

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

BASKIN-ROBBINS FRANCHISING
LLC, a Delaware limited liability
company, and BR IP HOLDER LLC,
a Delaware limited liability company,



Provided by:
[Overhauser Law Offices LLC](http://www.iniplaw.org)
www.iniplaw.org
www.overhauser.com

Plaintiffs,

v.

Case No. _____

BIG SCOOPS INC.,
an Indiana corporation, and
DAVID M. GLASGOW, JR., an individual,

Defendants.

_____ /

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs, Baskin-Robbins Franchising LLC and BR IP Holder LLC (hereinafter, unless specifically identified, referred to as “Plaintiffs” or “Baskin-Robbins”), sue Defendants, Big Scoops Inc. and David M. Glasgow, Jr. and allege as follows:

PRELIMINARY STATEMENT

1. This is an action for breach of contract, trademark infringement, trade dress infringement, and unfair competition arising from Defendants’ repeated violations of their Franchise Agreement and Personal Guarantees with Plaintiffs. On numerous occasions, Defendants were notified that they were in default of the Franchise Agreement based on their failure to pay required fees and other amounts to Plaintiffs. Since receiving their most recent Notice to Cure in December 2018, Defendants once again are in default of the Franchise Agreement based upon their failure to pay required fees and other amounts to Plaintiffs. As a result of Defendants’ repeated breaches of the Franchise Agreement, Defendants are no longer entitled to an opportunity to cure their financial defaults. Accordingly, Plaintiffs recently sent

Defendants a Notice of Termination with respect to their Baskin-Robbins franchised business terminating their Franchise Agreement. Nonetheless, Defendants continue to operate the Baskin-Robbins shop and have failed to comply with their post-termination obligations in breach of the Franchise Agreement. Additionally, Defendants' continued use and enjoyment of Plaintiffs' trademarks, trade name, and trade dress after the effective date of the termination of the Franchise Agreement is a violation of the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* Plaintiffs seek injunctive relief, monetary damages, and other relief against Defendants for the reasons set forth below.

PARTIES

2. Plaintiff Baskin-Robbins Franchising LLC is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. It is engaged in the business of franchising independent business persons to operate Baskin-Robbins shops throughout the United States. Baskin-Robbins franchisees are licensed to use the trade names, service marks, and trademarks of Baskin-Robbins and to operate under the Baskin-Robbins system, which involves the production, merchandising, and sale of ice cream and related products utilizing a specially designed building with special equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, proprietary marks and identification.

3. Plaintiff BR IP Holder LLC, is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. BR IP Holder LLC is the owner of the trademark, service mark, and trade name "Baskin-Robbins" and related marks. Unless otherwise specified, Baskin-Robbins Franchising LLC and BR IP Holder LLC are collectively referred to herein as "Baskin-Robbins."

4. DB Master Finance LLC, a Delaware limited liability company, is the sole member of Plaintiff BR IP Holder LLC. In turn, the sole member of DB Master Finance LLC is Baskin-Robbins International LLC, a Delaware limited liability company. The sole member of Baskin-Robbins International LLC is Baskin-Robbins Flavors LLC, a Delaware limited liability company. The sole member of Baskin-Robbins Flavors LLC is Baskin-Robbins USA LLC, a California limited liability company. The sole member of Baskin-Robbins USA LLC is Baskin-Robbins LLC, a Delaware limited liability company. The sole member of Baskin-Robbins LLC is Mister Donut of America LLC, a Delaware limited liability company. The sole member of Mister Donut of America LLC is Dunkin' Donuts USA LLC, a Delaware limited liability company. The sole member of Dunkin' Donuts USA LLC is Dunkin' Donuts LLC, a Delaware limited liability company. The sole member of Dunkin' Donuts LLC is Dunkin' Brands, Inc., a Delaware corporation. The principal place of business of all the foregoing entities is at Canton, Massachusetts.

5. The sole member of Plaintiff Baskin-Robbins Franchising LLC is DB Franchising Holding Company LLC, which is a Delaware limited liability company with its principal place of business at Canton, Massachusetts. In turn, the sole member of DB Franchising Holding Company LLC is DB Master Finance LLC. As stated above, DB Master Finance LLC is a Delaware limited liability company with its principal place of business in Canton, Massachusetts.

6. Defendant Big Scoops Inc. ("Big Scoops") is an Indiana corporation with its principal place of business in Terre Haute, Vigo County, Indiana. At all times relevant to this action, Big Scoops was the owner and operator of a retail Baskin-Robbins shop located at 2 W. Honey Creek Parkway, Terre Haute, Indiana pursuant to a Franchise Agreement with Baskin-Robbins Franchising LLC dated October 14, 2015.

7. Defendant David M. Glasgow Jr. is a natural person and, upon information and belief, a citizen and a resident of the State of Indiana. Defendant David M. Glasgow Jr. is an officer of Big Scoops, and personally guaranteed the obligations of Big Scoops pursuant to personal guarantees executed with respect to the Franchise Agreement.

JURISDICTION AND VENUE

8. This action arises, in part, under Chapter 22 of Title 15 of the United States Code, 15 U.S.C. § 1051, *et seq.* (the “Lanham Act”), and presents, *inter alia*, federal questions involving trademark infringement and unfair competition.

9. This Court has jurisdiction pursuant to §§ 34(a) and 39 of the Lanham Act, 15 U.S.C. §§ 1116(a) and 1121, and 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367(a). The amount in controversy, including the objects of the litigation, exceeds \$75,000, exclusive of interest and costs.

10. This Court has *in personam* jurisdiction over Defendants because they conduct business in this district, they are residents of this district, and/or the events giving rise to Plaintiffs’ claims occurred in this district.

11. This Court has supplemental jurisdiction over any related state law claims pursuant to 28 U.S.C. § 1367.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district, a substantial part of the events giving rise to Plaintiffs’ claims occurred in this district, and/or this is the judicial district in which Defendants are subject to personal jurisdiction.

FACTUAL BACKGROUND

The Baskin-Robbins System

13. Baskin-Robbins Franchising LLC is the franchisor of the Baskin-Robbins franchise system.

14. BR IP Holder LLC is the owner of the trademarks, service marks, logos, emblems, trade dress and trade name “Baskin-Robbins,” and related marks. Baskin-Robbins has the exclusive license to use and license others to use these marks and trade name and has used them continuously since approximately 1947 to identify Baskin-Robbins shops, and the ice cream and other products associated with those shops.

15. BR IP Holder LLC owns numerous federal registrations for the mark “Baskin-Robbins” or derivations thereof, as well as related marks. Each of these registrations is in full force and effect, and most of them are incontestable pursuant to 15 U.S.C. § 1065. Each registration is prima facie evidence of the validity of the registration, of BR IP Holder LLC’s ownership of the Baskin-Robbins marks, and of Baskin-Robbins’ exclusive right to use those marks in commerce on the services and goods listed above, as provided in 15 U.S.C. §§ 1057(b) and 1115(a).

16. The Baskin-Robbins marks are utilized in interstate commerce.

17. The Baskin-Robbins marks have been very widely advertised and promoted by Baskin-Robbins over the years. As a result, the Baskin-Robbins marks have become famous throughout the United States.

18. Baskin-Robbins and its franchisees currently operate more than 7,800 shops worldwide, including over 2,500 shops in the United States. In the more than seventy (70) years since the Baskin-Robbins system began, millions of customers have been served in Baskin-Robbins shops.

19. As a result of the extensive sales, advertising, and promotion of items identified by the Baskin-Robbins marks, the public has come to know and recognize the Baskin-Robbins marks, and associate them exclusively with products and services offered by Baskin-Robbins and its franchisees. The Baskin-Robbins marks are among the best and most widely known trademarks in the United States today, and are assets of inestimable value to Baskin-Robbins, representing and embodying Baskin-Robbins' considerable goodwill and favorable reputation.

Obligations Under the Franchise Agreement

20. On or about October 14, 2015, Big Scoops entered a franchise agreement with Baskin-Robbins Franchising LLC, which granted it the right to operate a Baskin-Robbins shop utilizing the Baskin-Robbins system, as described in paragraphs 2 and 3 above (the "Franchise Agreement").

21. Big Scoops was licensed to use the Baskin-Robbins trademarks, trade names, and trade dress in accordance with the terms of its Franchise Agreement.

22. Under the Franchise Agreement, Big Scoops agreed to use Baskin-Robbins' proprietary marks, including, but not limited to, their trademarks, service marks, logos, emblems, trade dress and other indicia of origin, only in the manner and to the extent specifically licensed by the Franchise Agreement. (Franchise Agreement, Terms and Conditions §§ 2.1, 2.4(a) and 9.0, attached as **Exhibit 1**).

23. Under the Franchise Agreement, Big Scoops agreed to, among other things, (i) pay a franchise fee equal to 5.9% of gross sales of the business, (ii) pay an advertising fee equal to 5.0% of gross sales of the business, (iii) pay late fees, interest and costs on unpaid monies due under the Franchise Agreement, and (iv) pay all sums owing and any damages, interest, costs and expenses, including reasonable attorneys' fees, incurred as a result of Defendants' defaults. (*Id.* §§ 5.2, 5.3, 5.7, 14.4.4 and 14.7.1).

24. Big Scoops agreed that it would be in default under the Franchise Agreement if it breached any obligation under the Franchise Agreement, including failing to pay any of the required fees. (*Id.* § 14.0.1).

25. Big Scoops agreed that Baskin-Robbins may terminate the Franchise Agreement if Big Scoops defaulted under the Franchise Agreement or if it failed to timely cure any default. (*Id.* § 14.6).

26. In addition, Big Scoops agreed that it would be a default under the Franchise Agreement if it failed to pay any of the required fees and, after receiving written notice of the failure to pay and seven (7) days to cure the default, if the default remained uncured, that Baskin-Robbins would have the right to terminate the Franchise Agreement. (*Id.* § 14.1.2).

27. Furthermore, Big Scoops also agreed that Baskin-Robbins may terminate the Franchise Agreement without providing an opportunity to cure if Big Scoops defaulted under the Franchise Agreement and received three (3) or more notices to cure for the same or substantially similar default (whether or not it had cured the default) within the immediately preceding twelve-month period. (*Id.* § 14.2).

28. Big Scoops agreed that upon the termination of the Franchise Agreement, its right to use the Baskin-Robbins proprietary marks and system would cease, and it would immediately cease to operate the franchised businesses, cease to use the proprietary marks and system, and would not, directly or indirectly, hold itself out as a present or former Baskin-Robbins' franchisee. (*Id.* §§ 14.6, 14.7.2 and 14.7.3).

29. Big Scoops agreed that any unauthorized use of the Baskin-Robbins proprietary marks following termination of the Franchise Agreement would result in irreparable harm to Baskin-Robbins, and would constitute willful trademark infringement. (*Id.* §§ 9.3, 10.3, 10.4 and 14.5).

30. Defendant David M. Glasgow, Jr., personally guaranteed Big Scoops' obligations under the Franchise Agreement. (*Id.* at Guarantee.)

Defendants' Default and Termination

31. Defendants breached the Franchise Agreement and Personal Guarantees, as applicable, by failing to pay the required fees, and/or other amounts owed to Plaintiffs on several occasions.

32. Pursuant to the applicable provisions of the Franchise Agreement, on June 19, 2018, October 9, 2018, and December 7, 2018, Baskin-Robbins sent Big Scoops separate Notices to Cure notifying Big Scoops that it was in default of the Franchise Agreement based on its failure to pay required fees.

33. Since receiving the December 7, 2018 Notice to Cure, Big Scoops is once again in default of the Franchise Agreement based on its failure to pay required fees to Baskin-Robbins.

34. As a result of Defendants' failure to cure their defaults under the Franchise Agreement, as well as being in default after having received three previous Notices to Cure regarding the Franchise Agreement, pursuant to Sections 14.1.2 and 14.2 of the Franchise Agreement, on February 12, 2019, Baskin-Robbins sent Defendants a Notice of Termination with respect to the franchised business (the "Notice of Termination"). The Notice of Termination terminated the Franchise Agreement, stated the grounds for termination, and requested that Defendants immediately comply with their post-termination obligations as set forth in the Franchise Agreement.

35. Notwithstanding Defendants' non-performance under the Franchise Agreement, the resulting termination of the Franchise Agreement, and the Notice of Termination, Defendants have continued to operate the Baskin-Robbins shop using Baskin-Robbins' marks and system without having any right or license to do so.

36. Defendants' continued unauthorized use of the Baskin-Robbins marks and system is causing and will continue to cause Baskin-Robbins irreparable harm.

37. Plaintiffs have been forced to engage undersigned counsel to represent them in this case.

38. Plaintiffs are obligated to pay undersigned counsel a reasonable fee for professional services provided in this case.

COUNT I

**(Breach of Contract - Breach of the Franchise Agreement)
(Big Scoops Inc.)**

39. The allegations of paragraphs 1 through 38 are hereby incorporated by reference.

40. Baskin-Robbins has performed all of its obligations under the Franchise Agreement.

41. Big Scoops' conduct described herein constitutes a breach of the above-described contractual obligations contained in the Franchise Agreement.

42. That breach constitutes good cause for terminating the Franchise Agreement.

43. As a result of Big Scoops' actions and inactions, Plaintiffs have suffered and are continuing to suffer irreparable harm, and have incurred and are continuing to incur monetary damages in an amount that has yet to be determined.

COUNT II

**(Breach of Contract - Breach of Personal Guarantee)
(David M. Glasgow, Jr.)**

44. The allegations of paragraphs 1 through 40 are hereby incorporated by reference.

45. Baskin-Robbins has performed all of its obligations under the Franchise Agreement.

46. Big Scoops' conduct described herein constitutes a breach of the above-described contractual obligations in the Franchise Agreement.

47. Big Scoops' breach constitutes good cause for terminating the Franchise Agreement.

48. Pursuant to the terms of the Personal Guarantee, the Glasgow agreed, among other things, that upon a default under the Franchise Agreement, he would immediately make each payment and perform each obligation required by those agreements.

49. Despite Glasgow's obligations to do so, he has failed to make any payments or perform each obligation required by the Franchise Agreement.

50. As a result of Glasgow's actions or inactions, Plaintiffs have suffered and are continuing to suffer irreparable harm, and have incurred and are continuing to incur monetary damages in an amount that has yet to be determined.

COUNT III

(Trademark Infringement) (All Defendants)

51. The allegations of paragraphs 1 through 50 are hereby incorporated by reference.

52. The use in commerce of the Baskin-Robbins trademarks and trade names by Defendants outside the scope of the Franchise Agreement and without Baskin-Robbins' consent is likely to confuse or deceive the public into believing, contrary to fact, that the unauthorized activities of Defendants are licensed, franchised, sponsored, authorized, or otherwise approved by Baskin-Robbins. Such unauthorized use of the Baskin-Robbins trademarks and trade names infringes the exclusive rights in its trademarks under Section 32 of the Lanham Act, 15 U.S.C. § 1114 and applicable state law.

53. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

54. As a result of the actions of Defendants, Plaintiffs have suffered and are continuing to suffer irreparable harm, and have incurred and are continuing to incur monetary damages in an amount that has yet to be determined.

COUNT IV

**(Unfair Competition)
(All Defendants)**

55. The allegations of paragraphs 1 through 54 are hereby incorporated by reference.

56. The use in commerce of Baskin-Robbins' trademarks and trade names by Defendants outside the scope of the Franchise Agreement and without Baskin-Robbins' consent is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of their goods, services, or commercial activities by another person. Such unauthorized use of Baskin-Robbins' trademarks and trade names violates Section 43 of the Lanham Act, 15 U.S.C. § 1125(a) and applicable state law.

57. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

58. As a result of the actions of Defendants, Plaintiffs have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damages in an amount that has yet to be determined.

COUNT V

**(Trade Dress Infringement)
(All Defendants)**

59. The allegations of paragraphs 1 through 58 are hereby incorporated by reference.

60. Big Scoops' shop is identified by signs, exterior appearance, packaging, containers, and other items on which the words "Baskin-Robbins" appears in the same lettering style and in the same distinctive color scheme that Baskin-Robbins uses for the shops operated by Baskin-Robbins' licensees.

61. The use by Big Scoops of trade dress that is identical to the Baskin-Robbins trade dress outside the scope of the Franchise Agreement constitutes a false designation of the origin of Big Scoops' shop, which is likely to cause confusion, or to cause mistake, or to deceive the public as to the affiliation, connection, or association of their shops with the Baskin-Robbins shops operated by Baskin-Robbins' licensees. Such adoption of Baskin-Robbins' trade dress violates Section 43 of the Lanham Act, 15 U.S.C. § 1125, and the common law.

62. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake or deceive.

63. As a result of the actions of Defendants, Plaintiffs have suffered and are continuing to suffer irreparable harm, and have incurred and are continuing to incur monetary damages in an amount that has yet to be determined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

1. Enter a declaratory judgment that Defendants' conduct violated the terms of the Franchise Agreement and constituted good cause for termination of the agreement;
2. Enter an order ratifying and enforcing the termination of the Franchise Agreement as of the effective date contained in the Notice of Termination;
3. Enjoin Defendants, and their agents, servants, employees and attorneys, and all others in active concert or participation with them, from infringing upon the Baskin-Robbins

trademarks, trade names, and trade dress, and from otherwise engaging in unfair competition with Baskin-Robbins;

4. Enjoin Defendants, and their agents, servants, employees and attorneys, and all others in active concert or participation with them, to comply with all post-termination obligations under any contract with Plaintiffs, including but not limited to, the Franchise Agreement and Personal Guarantees;

5. Enter a judgment in favor of Plaintiffs for the damages incurred as a result of the breaches of the Franchise Agreement and Personal Guarantees;

6. Award Plaintiffs prejudgment interest in accordance with Section 35 of the Lanham Act, 15 U.S.C. § 1117 and applicable law;

7. Award Plaintiffs their costs and attorneys' fees incurred in connection with this action pursuant to the Franchise Agreement, Personal Guarantees, and Section 35 of the Lanham Act, 15 U.S.C. § 1117; and

8. Award Plaintiffs such other relief as this Court may deem just and proper.

Dated: February 12, 2019

Respectfully submitted,

/s/Anthony M. Zelli
Anthony M. Zelli, #30470-10
Dinsmore & Shohl LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
(502) 540-2300
anthony.zelli@dinsmore.com
Counsel for Plaintiffs