to pre-judgment interest on any damages suffered.

31. YESCO is further entitled to post-judgment interest at the maximum rate allowed by applicable law.

32. YESCO also is entitled to recover its reasonable attorneys' fees and costs incurred in connection herewith in amounts to be proven at trial.

SECOND CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing)

33. YESCO hereby incorporates paragraphs 1 through 32 of this Complaint by this reference, as if fully set forth herein.

34. The Franchise Agreement includes a covenant of good faith and fair dealing between the parties to that contract.

35. Roth has breached the implied covenant of good faith and fair dealing by interacting with YESCO, potential YESCO customers, and other YESCO franchisees in a way that is designed to harm YESCO and in contravention of the clear intent and design of the Franchise Agreement.

36. YESCO is entitled to recover damages from Roth associated with his breach of this implied covenant.

37. YESCO is further entitled to pre-judgment and post-judgment interest on all damages awarded.

38. YESCO is further entitled to recover its reasonable attorneys' fees and costs incurred in connection herewith in amounts to be proven at trial.

THIRD CLAIM FOR RELIEF
(Trade Secrets Act)

39. YESCO hereby incorporates paragraphs 1 through 38 of this Complaint by this reference, as if fully set forth herein.

40. YESCO provided proprietary and sensitive information about its customers and potential customers and about is business operations and franchise relationships to Roth, which information derives independent economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use ("YESCO Trade Secret Information").

41. Some of the YESCO Trade Secret Information is defined as Marks, Copyrights, and the System in the Franchise Agreement.

42. The YESCO Trade Secret Information is and was the subject of reasonable efforts by YESCO under the circumstances to maintain its secrecy.

43. Roth has misappropriated YESCO trade secrets by using the YESCO Trade Secret Information to lure away potential customers and to attempt to lure away other YESCO customers.

44. YESCO has been damaged by such misappropriation.

45. YESCO is entitled to recover its damages from Roth.

46. In addition, YESCO is entitled to pre-judgment and post-judgment interest on the damages it has suffered.

47. Further, YESCO is entitled to injunctive relief to redress actual and threatened misappropriation of its trade secrets.

FOURTH CLAIM FOR RELIEF
(Contractual and Common Law Indemnification)

48. YESCO hereby incorporates paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. The Franchise Agreement includes an indemnification provision whereby Roth has promised to indemnify YESCO for all damages, expenses, and other costs associated with this lawsuit and any of YESCO's claims asserted herein.

50. Under common law principles of indemnification, it is equitable that Roth be required to indemnify YESCO for all expenses and costs associated with this lawsuit and for all claims asserted by YESCO herein.

51. YESCO is entitled to a judgment against Roth for all legal fees, expenses, and other costs incurred by YESCO that are in any way related to this lawsuit.

52. YESCO is entitled to interest on all such amounts awarded.

FIFTH CLAIM FOR RELIEF
(Tortious Interference with Economic Relations)

53. YESCO hereby incorporates paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54. Roth intentionally or negligently has interfered with YESCO's existing and/or prospective relationships, including, without limitation relationships YESCO has with other franchisees, with existing YESCO customers, and with potential YESCO customers.

55. Roth's interference stemmed from an improper purpose and/or an improper means on his part.

56. Roth's interference has been the actual and proximate cause of damage to YESO, in amounts to be proven at trial.

57. YESCO is entitled to recover all damages from Roth associated with his tortious interference.

58. YESCO is additionally entitled to recover interest and attorney fees.

SIXTH CLAIM FOR RELIEF
(Noncompetition Covenant)

59. YESCO hereby incorporates paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. Roth agreed as part of his Franchise Agreement to a noncompetition clause that restricts his business operations for two years within the Territory plus a 25-mile perimeter of his Territory.

61. The noncompetition provisions contained in the Franchise Agreement are reasonable in scope and duration.

62. The noncompetition provisions contained in the Franchise Agreement are narrowly tailored to meet YESCO's legitimate business purposes.

63. On information and belief, Roth is conducting business in violation of the express covenants and promises made not to compete against YESCO in the manner that he is doing for a period of two years.

64. YESCO has been damaged and will be further damaged by Roth's conduct that contravenes the noncompetition provisions of the Franchise Agreement.

SEVENTH CLAIM FOR RELIEF
(Trademark Violations under Lanham Act)

65. YESCO hereby incorporates paragraphs 1 through 64 of this complaint as if fully set forth herein.

66. YESCO possesses various marks that are uniquely associated with its business that it allows to be used by franchisees.

67. During the time that Roth operated as a franchisee, he was allowed access to and use YESCO's marks.

68. YESCO's marks are valid and legally protected.

69. YESCO's marks are owned by YESCO, not Roth.

70. On information and belief, Roth has used, and is using, one or more of YESCO's marks in the stream of commerce without YESCO's consent.

71. Roth's use of YESCO's marks will create the likelihood of confusion.

EIGHTH CLAIM FOR RELIEF
(Preliminary and Permanent Injunction)

72. YESCO hereby incorporates paragraphs 1 through 71 of this Complaint as if fully set forth herein.

73. The actions of Roth have caused, and will continue to cause, irreparable harm to YESCO if allowed to continue.

74. Accordingly, YESCO is entitled to an order of this Court restraining and enjoining the prohibited conduct, including breaches of the Franchise Agreement generally (and specifically related to breach of the noncompetition covenant) and misappropriation of YESCO Trade Secret Information.

75. The injury caused to YESCO outweighs whatever damage the injunctive order will cause Roth.

76. An injunctive order in favor of YESCO would not be adverse to the public interest.

77. YESCO is substantially likely to succeed on the merits of the claims it has asserted in this Complaint.

78. Alternatively, this case presents serious issues on the merits which should be the subject of further litigation.

79. On page A-50 of the Franchise Agreement, Roth acknowledged and agreed that conduct on his part that violates such agreement should be restrained and enjoined.

80. No security should be required to be posted, since the injunctive relief sought simply would maintain the status quo. Alternatively, security should not exceed $500, the amount agreed upon by Roth on page A-50 of the Franchise Agreement as a maximum security/bond amount.

81. YESCO is entitled to its attorney fees and court costs incurred herein.

82. The injunction order should apply to Roth and any of his affiliated or related entities and/or persons.

PRAYER FOR RELIEF

WHEREFORE, YESCO prays for judgment against Roth as follows:

1. UNDER THE FIRST CLAIM FOR RELIEF, for judgment against Roth for all damages suffered related to breach of contract, plus pre-judgment and post-judgment interest, plus reasonable attorneys' fees and costs incurred in this matter;

2. UNDER THE SECOND CLAIM FOR RELIEF, for judgment against Roth for all damages suffered related to breach of the implied covenant of good faith and fair dealing, plus pre-judgment and post-judgment interest, plus reasonable attorneys' fees and costs incurred in this matter;

3. UNDER THE THIRD CLAIM FOR RELIEF, for judgment against Roth for all damages attributable to misappropriation of YESCO's trade secrets, pre-judgment and post-judgment interest, and attorney fees;

4. UNDER THE FOURTH CLAIM FOR RELIEF, for judgment against Roth requiring him to indemnify YESCO for all costs and expenses associated in any way with this lawsuit and with the claims asserted by YESCO herein;

5. UNDER THE FIFTH CLAIM FOR RELIEF, for judgment against Roth for all damages attributable to tortious interference with YESCO's existing and prospective economic relations, pre-judgment and post-judgment interest, and attorney fees;

6. UNDER THE SIXTH CLAIM FOR RELIEF, for judgment against Roth for all damages associated with his breach of noncompetition provisions in the Franchise Agreement, plus interest and attorney fees, and for an order enjoining and restraining breach of such provisions;

7. UNDER THE SEVENTH CLAIM FOR RELIEF, for judgment against Roth for all damages associated with his breaches of the Lanham Act, for injunction relief preventing further breaches of such act, plus interest and attorney fees;

8. UNDER THE EIGHTH CLAIM FOR RELIEF, for entry of an order against Roth enjoining and restraining any breaches by Roth of the Franchise Agreement and further enjoining/restraining misappropriation of any of the YESCO Trade Secrets as to all persons acting on Roth's behalf or in active concern with him; and

9. UNDER ALL CLAIMS, for any additional relief deemed proper by the Court.

DATED this 3rd day of January, 2014.

PARR BROWN GEE & LOVELESS, P.C.

By: /s/ James L. Ahlstrom
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