



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**BASKIN-ROBBINS FRANCHISING LLC,
a Delaware Limited Liability Company,**

and

**BR IP HOLDER LLC,
a Delaware Limited Liability Company,**

Plaintiffs,

v.

**BLU MOO ICE CREAM INC.,
an Indiana Corporation;**

and

**ROBERT HOLOCHER,
an Individual,**

Defendants.

Case No. 1:24-cv-293

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs Baskin-Robbins Franchising LLC (“Baskin-Robbins”) and BR IP Holder LLC (“BR IP Holder”), by and through their undersigned counsel, hereby submit this Complaint for Damages and Injunctive Relief against Defendants Blu Moo Ice Cream Inc. (“Blu Moo”) and Robert Holocher, and, in support thereof, states as follows:

Introduction

1. This is a Complaint for damages and injunctive relief arising out of Defendants’ willful breach of contract and violation of federal trademark laws. Defendant Blu Moo operated two Baskin-Robbins franchises in the greater Indianapolis area pursuant to franchise agreements with Baskin-Robbins (the “Greenwood Franchise Agreement” and “Indianapolis Franchise

Agreement,” as defined below, collectively the “Franchise Agreements” and each a “Franchise Agreement”). Holocher is a personal guarantor of Blu Moo’s obligations under the Franchise Agreements, and, upon information and belief, is the President of Blu Moo. The Franchise Agreements were lawfully terminated on or about June 27, 2023, due to Blu Moo’s repeated failures to pay sums due to Baskin-Robbins. Blu Moo and Holocher were instructed clearly and timely to comply with all post-term obligations in the Franchise Agreements, including, most prominently, ceasing operations at each Restaurant (the “Greenwood Restaurant” and the “Indianapolis Restaurant,” respectively, and, collectively, the “Restaurants”); ceasing all use of Baskin-Robbins’ valuable intellectual property, including its trade name, trademarks, and trade dress; de-identifying each Restaurant in compliance with Baskin-Robbins’ then-applicable standards, in order to completely dissociate each Restaurant from the Baskin-Robbins intellectual property; and paying all sums due to Baskin-Robbins. Despite these clear instructions, which were issued pursuant to rights that Blu Moo granted to Baskin-Robbins in the Franchise Agreements, as well as those afforded to Baskin-Robbins under federal trademark laws, Blu Moo and Holocher have both (i) failed to pay all sums due to Baskin-Robbins and (ii) continued to operate the Greenwood Restaurant as an unlicensed ice cream shop, making use of Baskin-Robbins’ valuable intellectual property. Even more concerningly, Defendants are now holding themselves out as authorized retailers of a competing ice cream brand—Ashby’s Sterling Ice Cream—which creates unacceptable confusion in the marketplace and materially degrades the value of Baskin-Robbins’ valuable intellectual property. Baskin-Robbins requests that the Court award it preliminary and permanent injunctive relief to prevent Defendants from making further unauthorized use of Baskin-Robbins’ intellectual property, as well as order Defendants to pay all amounts due to Baskin-Robbins, including the attorneys’ fees it incurs in enforcing the Franchise Agreements.

Parties

2. Plaintiff Baskin-Robbins Franchising LLC is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. Baskin-Robbins Franchising, LLC is a wholly owned subsidiary of DB Franchising Holding Company LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of DB Master Finance LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of DB Master Finance Parent LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of Baskin-Robbins International LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of Baskin-Robbins USA LLC (a California limited liability company), which in turn is a wholly owned subsidiary of Dunkin' Donuts LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of Dunkin' Brands, Inc. Dunkin' Brands, Inc. is a Delaware corporation with its principal place of business in Canton, Massachusetts.

3. Plaintiff BR IP Holder LLC is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. BR IP Holder LLC is a wholly owned subsidiary of DB Master Finance LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of DB Master Finance Parent LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of Baskin-Robbins International LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of Baskin-Robbins USA LLC (a California limited liability company), which in turn is a wholly owned subsidiary of Dunkin' Donuts LLC (a Delaware limited liability company), which in turn is a wholly owned subsidiary of Dunkin' Brands, Inc. Dunkin' Brands, Inc. is a Delaware corporation with its principal place of business in Canton, Massachusetts.

4. Defendant Blu Moo Ice Cream Inc. is an Indiana corporation, with its principal place of business in Carmel, Indiana.

5. Defendant Robert Holocher is a natural person who, upon information and belief, is the President of Blu Moo and a citizen and resident of the State of Indiana. Holocher has personally guaranteed Blu Moo's performance of its obligations under each of its Franchise Agreements with Baskin-Robbins.

Jurisdiction and Venue

6. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1121(a), as a portion of this action arises under 15 U.S.C. § 1051, *et seq.* (the "Lanham Act"), presenting a federal question regarding Defendants' trademark infringement and unfair competition, and the Court has supplemental jurisdiction over the remaining state-law claims pursuant to 28 U.S.C. § 1367(a), as they arise from the same case or controversy as the Lanham Act claims.

7. The Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(a), as there is complete diversity between all plaintiffs and all defendants, and the amount in controversy, including the value of the injunctive relief sought, exceeds \$75,000, exclusive of interests and costs.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), as each Defendant resides in this judicial district, and a substantial part of the events or omissions giving rise to claims at issue occurred here.

Factual Allegations

The Baskin-Robbins Marks

9. Baskin-Robbins is the franchisor of the Baskin-Robbins franchise system. In that capacity, it enters into franchise agreements with independent franchisees, granting each franchisee the right to operate an independent ice-cream shop that makes use of the franchisor's valuable trademarks, intellectual property, and goodwill, but only in such manner and at such locations as Baskin-Robbins may authorize from time to time.

10. BR IP Holder is the owner of certain intellectual property that comprises the Baskin-Robbins brand, including trademarks, service marks, logos, trade dress, the Baskin-Robbins trade name, and related marks (the "Baskin-Robbins Marks").

11. Baskin-Robbins has a license to use, to license others to use, and to enforce the Baskin-Robbins Marks.

12. Baskin-Robbins has used the Baskin-Robbins Marks continuously and extensively in commerce since approximately 1954, in order to identify the origin, sponsorship, and approval of Baskin-Robbins branded ice-cream restaurants, as well as the ice cream and other high-quality products associated with those shops, and to distinguish those ice-cream shops and products from those established, operated, and sold by competitors.

13. A number of the Baskin-Robbins Marks are federally registered trademarks. Those registrations are in full force and effect, and most of them are incontestable pursuant to 15 U.S.C. § 1065.

14. The Baskin-Robbins Marks are utilized in interstate commerce.

15. As a result of Baskin-Robbins' extensive investment in the promotion and sale of items associated with the Baskin-Robbins Marks, including the franchising of Baskin-Robbins

restaurants, the Baskin-Robbins Marks have become widely known and recognizable, and the public has come to associate the Marks exclusively with the high-quality products and services offered at Baskin-Robbins restaurants, of which there are more than 7,500 worldwide, including 2,200 in the United States, certain of which are combination Dunkin' / Baskin-Robbins restaurants. The Baskin-Robbins Marks are assets of incalculable value to Baskin-Robbins and to the franchisees that operate independent businesses making use of them.

The Blu Moo Franchise Agreements

16. Blu Moo entered into a Franchise Agreement (the "Greenwood Franchise Agreement") with Baskin-Robbins on or about December 22, 2017, for the ownership and operation of a Baskin-Robbins franchise at 1280 US Highway 31 N, Greenwood, Indiana, 46142 (the "Greenwood Restaurant"). Holocher signed an addendum to the Greenwood Franchise Agreement personally guaranteeing Blu Moo's payment and performance obligations under the Agreement. A true and correct copy of the Greenwood Franchise Agreement, along with Holocher's Personal Guarantee, is attached hereto as Exhibit A.

17. Blu Moo entered into a Franchise Agreement (the "Indianapolis Franchise Agreement") with Baskin-Robbins on or about June 22, 2011, for the ownership and operation of a Baskin-Robbins franchise at 2201 E. 62nd Street, Indianapolis, Indiana, 46220 (the "Indianapolis Restaurant"). Holocher signed an addendum to the Indianapolis Franchise Agreement personally guaranteeing Blu Moo's payment and performance obligations under the Agreement. A true and correct copy of the Indianapolis Franchise Agreement, along with Holocher's Personal Guarantee, is attached hereto as Exhibit B.

18. The Greenwood Franchise Agreement was to remain in effect until February 28, 2036, unless sooner terminated by its terms.

19. The Indianapolis Franchise Agreement was to remain in effect until December 13, 2029, unless sooner terminated by its terms.

20. Each Franchise Agreement identifies Baskin-Robbins' "Proprietary Marks" to include "trademarks, service marks, logos, emblems, trade dress, trade names, including Baskin-Robbins® and other indicia of origin" associated with the Baskin-Robbins brand. (Exhibit A and B at § 2.1).

21. In connection with each Franchise Agreement, Blu Moo agreed that it would "use only the Proprietary Marks that [Baskin-Robbins] designate[s] and in the matter that [Baskin-Robbins] approve[s];" and "use and display [the] Proprietary Marks only in connection with the operation of the Restaurant." Blu Moo also acknowledged that it had "no rights in the Proprietary Marks or [Baskin-Robbins'] System other than those explicitly granted" in the Franchise Agreements. (Exhibit A and B at §§ 9.0, 9.3).

22. Each Franchise Agreement afforded Blu Moo the right to operate an independent ice-cream shop, making use of all of the Baskin-Robbins Marks and goodwill associated with the Baskin-Robbins brand, in exchange for, among other things, the payment of various fees, including a Continuing Franchise Fee of 5.9% of Gross Sales, as defined in the applicable Franchise Agreement, and a Continuing Advertising Fee of 5% of Gross Sales. (Exhibit A and B at Contract Data Schedule; §§ 5.2, 5.3, 5.5).

23. Blu Moo agreed to pay interest at the rate of 1.5% per month, or the highest rate allowable by law, on all late payments to Baskin-Robbins. (Exhibit A and B at § 5.7).

24. The Franchise Agreements set forth circumstances under which Blu Moo could be found in default of the Agreement, and state that Baskin-Robbins was permitted to terminate the

Franchise Agreement if Blu Moo failed to cure any default that may be cured. (Exhibit A and B at § 14.6).

25. Among the obligations that Defendants undertook in the event that the Franchise Agreements were to be terminated were:

- a. Paying all sums due to Baskin-Robbins, including applicable fees and interest, within ten (10) days.
- b. Ceasing all operations at each Restaurant immediately, and no longer holding themselves out as Baskin-Robbins franchisees.
- c. Ceasing all use of the Baskin-Robbins Marks, removing from each Restaurant all indicia of the Baskin-Robbins Marks, and taking all steps that Baskin-Robbins may require in order to de-identify the Restaurants and to distinguish them from other restaurants operating within the Baskin-Robbins system.

(Exhibit A and B at § 14.7).

26. Blu Moo further agreed to a post-termination restriction on competition with Baskin-Robbins:

For the first twenty-four months following the expiration or termination of this Agreement or transfer of an interest in the franchised business (the “Post-Term Period), neither you nor any shareholder, member, partner, officer, director or guarantor of yours, or any person or entity who is in active concert or participation with you or who has a direct or indirect beneficial interest in the franchised business, may have any direct or indirect interest in, perform any activities for, provide any assistance to or receive any financial or other benefit from any business or venture (other than an ownership interest in real property) that sells products that are the same as or substantially similar to those sold in Baskin-Robbins restaurants and located within five (5) miles from the Restaurant or any other Baskin-Robbins restaurant that is open or under development. The restriction in the previous sentence does not apply to your ownership of less than two percent (2%) of a company whose shares are listed and traded on a national or regional securities exchange. The Post-Term Period begins to run upon your compliance with all of your obligations in this Section.

(Exhibit A and B at § 10.2).

27. Blu Moo further agreed that a breach of the restrictive covenant would “be deemed to threaten immediate and substantial irreparable injury” to Baskin-Robbins and would give

Baskin-Robbins “the right to obtain immediate injunctive relief without limiting any other rights” that Baskin-Robbins might have. (Exhibit A and B at § 10.4).

Termination of Franchise Agreements and Defendants’ Ongoing Breach and Infringement

28. The Greenwood and Indianapolis Franchise Agreements were terminated on or about June 27, 2023 (the “Termination Notice”) due to Blu Moo’s repeated and ongoing failure to pay Continuing Franchisee Fees and Continuing Advertising Fees as they came due, which constituted a material breach of each Franchise Agreement. A true and correct copy of the Termination Notice is attached hereto as Exhibit C.

29. The termination of Blu Moo’s Franchise Agreements followed an earlier Notice of Default, which afforded Blu Moo the opportunity to cure the outstanding financial defaults, but Blu Moo failed to do so. A copy of the Notice of Default was included as an attachment to the Termination Notice. (See Exhibit C).

30. Blu Moo and Holocher were duly apprised of their post-term obligations in the Termination Notice. (See Exhibit C).

31. On August 4, 2023, Baskin-Robbins sent a written communication to Blu Moo and Holocher (the “August 4 Letter”), informing them that they had failed to pay the amounts due to Baskin-Robbins and noting that they had neither ceased operations at either Restaurant nor performed the work necessary to properly de-identify them. The August 4 Letter declared Blu Moo and Holocher to be in ongoing material breach of each Franchise Agreement. A true and correct copy of the August 4 Letter is attached hereto as Exhibit D.

32. Blu Moo and Holocher took no action in response to the August 4 Letter and continued operations at each Restaurant, neither of which had been properly de-identified and each of which was continuing to make use of the Baskin-Robbins Marks.

33. On August 25, 2023, Baskin-Robbins, through its outside franchise counsel, sent further correspondence to Blu Moo and Holocher (the “August 25 Letter”) addressing their ongoing material breaches of each Franchise Agreement and violations of the Lanham Act due to their continued operations of the Restaurants making unauthorized use of the Baskin-Robbins Marks. A true and correct copy of the August 25 Letter is attached hereto as Exhibit E.

34. Upon information and belief, shortly after its receipt of the August 25 Letter, Blu Moo was evicted from the space from which it had operated the Indianapolis Restaurant, and Blu Moo’s landlord completed the de-identification of the space.

35. Blu Moo and Holocher took no other action in response to the August 25 Letter, however, and continued to operate the Greenwood Restaurant, which had not been properly de-identified and was continuing to make use of the Baskin-Robbins Marks.

36. Upon further inspection of the Restaurant, Baskin-Robbins became aware that, not only are Blu Moo and Holocher continuing to operate the Greenwood Restaurant and making use of the Baskin-Robbins Marks, they are now advertising for sale a competing brand of ice cream that ostensibly is sold through a network of retailers and distributors—Ashby’s Sterling Ice Cream.

37. Advertising a competing brand of ice cream for sale at what, by all outward appearances, is a functioning Baskin-Robbins ice cream shop creates confusion in the marketplace and degrades the value of the Baskin-Robbins Marks.

38. On December 27, 2023, Baskin-Robbins, through its outside litigation counsel, sent a final letter to Blu Moo and Holocher (the “December 27 Letter”), addressing their ongoing failure to comply with the post-term obligations in the Greenwood Franchise Agreement and newly discovered affiliation with Ashby’s Sterling Ice Cream. A true and correct copy of the December 27 Letter is attached hereto as Exhibit F.

39. Blu Moo and Holocher took no action in response to the December 27 Letter and continued to operate the Greenwood Restaurant, which has not been properly de-identified and which still makes use of the Baskin-Robbins Marks.

40. Defendants' continued operation of the Greenwood Restaurant while making unauthorized use of the Baskin-Robbins Marks, and the advertising and offer for sale of a competing ice-cream brand, has caused and will continue to cause irreparable harm to Baskin-Robbins.

41. Defendants have failed to pay all sums due to Baskin-Robbins under both the Greenwood and Indianapolis Franchise Agreements, including \$22,610.75 for the Indianapolis Restaurant and \$32,081.82 for the Greenwood Restaurant.

42. Baskin-Robbins has been forced to engage counsel to bring this action, and is entitled to recover the attorneys' fees it incurs in enforcing each Franchise Agreement. (Exhibits A and B at §§ 5.7, 14.4.4).

Count I
Material Breach of Franchise Agreements – Failure to Pay Amounts Due
Against Blu Moo Ice Cream Inc.

43. Baskin-Robbins incorporates by reference the allegations in Paragraphs 1 – 42 of this Complaint as though fully set forth herein.

44. The Greenwood and Indianapolis Franchise Agreements were valid and enforceable contracts.

45. Baskin-Robbins has performed all of its obligations under the Greenwood and Indianapolis Franchise Agreements.

46. The Greenwood and Indianapolis Franchise Agreements were lawfully terminated on June 27, 2023.

47. Among the post-termination obligations that Blu Moo undertook in signing the Greenwood and Indianapolis Franchise Agreements was payment of all amounts due to Baskin-Robbins.

48. The post-termination obligations in the Greenwood and Indianapolis Franchise Agreements survived termination of the Franchise Agreements.

49. To date, Blu Moo has failed to pay the amounts due to Baskin-Robbins, including \$22,610.75 for the Indianapolis Restaurant and \$32,081.82 for the Greenwood Restaurant.

50. Blu Moo's failure to pay the amounts due to Baskin-Robbins constitutes material breach of the Franchisee Agreements.

51. Baskin-Robbins has suffered damages as a result of Blu Moo's breach.

WHEREFORE, Baskin-Robbins respectfully requests that the Court enter a judgment in favor of Baskin-Robbins and against Blu Moo Ice Cream Inc. and award the relief requested below.

Count II
Material Breach of Franchise Agreement – Failure to Comply With Post-Term Obligations
Against Blu Moo Ice Cream Inc.

52. Baskin-Robbins incorporates by reference the allegations in Paragraphs 1 – 42 of this Complaint as though fully set forth herein.

53. The Greenwood and Indianapolis Franchise Agreements were valid and enforceable contracts.

54. Baskin-Robbins has performed all of its obligations under the Greenwood and Indianapolis Franchise Agreements.

55. The Greenwood and Indianapolis Franchise Agreements were lawfully terminated on June 27, 2023.

56. The post-termination obligations in the Greenwood and Indianapolis Franchise Agreements survived termination of the Franchise Agreements.

57. To date, Blu Moo has failed to comply with its post-termination obligations under the Greenwood Franchise Agreement, including ceasing operations at the Greenwood Restaurant, ceasing all use of the Baskin-Robbins Marks, and de-identifying the Greenwood Restaurant to distinguish it from other restaurants operating within the Baskin-Robbins system.

58. Blu Moo's operation of the Greenwood Restaurant also constitutes a violation of the post-term restrictive covenant against competition with Baskin-Robbins.

59. Blu Moo also continued to operate the Indianapolis Restaurant for a period of time after it was lawfully terminated, and in defiance of several cease-and-desist letters, until the Indianapolis Restaurant was de-identified by Blu Moo's landlord after Blu Moo was evicted from the space.

60. The failure to cease operations at the Greenwood Restaurant and the continued use of the Baskin-Robbins Marks without authorization is a material breach of the Franchise Agreement, and has caused and will continue to cause irreparable harm to Baskin-Robbins.

61. Baskin-Robbins has also suffered damages from Defendants' unauthorized operation of the Restaurants after the lawful termination of the Franchise Agreements.

WHEREFORE, Baskin-Robbins respectfully requests that the Court enter a judgment in favor of Baskin-Robbins and against Blu Moo Ice Cream Inc. and award the relief requested below.

Count III
Breach of Personal Guarantees
Against Robert Holocher

62. Baskin-Robbins incorporates by reference the allegations in Paragraphs 1 – 42 of this Complaint as though fully set forth herein.

63. In connection with Blu Moo's execution of both the Greenwood and Indianapolis Franchise Agreements, Holocher executed Personal Guarantees in favor of Baskin-Robbins, and undertook an obligation to satisfy all of Blu Moo's payment and performance obligations under each Franchise Agreement. (Exhibits A and B).

64. Baskin-Robbins has performed all of its obligations under the Greenwood and Indianapolis Franchise Agreements.

65. Blu Moo has been and continues to be in material breach of numerous of its post-term obligations under the Greenwood and Indianapolis Franchise Agreements, including paying all amounts due to Baskin-Robbins, ceasing operations at the Greenwood and Indianapolis Restaurants, ceasing all use of the Baskin-Robbins Marks, and de-identifying the Greenwood Restaurant to distinguish it from other restaurants operating within the Baskin-Robbins system.

66. Holocher has failed to cure any of Blu Moo's material breaches or satisfy any of its outstanding obligations, despite being on sufficient notice of such breaches and outstanding obligations, and he therefore is in material breach of the Personal Guarantees.

67. Baskin-Robbins has suffered damages from Holocher's breach of his obligations under the Personal Guarantees.

WHEREFORE, Baskin-Robbins respectfully requests that the Court enter a judgment in favor of Baskin-Robbins and against Robert Holocher and award the relief requested below.

Count IV
Lanham Act - Trademark Infringement
Against All Defendants

68. BR IP Holder incorporates by reference the allegations in Paragraphs 1 – 42 of this Complaint as though fully set forth herein.

69. Among the Baskin-Robbins Marks a number of federally registered trademarks (the “Registered Marks”).

70. BR IP Owner is the owner of the Registered Marks.

71. The Registered Marks are protectable.

72. Defendants’ use in commerce of the Registered Marks without consent or authorization under the Franchise Agreement constitutes an infringing use of a reproduction, counterfeit, copy, or colorable imitation of the Registered Marks in connection with the sale, offering for sale, distribution, or advertising of goods or services in connection with such unauthorized use, and is likely to cause confusion or mistake or to deceive the public into believing that Defendants’ unauthorized activities are licensed, franchised, sponsored, authorized, or otherwise approved by BR IP Holder, which they are not. This unauthorized use of the Registered Marks infringes the exclusive right in those Marks, in violation of 15 U.S.C. § 1114(1).

73. Defendants’ infringing use of the Registered Marks is being committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

74. As a direct and proximate result of Defendants’ infringement, BR IP Holder has been irreparably harmed, including injury to its goodwill and reputation, resulting in lost revenues and profits and diminished goodwill.

75. BR IP Holder has no adequate remedy at law, and is entitled to preliminary and permanent injunctive relief against Defendants’ further acts of trademark infringement.

WHEREFORE, BR IP Holder respectfully requests that the Court enter a judgment in favor of Baskin-Robbins and against Defendants and award the relief requested below.

Count V
Lanham Act - Unfair Competition
Against All Defendants

76. Baskin-Robbins and BR IP Holder incorporate by reference the allegations in Paragraphs 1 – 42 of this Complaint as though fully set forth herein.

77. The Baskin-Robbins Marks are protectable.

78. Defendants' continued operation of the Restaurant without authorization constitutes unfair competition, false designation of origin, and false or misleading representations of fact, and is likely to cause confusion, mistake, or to deceive the public as to Defendants' affiliation, connection, or association with Baskin-Robbins as the franchisor and/or BR IP Holder as the owner of certain Registered Marks, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities, in violation of 15 U.S.C. § 1125.

79. As a direct and proximate result of Defendants' infringement, Baskin-Robbins and BR IP Holder have been irreparably injured, including injury to their goodwill and reputation, resulting in lost revenues and profits and diminished goodwill.

80. Baskin-Robbins and BR IP Holder have no adequate remedy at law, and are entitled to preliminary and permanent injunctive relief against Defendants' further acts of unfair competition.

WHEREFORE, Baskin-Robbins and BR IP Holder respectfully request that the Court enter a judgment in favor of Baskin-Robbins and BR IP Holder, as appropriate, and against Defendants and award the relief requested below.

Count VI
Common Law Unfair Competition
Against All Defendants

81. Baskin-Robbins incorporates by reference the allegations in Paragraphs 1 – 42 of this Complaint as though fully set forth herein.

82. Defendants' continued operation of the Greenwood Restaurant constitutes unfair competition in violation of common law, as Defendants are passing themselves off as being authorized Baskin-Robbins franchisees, and are inducing the public to believe that the products and services that Defendants are offering are approved by Baskin-Robbins as the franchisor, which, due to the termination of the Franchise Agreement, they are not.

83. As a direct and proximate result of Defendants' unfair competition, Baskin-Robbins has been irreparably harmed, including injury to its goodwill and reputation, resulting in lost revenues and profits and diminished goodwill.

84. Baskin-Robbins has no adequate remedy at law, and is entitled to preliminary and permanent injunctive relief against Defendants' further acts of unfair competition.

WHEREFORE, Baskin-Robbins respectfully requests that the Court enter a judgment in favor of Baskin-Robbins and against Defendants and award the relief requested below.

Prayer for Relief

WHEREFORE, Baskin-Robbins and BR IP Holder respectfully request that the Court enter a judgment in their favor and against Defendant Blu Moo Ice Cream Inc. and Robert Holocher and award the following relief:

- a. A preliminary and permanent injunction providing that Blu Moo Ice Cream Inc. and Holocher, along with their respective agents and those in active concert or participation with them:
 - (i) Are prohibited from any further operation of the Greenwood Restaurant, as well as from any further operation of any ice-cream restaurant at the

site of the Greenwood Restaurant in violation of the post-term non-compete in the Greenwood Franchise Agreement;

- (ii) Are prohibited from any further use of the Baskin-Robbins Marks, or any trademark, service mark, logo, or trade name that is confusingly similar to the Baskin-Robbins Marks, at the Greenwood Restaurant or elsewhere;
 - (iii) Are to comply with all post-term obligations in the Greenwood Franchise Agreement, including taking all steps that Baskin-Robbins may require to de-identify the Greenwood Restaurant in order to distinguish it from other restaurants operating within the Baskin-Robbins system.
- b. An Order requiring Defendants to pay all amounts due to Baskin-Robbins under the Franchise Agreements, including \$22,610.75 for the Indianapolis Restaurant and \$32,081.82 for the Greenwood Restaurant.
 - c. An Order requiring Defendants to pay Baskin-Robbins all monetary damages that it has suffered as a result of Defendants' breaches of contract, trademark infringement, unfair competition, and breach of guaranty, including, where applicable, punitive damages, in an amount to be proved at trial.
 - d. An Order requiring Defendants to pay Baskin-Robbins' costs and reasonable attorneys' fees incurred in enforcing each Franchise Agreement, as provided for by the terms of the Franchise Agreements and 15 U.S.C. § 1117.
 - e. An Order requiring Defendants to pay prejudgment interest on all amounts due to Baskin-Robbins, pursuant to the Franchise Agreements and 15 U.S.C. § 1117.
 - f. An Order granting Baskin-Robbins such other and further relief that the Court deems just and appropriate.

Dated: February 14, 2024

Respectfully submitted,

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