



**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**

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

Plaintiffs,

v.

Case No. 3:19-cv-237

RADHAKRISHNA LLC,  
an Indiana limited liability company,  
NAIK'S, LLC, a Kentucky limited liability company, and  
MUKESH NAIK, an individual,

Defendants.

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**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, Radhakrishna LLC, Naik’s, LLC, and Mukesh Naik (collectively “Defendants”) 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 respective Franchise Agreements and Personal Guarantees with Plaintiffs. On numerous occasions, Defendants were notified that they were in default of the Franchise Agreements based on their failure to pay required fees and other amounts to Plaintiffs. Since receiving their most recent Notice to Cure on July 23, 2019, Defendants once again are in default of the Franchise Agreements based upon their failure to pay required fees and other amounts to Plaintiffs. As a result of Defendants’ repeated breaches of the Franchise Agreements, 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 businesses terminating their Franchise Agreements. Nonetheless, Defendants continue to operate the Baskin-Robbins shops and have failed to comply with their post-termination obligations in breach of the Franchise Agreements. Additionally, Defendants' continued use and enjoyment of Plaintiffs' trademarks, trade name, and trade dress after the termination of the Franchise Agreements 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 in 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 Radhakrishna LLC ("Radha") is an Indiana limited liability company with its principal place of business in Evansville, Indiana. At all times relevant to this action, Radha was the owner and operator of a retail Baskin-Robbins shop located at 3245 Mount Mariah Avenue, Unit 1, Owensboro, Kentucky 42303 pursuant to a Franchise Agreement ("PC 351607") with Baskin-Robbins Franchising LLC dated August 10, 2013. Pursuant to PC 351607, Mukesh

Naik is the member and officer of Radha. Mukesh Naik's address is 5517 Jackson Ct, Evansville, IN 47715. Accordingly, Radha is a citizen of Indiana.

7. Defendant Naik's, LLC ("Naik's") is a Kentucky limited liability company with its principal place of business in Louisville, Kentucky. At all times relevant to this action, Naik's was the owner and operator of two retail Baskin-Robbins shops located at 3959 Taylorsville Rd, Louisville, Kentucky 40220 and 12418 LaGrange Road, Louisville, Kentucky 40245 pursuant to Franchise Agreements with Baskin-Robbins Franchising LLC dated September 30, 2014 ("PC 360560") and August 25, 2014 ("PC 353400"), respectively.

8. According to the 2019 annual report available on the Kentucky Secretary of State's website, the members of Naik's LLC are Mukesh Naik, 5517 Jackson Ct, Evansville, IN 47715 and Janak Naik, 1215 Beckley Hills Ct, Louisville, KY 40245. Accordingly, Naik's is a citizen of Indiana and Kentucky.

9. Defendant Mukesh Naik, is a natural person and a citizen of Indiana. At all times relevant to this action, Mukesh Naik, individually, was the owner and operator of a retail Baskin-Robbins shop located at 848 S. Green River Road, Lawndale Shopping Center, Evansville, Indiana 47715 pursuant to a Franchise Agreement with Baskin-Robbins Franchising LLC dated September 14, 1998, as amended ("PC 361694"). Mukesh Naik is an officer of both Radhakrishna LLC and Naik's, LLC. Further, Mukesh Naik personally guaranteed the obligations of Radhakrishna LLC and Naik's, LLC pursuant to personal guarantees executed with respect to each of the Franchise Agreements.

10. The franchise agreements for PC 351607, PC 353400, PC 360560, and PC 361694, are collectively referenced herein as the "Franchise Agreements."

**JURISDICTION AND VENUE**

11. 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.

12. 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.

13. This Court has *in personam* jurisdiction over Defendants because they conduct business in this district, they are residents of this district, the events giving rise to Plaintiffs’ claims occurred in this district, and/or Defendants are foreign LLCs whose members and officers reside in this district. Further, this Court has *in personam* jurisdiction over Mukesh Naik because he is a resident of this district, he is a member and officer of Defendant Radha and Naik’s, and he is specifically accused of wrong doing.

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

15. 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**

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

17. 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.

18. 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).

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

20. 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.

21. 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.

22. 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 Agreements**

23. On or about September 14, 1998, Mukesh Naik, individually, entered a franchise agreement for PC 361694 with Baskin-Robbins Franchising LLC. On or about August 10, 2013, Radha entered a franchise agreement for PC 351607 with Baskin-Robbins Franchising LLC. On or about August 25, 2014 and September 30, 2014, Naik's entered separate franchise agreements with Baskin-Robbins Franchising LLC for PC 353400 and PC 360506. The Franchise Agreements granted Defendants the right to operate four Baskin-Robbins shops utilizing the Baskin-Robbins system as described in paragraphs 2 and 3 above.

24. Defendants were licensed to use the Baskin-Robbins trademarks, trade names, and trade dress in accordance with the terms of the Franchise Agreements.

25. Under the Franchise Agreements, Defendants 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 Agreements. (PC 361694 Franchise Agreement, General Terms and Conditions §§ 1.0, 7.0, 7.1, and 7.1.1, attached as **Exhibit 1**; PC 351607, PC 353400, and PC 360560 Franchise Agreements, Terms and Conditions §§ 2.1, 2.4(a) and 9.0, collectively attached as **Exhibit 2**).

26. Under the Franchise Agreements, Defendants 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. (Second Amendment to Franchise Agreement, attached as **Exhibit 3**; Ex. 2 at §§ 5.2, 5.3, 5.7, 14.4.4 and 14.7.1).

27. Defendants agreed that they would be in default under the Franchise Agreements if they breached any obligation under the Franchise Agreements, including failing to pay any of the required fees. (Ex. 1 at §§ 9.0.5 and 9.1.4; Ex. 2 at § 14.0.1).

28. Defendants agreed that Baskin-Robbins may terminate the Franchise Agreements if Defendants defaulted under the Franchise Agreements or if they failed to timely cure any default. (Ex. 1 at §§ 9.0.5 and 9.1.4; Ex. 2 at § 14.6).

29. In addition, Defendants agreed that they would be in default under the Franchise Agreements if they 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 Agreements. (Ex. 1 at §§ 9.0.5, 9.1.1, and 9.1.4; Ex. 2 § 14.1.2).

30. Furthermore, Defendants also agreed that Baskin-Robbins may terminate the Franchise Agreements without providing an opportunity to cure if they defaulted under the Franchise Agreements 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. (Ex. 1 at § 9.1.4; Ex. 2 at § 14.2).

31. Defendants agreed that upon the termination of the Franchise Agreements, their right to use the Baskin-Robbins proprietary marks and system would cease, and they would immediately cease to operate the franchised businesses, cease to use the proprietary marks and



system, and would not, directly or indirectly, hold themselves out as a present or former Baskin-Robbins' franchisees. (Ex. 1 at §§ 9.4, 9.4.1, 9.4.2, 9.4.3, 9.4.5; Ex. 2 at §§ 14.6, 14.7.2 and 14.7.3).

32. Defendants agreed that any unauthorized use of the Baskin-Robbins proprietary marks following termination of the Franchise Agreements would result in irreparable harm to Baskin-Robbins, and would constitute willful trademark infringement. (Ex. 1 § at 9.4.3; Ex. 2 §§ 9.3, 10.3, 10.4 and 14.5).

33. Defendant Mukesh Naik, personally guaranteed Naik's and Radha's obligations under the Franchise Agreements. (Ex. 2 at Guarantees.)

#### **Defendants' Default and Termination**

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

35. Pursuant to the applicable provisions of the Franchise Agreements, on October 9, 2018, May 24, 2019, and July 23, 2019, Baskin-Robbins sent Defendants separate Notices to Cure notifying Defendants that they were in default of the Franchise Agreements based on their failure to pay required fees. (Notices to Cure, attached hereto collectively, as **Exhibit 4**.)

36. Since receiving the July 23, 2018 Notices to Cure, Defendants are once again in default of the Franchise Agreements based on their failure to pay required fees to Baskin-Robbins.

37. As a result of Defendants' failure to cure their defaults under the Franchise Agreements, as well as being in default after having received three previous Notices to Cure regarding the Franchise Agreements, pursuant to Section 9.1.4 of the Franchise Agreement for PC 361694, and pursuant to Sections 14.1.2 and 14.2 of the Franchise Agreements for PC 351607, PC 360506, and PC 353400, on November 20, 2019, Baskin-Robbins sent Defendants a Notice of

Termination with respect to the franchised businesses (the “Notice of Termination”). The Notice of Termination terminated the respective Franchise Agreements, stated the grounds for termination, and requested that Defendants immediately comply with their post-termination obligations as set forth in the Franchise Agreements.

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

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

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

41. 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 Agreements)  
(Radhakrishna LLC, Naik’s LLC, and Mukesh Naik)**

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

43. Baskin-Robbins has performed all of its obligations under the Franchise Agreements.

44. Radha, Naik’s, and Mukesh Naik’s conduct described herein constitutes a breach of the above-described contractual obligations contained in the Franchise Agreements.

45. That breach constitutes good cause for terminating the Franchise Agreements.

46. As a result of Radha, Naik's, and Mukesh Naik's 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)  
(Mukesh Naik)**

47. The allegations of paragraphs 1 through 45 are hereby incorporated by reference.

48. Baskin-Robbins has performed all of its obligations under the Franchise Agreements.

49. Radha's, Naik's, and Mukesh Naik's conduct described herein constitutes a breach of the above-described contractual obligations in the Franchise Agreement.

50. Radha's, Naik's, and Mukesh Naik's respective breaches constitute good cause for terminating the Franchise Agreements.

51. Pursuant to the terms of the Personal Guarantees, Mukesh Naik agreed, among other things, that upon a default under the Franchise Agreements, he would immediately make each payment and perform each obligation required by those agreements.

52. Despite Mukesh Naik's obligations to do so, he has failed to make any payments or perform each obligation required by the Franchise Agreements.

53. As a result of Mukesh Naik'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)**

54. The allegations of paragraphs 1 through 52 are hereby incorporated by reference.

55. The use in commerce of the Baskin-Robbins trademarks and trade names by Defendants outside the scope of the Franchise Agreements 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.

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

57. 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)**

58. The allegations of paragraphs 1 through 56 are hereby incorporated by reference.

59. The use in commerce of Baskin-Robbins' trademarks and trade names by Defendants outside the scope of the Franchise Agreements 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.

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

61. 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)**

62. The allegations of paragraphs 1 through 60 are hereby incorporated by reference.

63. Defendants' shops are 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.

64. Defendants' use of trade dress that is identical to the Baskin-Robbins trade dress outside the scope of the Franchise Agreements constitutes a false designation of the origin of Defendants' shops, 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.

65. Defendants' acts were and are being done knowingly and intentionally to cause confusion, or to cause mistake or deceive.

66. As a result of Defendants' actions, 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 Agreements and constituted good cause for termination of the agreements;

2. Enter an order ratifying and enforcing the termination of the Franchise Agreements 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 Agreements and Personal Guarantees;

5. Enter a judgment in favor of Plaintiffs for the damages incurred as a result of the breaches of the Franchise Agreements 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 Agreements, 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.

Respectfully submitted,

s/Anthony M. Zelli  
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