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

J DOG FRANCHISES, LLC 100 Berwyn Park, 850 Cassatt Rd., Suite 225 Berwyn, PA 19312	:	
	:	Case No. 15-cv-2780
v.	:	
	:	JURY TRIAL IS DEMANDED
LOUIS VAUGHN JR. 1326 Garden Grove Court Houston, Texas 77082	:	

ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND JURY TRIAL DEMAND OF DEFENDANT

Defendant Louis Vaughn, Jr. ("Defendant"), acting through his attorneys, answers the Civil Action Complaint of J. Dog Franchises, LLC ("Plaintiff") as follows with paragraphs numbered to correspond to the numbered paragraphs of the Complaint:

Jurisdiction and Venue

1. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

2. Admitted in part and denied in part. Defendant admits only that he is a resident of Texas, otherwise denied.

3. Defendant admits only that the Complaint purports to state claims arising under 28 U.S.C. §§ 1331, 1332(a) and 15 U.S.C. § 1051 et seq., otherwise denied.

4. Denied. The Franchise Agreement speaks for itself.

5. Denied.

Background

6. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

7. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

8. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

9. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

10. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

11. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

12. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

13. Denied in part and admitted in part. Defendant admits only that he signed the Franchise Agreement on June 24, 2013, otherwise, the Franchise Agreement speaks for itself.

14. Denied. The Franchise Agreement speaks for itself.

15. Denied. The Franchise Agreement speaks for itself.

16. Denied. The Franchise Agreement speaks for itself.

17. Denied. The Franchise Agreement speaks for itself.

18. Denied. The Franchise Agreement speaks for itself.

19. Denied. The Franchise Agreement speaks for itself.

20. Denied. The Franchise Agreement speaks for itself.

Defendant's History of Non-Compliance

21. Denied. Defendant did not breach the Franchise Agreement. By way of further response, denied as a conclusion of law to which no response is required.

22. Denied in part and admitted in part. Defendant only admits that he continued to pay $500 a month and that he made a $500 payment in December 2014. By way of further response, Defendant sent a check for payment of back royalties owed in the amount of $2,000 to Plaintiff.

23. Denied. By way of further response, Defendant attempted, in good faith, to be compliant with the demands of Plaintiff.

24. Denied. The Franchise Agreement speaks for itself. By way of further response, denied as a conclusion of law to which no response is required.

25. Denied in part and admitted in part. Defendant admits only that he advertises on the website located at www.junkremovalservicehouston.com, but not for Plaintiff's business. The rest of the averments in this paragraph are denied.

26. Denied. The Franchise Agreement speaks for itself. By way of further response, denied as a conclusion of law to which no response is required.

27. Denied as conclusions of law. By way of further response, Defendant received three letters on behalf of Defendant in January-February of 2015.

28. Admitted in part and denied in part. Defendant only admits that the Franchise Agreement is terminated. The rest of the averments in this paragraph are denied.

Defendant's Failure to Abide by the Post-Termination

Covenants of the Franchise Agreements

29. Denied. The Franchise Agreement speaks for itself.

30. Denied.

31. Denied.

32. Denied. By way of further response, Defendant has removed and ceased use of any materials bearing Plaintiff's trademarks.

33. Denied.

34. Denied. By way of further response, Defendant has removed all references on social media and other websites under his control to Plaintiff or its trademarks.

35. Denied. By way of further response, Defendant does not service Plaintiff's customers. By way of further response, Defendant did not acquire any supplies and equipment from Plaintiff for which he is required to provide an accounting. Plaintiff's right to repurchase

supplies and equipment under the Franchise Agreement, if any, is exercisable by written notice, which Plaintiff failed to provide.

COUNT I
(Lanham Act Violations – Trademark Infringement and Unfair Competition)

36. Defendant incorporates his responses to paragraphs 1-35 as if set forth here at length.

37. Denied. By way of further response, Defendant does not continue to operate a J. Dog Franchise Location for the Houston, Texas area, use J. Dog's trademarks, or otherwise identify himself as an authorized J. Dog franchisee.

38. Denied as conclusions of law. By way of further response, the averments in this paragraph are denied. By way of further response, Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied.

39. Denied as conclusions of law for which no response is required.

40. Denied. By way of further response, Defendant is without sufficient knowledge or information to determine the truth of the averments stated within this paragraph. The averments in this paragraph, therefore, are also denied for that reason.

41. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied. By way of further response, the averments in this paragraph are also denied as conclusions of law.

42. Denied as conclusions of law. By way of further response, the averments in this paragraph are denied.

COUNT II
(Breach of Contract, Post-Termination Covenants)

43. Defendant incorporates its responses to paragraphs 1-42 as if set forth here at length.

44. Denied as a conclusion of law. By way of further response, the averments in this paragraph are denied. By way of further response, the Franchise Agreement speaks for itself.

45. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied. By way of further response, the averments in this paragraph are also denied as conclusions of law.

46. Denied. Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied. By way of further response, the averments in this paragraph are also denied as conclusions of law.

COUNT III
(Breach of Contract – Money Damages)

47. Defendant incorporates its responses to paragraphs 1-46 as if set forth here at length.

48. Denied in part and admitted in part. By way of further response, Defendant made royalty payments to Plaintiff in November of 2014 and December of 2014. Defendant also sent Plaintiff payment in the amount of $2,000 for back royalties.

49. Denied as a conclusion of law in part and admitted in part. By way of further response, Defendant admits only that he received letters from Plaintiff dated January 7, 2015 and February 9, 2015 and that the Franchise Agreement is terminated.

50. Denied. The Franchise Agreement speaks for itself.

51. Denied as a conclusion of law. By way of further response, Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are also denied for that reason.

52. Denied. The Franchise Agreement speaks for itself.

COUNT VI
(For an Accounting)

53. Defendant incorporates its responses to paragraphs 1-52 as if set forth here at length.

54. Denied. The Franchise Agreement speaks for itself.

55. Denied. The Franchise Agreement speaks for itself. By way of further response, the averments in this paragraph are denied.

56. Denied. By way of further response, the Franchise Agreement speaks for itself. By way of more further response, Defendant did not acquire any supplies and equipment from Plaintiff for which he is required to provide an accounting. Plaintiff's right to repurchase supplies and equipment under the Franchise Agreement, if any, is exercisable by written notice, which Plaintiff failed to provide.

COUNT VII
(Declaratory Judgment)

57. Defendant incorporates its responses to paragraphs 1-56 as if set forth here at length.

58. Denied as a conclusion of law. By way of further response, Defendant is without sufficient knowledge or information to determine the truth of the averment stated within this paragraph. The allegations in this paragraph, therefore, are denied. The Franchise Agreement also speaks for itself.

59. Denied as a conclusion of law to which no response is required.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that:

a. Plaintiff's Complaint be dismissed in its entirety with prejudice;

b. Plaintiff be awarded no damages;

c. Plaintiff's requests for injunctive relief be denied;

d. Plaintiff's requests for declaratory relief be denied;

e. Defendant be awarded its costs and fees, including reasonable attorneys' fees incurred to defend this action; and

f. Defendant be awarded such other relief as the Court deems appropriate.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

2. This Court lacks personal jurisdiction over the Defendant.

3. This Court is an improper venue.

4. Some or all of the claims set forth in Plaintiff's Complaint are barred in whole or in part by the applicable statute of limitations.

5. Plaintiff's claims are barred by the doctrine of waiver.

6. Plaintiff's claims are barred by the equitable doctrine of laches.

7. Plaintiff's claims are barred by the equitable doctrine of estoppel.

8. Plaintiff has failed to mitigate damages.

9. Any alleged injury suffered by Plaintiff did not result from and was not proximately caused by any act or omission, or any wrongful conduct on the part of Defendant.

10. Plaintiff's claims are barred by the doctrine of accord and satisfaction.

11. Plaintiff has failed to join a party under Federal Rule of Civil Procedure 19.

12. Trademark registrations and pending applications alleged by Plaintiff are invalid.

COUNTERCLAIMS AND DEMAND FOR JURY TRIAL

Counterclaim Plaintiff Louis Vaughn, Jr. ("Vaughn" or "Counterclaim Plaintiff"), by and through his counsel, Ryder, Lu, Mazzeo & Konieczny LLC, hereby files his counterclaims and jury demand against Counterclaim Defendant J. Dog Franchises, LLC ("J. Dog" or "Counterclaim Defendant") as follows:

Jurisdiction and Venue

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States as codified in 17 U.S.C. § 101 et seq.

2. This is also a civil action for breach of contract under the common law of the Commonwealth of Pennsylvania.

3. This is also a civil action for misappropriation of name and likeness as codified in 42 Pa. Cons. Stat. § 8316 and under the common law of the Commonwealth of Pennsylvania.

4. This Court has subject matter jurisdiction over this matter under 15 U.S.C. § 1051 et seq. and 17 U.S.C. § 101 et seq. This Court also has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338. This Court also has diversity jurisdiction under 28 U.S.C. § 1332 in that the parties have complete diversity. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 over the accompanying state law claims.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Counterclaim Defendant resides, transacts business, is found, has agents, and is incorporated in this District, and because a substantial part of the events giving rise to Counterclaim Plaintiff's claims occurred in this District.

6. This Court has personal jurisdiction over Counterclaim Defendant because, *inter alia*, J. Dog: (a) has its principal place of business in Pennsylvania; (b) transacts business in this District; (c) has substantial contacts in this District; and/or (d) engaged in unlawful acts in this District.

The Parties

7. Counterclaim Plaintiff Vaughn is an individual residing at 1326 Garden Grove Court, Houston, Texas 77082.

8. Counterclaim Defendant J. Dog is a Pennsylvania corporation, with a principal place of business at 100 Berwyn Park, 850 Cassatt Road, Suite 225, Berwyn, Pennsylvania 19312.

Statement of Facts

9. The foregoing allegations, including the allegations in Counterclaim Plaintiff's answer above, are repeated and incorporated herein by reference as if set forth here at length.

10. Counterclaim Defendant promotes itself as a trash and junk removal business run by veterans of the United States armed forces.

11. As a primary way of seeking income, J. Dog attempts to franchise its business to veterans, especially in other states. J. Dog licenses the use of its company trademarks to new franchisees, offers a one-day training seminar, and provides an operating manual detailing the nature of the business in exchange for monthly royalty payments in the amount of $500-$1,500.

12. Counterclaim Plaintiff, being a United States veteran himself, executed a Franchise Agreement with J. Dog on June 24, 2013 to open a franchise location in Houston, Texas to operate a junk removal business.

13. Counterclaim Plaintiff began to operate a J. Dog junk removal franchise in Houston, Texas. Counterclaim Plaintiff produced his own advertisements for the business on the Internet to attract customers, and produced intellectual property in connection with his business, such as a collection of videos describing a goodwill outreach volunteer clean-up service he was instituting in his community ("Video Collection"). To attain copyright protection for his work, Counterclaim Plaintiff filed a copyright registration application for the video collection entitled *Junk Removal Houston Community Volunteer Clean Up*, U.S. Copyright Application No. 1-2540347661.

14. Counterclaim Defendant, on its corporate website advertising and promoting the business, posted references and hyperlinks to Counterclaim Plaintiff's Video Collection without compensation or permission. Counterclaim Defendant used Counterclaim Plaintiff's name and

likeness on its website to further advertise and promote its business, including references to Counterclaim Plaintiff as its franchisee, and in the context of customer testimonials and on its online blog. Such references are still accessible online at http://jdogjunkremoval.com/testimonials/ and at http://designgent.com/blog/.

15. In or around October 22, 2014, Counterclaim Defendant altered the nature of its business without prior notification to Counterclaim Plaintiff. Counterclaim Defendant added new services such as hauling, and extended its potential franchisee participation from veterans to include friends and family of veterans as well.

15. After entering financial hardship due to low income from the business and suffering health complications resultant from past military service, Counterclaim Plaintiff attempted to negotiate with Counterclaim Defendant for an extension of time to pay increasing monthly royalty payments to no avail. In or around January-February 2015, Counterclaim Plaintiff made a payment of $2,000 to Counterclaim Defendant for alleged back royalties owed under the Franchise Agreement.

16. Counterclaim Defendant subsequently terminated the Franchise Agreement on February 9, 2015 and subsequently filed the present suit to recover future royalties for an expected franchise period of ten (10) years in the amount of $153,000 and back royalties in the amount of $2,000.

Count I

Federal Copyright Infringement under 17 U.S.C. § 101 et seq.

17. The foregoing allegations are repeated and incorporated herein by reference as if set forth here at length.

18. Vaughn is, and has at all times been, the copyright owner under the United States copyright law with respect to the *Junk Removal Houston Community Volunteer Clean Up* video collection, published September 8, 2013 and subject of a pending copyright registration application, U.S. Copyright Application No. 1-2540347661.

19. J. Dog has used Vaughn's copyrighted work on its website without permission or consent from Vaughn.

20. J. Dog's activities have violated, among other things, Vaughn's exclusive rights of reproduction, publication, and/or display. These actions constitute infringement of Vaughn's copyrights and/or exclusive rights under the Copyright Act of 1976 as codified in 17 U.S.C. § 106.

21. J. Dog's acts have been willful and/or with a wanton and reckless disregard for Vaughn's exclusive rights.

22. As a result of J. Dog's infringement of Vaughn's copyright and/or exclusive rights under the Copyright Act, Vaughn is entitled to statutory damages or actual damages pursuant to 17 U.S.C. § 504 against J. Dog for infringement of his copyrighted work.

23. Vaughn is also entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

24. Pursuant to 17 U.S.C. §§ 502 and 503, Vaughn is entitled to injunctive relief prohibiting J. Dog from further infringing Vaughn's copyrights and/or exclusive rights and ordering J. Dog to destroy all copies of Vaughn's work made, published, or displayed in violation of Vaughn's copyright.

Count II

Breach of Contract

25. The foregoing allegations are repeated and incorporated herein by reference as if set forth here at length.

26. Vaughn and J. Dog dually executed a Franchise Agreement on June 24, 2013 for Vaughn's operation of a J. Dog franchise business in Houston, Texas.

26. Pursuant to Section 7.5 of the dually executed Franchise Agreement, J. Dog was required to provide prior written notice to Vaughn, the franchisee, before making any changes, additions, subtractions, or modifications to its system as defined in the Franchise Agreement.

27. Pursuant to Section 11.9 of the dually executed Franchise Agreement, J. Dog was obligated to supply Vaughn, the franchisee, with revised pages of the Operation Manual of the system when it makes any additions, subtractions, modifications, or changes to the Manual's terms.

28. J. Dog failed to provide Vaughn with prior written notice or revised pages of the Operation Manual before altering its system from offering franchising opportunities to veterans only, to offering franchising opportunities additionally to friends and family of veterans.

29. J. Dog also failed to provide Vaughn with prior written notice or revised pages of the Operation Manual when it altered its system from offering its customers solely junk removal services to also offering hauling services.

30. Vaughn has sustained damage to his business, reputation, goodwill, and expectations under the Franchise Agreement as a result of J. Dog's breaches of the Franchise Agreement.

31. J. Dog's acts have been willful and/or with a wanton and reckless disregard for its duties and Vaughn's contractual rights under the Franchise Agreement.

Count III

Unauthorized Use of Name and Likeness under 42 Pa. Cons. Stat. § 8316

32. The foregoing allegations are repeated and incorporated herein by reference as if set forth here at length.

33. Vaughn, as a U.S. veteran and J. Dog's first franchisee in a public service industry, derives commercial value from his name and likeness.

34. J. Dog used Vaughn's name and likeness in connection with the offering for sale and sale of services and its business, and for the purpose of advertising or promoting its services and business on its websites located at http://jdogjunkremoval.com/ and http://www.jdog2.com/.

35. J. Dog used Vaughn's name and likeness without attaining prior written consent from Vaughn.

36. As a result of J. Dog's activities, Vaughn has sustained invasions of privacy and damages to his reputation.

37. Vaughn is entitled to enjoin J. Dog's activities and recover damages resulting from J. Dog's activities under 42 Pa. Cons. Stat. § 8316.

WHEREFORE, Counterclaim Plaintiff Louis Vaughn, Jr. prays for the following relief:

a. an award of statutory damages for copyright infringement of Vaughn's copyrighted work;

b. an award of damages for J. Dog's breach of its duties and obligations under the dually executed Franchise Agreement;

c. an award of damages for misappropriation and unlawful use of Vaughn's name and likeness without permission or consent;

d. an award of costs, disbursements, and interest;

e. an award of attorneys' fees; and

f. such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Ryder, Lu, Mazzeo & Konieczny LLC

Date: July 9, 2015

By: /FrankAMazzeo/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer, Affirmative Defenses, Counterclaims, and Jury Trial Demand of Defendant were electronically filed on July 9, 2015 and a copy served via email and ECF upon the following:

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Date: July 9, 2015

By: /DenisYanishevskiy/
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