

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 27 2008

GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. ~~08-CV-01820~~ - *Eun Bnb*

Service Master Residential/Commercial Services, L.P.,

Plaintiff,

v.

Orazio C. Tirella, Margaret M. Tirella, Stacy M. Tirella and Global Management Services, Inc.,

Defendant.

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

Comes now Plaintiff ServiceMaster Residential/Commercial Services, L.P., and as and for its Complaint against Defendants states and declares as follows:

JURISDICTION AND VENUE

1. This is an action for breach of contract, tortious interference with contract, trademark infringement and unfair competition under the Trademark Act of 1946, as amended (the Lanham Act, 15 U.S.C. § 1051, *et seq.*), and misappropriation of goodwill arising out of Defendants' operations and use of ServiceMaster's federally registered trademarks in connection with their businesses in Central Colorado.

2. Jurisdiction is based on the federal trademark laws of the United States, 15 U.S.C. §§ 1051-1127, and 28 U.S.C. § 1331 and § 1338 relating to pendent jurisdiction.

3. Venue is predicated on 28 U.S.C. § 1391(b). A substantial part of the events and omissions giving rise to ServiceMaster's claim occurred in this District.

THE PARTIES

4. ServiceMaster Residential/Commercial Services, L.P. ("ServiceMaster") has developed a business system for residential and commercial cleaning and other related services using unique techniques, special equipment and processes, standards and specifications, products, and other methods, all associated with "ServiceMaster" trademarks, trade names and related marks (hereinafter "the Marks").

5. ServiceMaster provides its unique services to the general public through authorized franchisees.

6. ServiceMaster is a Delaware limited partnership with its principal place of business in Memphis, Tennessee.

7. Defendants Orazio and Margaret Tirella are husband and wife and are residents and citizens of Colorado. Stacy Tirella is a resident and citizen of the State of Colorado and the daughter of Orazio and Margaret Tirella.

8. Global Management Services, Inc. is a Colorado corporation owned by Charles and Margaret Tirella with a principal office address of 1858 South Wadsworth Boulevard, #125, Lakewood, CO 80232. Charles and Margaret Tirella are officers and directors of Global Management Services, Inc.

THE FRANCHISE AGREEMENTS

9. In the summer of 1994, Margaret and Orazio Tirella (the "Tirellas") approached ServiceMaster seeking to purchase an existing ServiceMaster franchise business. The Tirellas touted their business and financial experience and had already formed Global Management

Services, Inc. ("Global Management") as a vehicle to purchase and operate their business. As part of the Tirellas' business profile submitted to ServiceMaster, they represented that:

We now want to invest in a business that will provide a steady income for us and family who will be involved in the management and operations. This does not mean we are only in for the short term. To the contrary, we have long range plans to perpetuate the business, increase our equity, and some day pass it along to our children.

10. Shortly thereafter, the Tirellas located an existing ServiceMaster franchisee in south central Colorado who was interested in selling his existing ServiceMaster business. The Tirellas, through Global Management, purchased a "Contract Services" ServiceMaster franchise business from M.M. Whaley, Inc., who had been operating since early 1992.

11. In connection with the Tirellas' purchase of the existing ServiceMaster business from M.M. Whaley, Inc., ServiceMaster entered into a ServiceMaster Franchise Agreement with Global Management effective on or about January, 1996 (the "Franchise Agreement"). The Tirellas and Global Management renewed the five-year Franchise Agreement on May 15, 2001. A true and correct copy of the 2001 Franchise Agreement is attached hereto as Exhibit A.

12. The Tirellas executed a separate Personal Guarantee and agreed to be bound personally by the terms and conditions of the Franchise Agreement. A true and correct copy of the Tirellas' Personal Guarantee is attached to and made a part of the Franchise Agreement.

13. Pursuant to the terms of the Franchise Agreement, Global Management and the Tirellas were granted a nonexclusive right and license to operate a ServiceMaster Contract Services franchised business using ServiceMaster's marks and unique business system in the limited territory of Adams, Arapahoe, Denver and Jefferson Counties in the State of Colorado.

Global Management and the Tirellas operated their business as "ServiceMaster Contract Cleaning Services."

14. As a Contract Services franchisee, Global Management and the Tirellas were licensed to provide cleaning or janitorial services rendered on a weekly, or greater frequency pursuant to a contract, written or oral, entered into with management or tenants of any commercial or institutional building, but not hospital contract housekeeping. Services included spot light cleaning, carpet maintenance, carpet cleaning, hard surface floor maintenance and furniture cleaning.

THE MARKS

15. Pursuant to the terms of the Franchise Agreement, the Tirellas were authorized to operate their franchised business using the federally registered marks "ServiceMaster" (Federal Registration No. 782,584), the "We Serve Cube" (Federal Registration 1,931,212), "The Color Yellow as Applied to a Vehicle" (Federal Registration No. 2,085,318) and "ServiceMaster Clean" (Federal Registration No. 2,254,065).

16. An affidavit was filed in compliance with sections 8 and 15 of the Trademark Act of 1946, as amended, for the ServiceMaster Marks, which have become incontestable under 28 U.S.C. § 1065.

17. ServiceMaster has marked the goods and services provided under its Marks with appropriate notice indicating that the Marks are registered in the United States Patent and Trademark Office.

18. ServiceMaster granted Global Management and the Tirellas a limited license to use the Marks in connection with the operation of their ServiceMaster® business pursuant to the

terms of the Franchise Agreement. The Tirellas were not, however, authorized to use the ServiceMaster Marks on, or in connection with, the sale or promotion of any product or service not specifically authorized by the Franchise Agreement or after its expiration or termination.

EXPIRATION AND TRANSFER

19. From and after January, 1996, the Tirellas operated their ServiceMaster® franchise using the names, trademarks, service marks and other assets of ServiceMaster in connection therewith and accepted the benefits produced by those rights and assets.

20. From the beginning, Stacy Tirella was involved in the day-to-day operations of the Tirellas' ServiceMaster business. In fact, Stacy Tirella worked for the ServiceMaster franchisee from whom the Tirellas purchased their License. Stacy Tirella has thus been involved with the SERVICEMASTER® franchise system since before 1996.

21. Stacy Tirella was personally involved in direct communication with ServiceMaster and assumed the role of the manager of the Tirellas' ServiceMaster business.

22. Over time, Stacy Tirella assumed full responsibility for the day-to-day operation of the Tirellas' ServiceMaster business. The Tirellas were close to retirement and experienced significant health issues, which prevented them from operating the business on a day-to-day basis.

23. As operator of the Tirellas' business, Stacy Tirella was offered the opportunity to attend various workshops, meetings, training seminars and other ServiceMaster sponsored functions. Stacy Tirella also reaped the benefit of the specialized training, systems and support provided by ServiceMaster to its franchisees.

24. ServiceMaster treated Stacy Tirella as the defacto franchisee because she was operating the business on a full-time daily basis for her parents. Stacy Tirella also affirmatively represented to ServiceMaster that the franchise she operated was her business.

25. Part of the reason ServiceMaster treated Stacy Tirella as the franchisee was her parents' expressed desire to transfer the business to Stacy Tirella in form and substance. On multiple occasions, the Tirellas and ServiceMaster discussed the method and manner of transferring the business to Stacy Tirella and getting her "on the Franchise Agreement."

26. ServiceMaster believed and relied upon the Tirellas' stated intent to transfer the business to Stacy Tirella, who would then carry the business forward as a ServiceMaster franchisee. Based upon the stated intentions and representations made by the Tirellas and Stacy Tirella, ServiceMaster treated Stacy Tirella as the owner and franchisee of the business and gave her full access to all aspects of ServiceMaster's unique and proprietary Business System and provided her with all of the ongoing support, programs and information made available to ServiceMaster franchisees in good standing.

27. On January 18, 2006, ServiceMaster mailed a renewal Franchise Agreement to the Tirellas and Stacy Tirella for review and execution. The Tirellas did not sign or return the Renewal Agreement.

28. On March 13, 2006, ServiceMaster called the Tirellas and left a message inquiring about the status of the Renewal Agreement. No one returned the call.

29. On August 22, 2006, ServiceMaster called the Tirellas and left a message regarding the status of the Renewal Agreement. Stacy Tirella returned the call stating that she gave the signed Renewal Agreement to the previous Regional Manager assigned to them by

ServiceMaster. Because ServiceMaster had no record of receipt of the Renewal Agreement, it provided the Tirellas with another Renewal Agreement for signature.

30. On August 31, 2006, Stacy Tirella confirmed an appointment with her Regional Manager and stated that she would take the renewal contracts to her parents for signature.

31. On November 15, 2006, ServiceMaster left a message for Stacy inquiring as to the status of the Renewal Agreements. Neither the Tirellas nor Stacy Tirella returned the call.

32. Because the Uniform Franchise Offering Circular ("UFOC") pertaining to the preceding Renewal Agreement expired, ServiceMaster drafted yet another Renewal Agreement in March, 2007. When ServiceMaster's Regional Manager presented the renewal to Stacy Tirella, she stated that they had signed two renewal Franchise Agreements within the prior six months. She also stated that she had her attorney review each renewal agreement at a cost of \$1,000 each and that before signing another Renewal Agreement she wanted to know what happened to the previous two that they had already signed. Stacy Tirella also stated that she wanted ServiceMaster to pay the cost of legal review. Later the same day, Stacy Tirella called ServiceMaster and requested that they not contact her mother, Margaret Tirella, regarding business matters. She stated that Margaret had received a pacemaker and Stacy did not want her mother to deal with the stress of the business. Stacy requested that ServiceMaster send the Renewal Franchise Agreements to her and that she would get it signed. She also stated that she would return it to the Regional Manager.

33. On March 9, 2007, Stacy Tirella informed ServiceMaster that she would be out of the country through the end of the month and therefore be unable to have the Renewal Agreements executed prior to the end of March. If the Tirellas could not sign the Renewal

Agreements prior to April 1, 2007, the UFOC provided with the Renewal Agreement would expire and they would need to sign an updated Renewal Agreement.

34. On March 29, 2007, Stacy Tirella called ServiceMaster from Australia. ServiceMaster explained that the UFOC they provided had expired and that a new UFOC would be available shortly after April 1, 2007. Stacy Tirella requested that ServiceMaster send the new UFOC and Renewal Agreement to her office before her scheduled visit with ServiceMaster so that Stacy Tirella's attorney could review it.

35. On March 30, 2007, ServiceMaster mailed the new UFOC and Renewal Agreement to Stacy Tirella, as she requested.

36. On April 25, 2007, ServiceMaster hand delivered another UFOC and Renewal Agreement to Stacy Tirella and arranged to pick up the Renewal Agreement in two weeks.

37. On May 18, 2007, ServiceMaster left a message for Stacy Tirella attempting to arrange a time to pick up the Renewal Contract. Stacy Tirella did not respond.

38. On June 1, 2007, Stacy Tirella informed ServiceMaster that she was leaving for an extended trip to Australia through June 23, 2007. She also stated that her attorney had a couple of questions about the Renewal Agreement. She requested that they schedule a meeting for the week of June 25, after her return from Australia. ServiceMaster requested that Stacy email ServiceMaster with the questions from her attorney so that their future meeting would be fruitful. Stacy Tirella did not respond to this request.

39. On June 20, 2007, ServiceMaster left a message for Stacy to arrange an appointment to pick up the Renewal Agreement.

40. On July 10, 2007, ServiceMaster visited with Stacy Tirella. At that time, she stated that she did not have the Renewal Agreement signed by her parents. Instead, she claimed that she had power of attorney for her parents and thought she could sign on their behalf. Stacy Tirella described the medical issues facing her parents. ServiceMaster requested a copy of the Power of Attorney and stated that they would check with their legal department regarding her ability to sign the Renewal Agreement on behalf of her parents. Stacy Tirella did not provide a copy of any Power of Attorney.

41. Over the next several months, Margaret and Charles Tirella experienced significant medical issues.

42. On September 14, 2007, Stacy Tirella spoke to ServiceMaster regarding the requirement that she attend the two-week Academy of Service training if she took over ownership of Global Management and her parents' ServiceMaster franchise business.

43. On October 14, 2007, ServiceMaster left a message for Stacy Tirella to follow up on the Renewal Agreement and her attendance at the Academy of Service. Stacy Tirella did not return the call.

44. On November 11, 2007, ServiceMaster left a message for Stacy Tirella to call regarding outstanding issues with the Renewal Agreement, her ownership of the business and attendance at the Academy of Service. Stacy Tirella did not return the call.

45. On November 26, 2007, ServiceMaster sent an email to Stacy Tirella with an Addendum to the existing Franchise Agreement extending its term through 2008. This was necessitated by a transaction where ServiceMaster was acquired by a private equity company. The acquisition necessitated drafting a revised UFOC, which would not be completed until late

2007. ServiceMaster acknowledged Stacy Tirella's representations that Margaret Tirella now was incapacitated and was unable to sign the Extension Agreement. ServiceMaster requested that Stacy Tirella provide a copy of the Power of Attorney, along with the signed Addendum.

46. Within minutes of receiving the Extension Addendum, Stacy Tirella called ServiceMaster and requested a face-to-face meeting in Denver in December 2007 to discuss her business status and her position with respect to recent personnel changes made within ServiceMaster. ServiceMaster informed Stacy Tirella that the new director for her area was Charlie Kerr, who would be contacting her shortly.

47. Charlie Kerr called Stacy Tirella on November 28, 2007, to discuss many issues, including the Extension Addendum and ultimately getting the Franchise Agreement in the name of Stacy Tirella, given Margaret and Charles Tirella's medical challenges. Again, Charlie Kerr requested that Stacy Tirella provide a copy of the Power of Attorney for her parents and sign the Extension Agreement. Stacy Tirella did neither, but did agree to meet with Charlie Kerr early in 2008.

48. Stacy Tirella failed to report her revenue or pay franchise fees for November, 2007. On December 20, 2007, ServiceMaster contacted Stacy Tirella regarding the late reporting and payment of fees for the month of November. At that time, for the first time, Stacy Tirella stated that she did not believe she had a valid contract in force with ServiceMaster since it expired in 2006. Stacy Tirella claimed that she no longer was required to file fee reports or pay franchise fees. She claimed to have received advice from her attorney and claimed that she was being discriminated against by ServiceMaster. Stacy Tirella stated that she was waiting for the

sit-down meeting with Charlie Kerr in the first quarter of 2008 and would determine if there was any reason to go forward with ServiceMaster at that time.

49. On February 4, 2008, Charlie Kerr met with the Tirellas and Stacy Tirella in ServiceMaster's regional office. After introductions and initial pleasantries were exchanged, Charlie Kerr expressed his desire to resolve all open issues and move forward. In response, Stacy Tirella produced a letter from ServiceMaster's Audit Department that her mother received two days earlier. The letter was a final notice concerning the Tirellas' failure to respond to previous requests for information regarding the reconciliation of a 2006 audit. ServiceMaster routinely conducts such audits of its franchisees to verify that those franchisees are paying the proper amount of fees to ServiceMaster. Receiving an audit notice from ServiceMaster is not considered an exceptional occurrence for a franchisee. Nonetheless, Stacy stated that prior to receiving this letter she intended to reconcile the Tirellas' relationship with ServiceMaster and move forward with a Renewal Agreement. However, receipt of the letter changed the Tirellas' minds and they did not want to be affiliated with ServiceMaster any longer. Charlie Kerr apologized for the unfortunate timing of the letter and made it clear that the timing, while embarrassing, was purely a coincidence and a case where a large company's right hand didn't know what the left hand was doing. Stacy Tirella rejected this explanation, choosing to believe that the letter was part of a strategy to weaken the Tirellas' position prior to the meeting. Stacy Tirella and the Tirellas expressed their desire to terminate the existing Franchise Agreement.

50. When the Tirellas expressed their desire to terminate the existing Franchise Agreement, Charlie Kerr reminded them of their post-termination obligations, including the obligation to completely de-identify their business and refrain from competition for one year in

their prior franchise territory. Stacy Tirella acknowledged these obligations. When asked by Charlie Kerr if Stacy Tirella intended to continue operating the cleaning business, she responded "no comment."

51. Prior to December 20, 2007, at no time did the Tirellas or Stacy Tirella ever indicate that they had any intention to cease operating as a ServiceMaster franchisee under the terms of the Franchise Agreement between the parties. To the contrary, at all times up through and including December, 2007, Stacy Tirella acted in all circumstances as a valid and existing ServiceMaster franchisee, taking advantage of all of the programs, opportunities, trademarks, and Business System provided by ServiceMaster and in all respects held herself out to her customers and the general public as a valid and existing ServiceMaster franchisee.

52. Up through November 2007, Stacy Tirella reported her gross sales on a monthly basis and paid franchise and advertising fees pursuant to the terms of the Franchise Agreement and at no time prior to December 2007 did she take the position that the Franchise Agreement between the parties was expired or no longer valid. To the contrary, both parties continued to operate under the terms of the existing Franchise Agreement pending the execution of the Renewal Agreement.

53. Pursuant to 2.2.1 of the Franchise Agreement, if the Tirellas intended not to renew their Franchise Agreement, they were obligated to provide ServiceMaster with notice of their election not to renew "not less than two months, nor more than four months, prior to the end of the term of this Agreement." The Tirellas did not provide ServiceMaster with prior notice of their intent not to renew.

54. Based upon the statements and representations made by the Tirellas and Stacy Tirella, ServiceMaster formally terminated the ServiceMaster Franchise Agreement by letter dated March 11, 2008. A true and correct copy of this letter is attached hereto as Exhibit B. the Notice of Termination states, in part:

It has recently come to my attention that you have decided not to proceed with the renewal of above-referenced Agreement and, consequently, your rights as a ServiceMaster franchisee. This came as a surprise to us since you and/or your daughter, Stacy Tirella, have continuously explained away the challenges we have encountered during our many attempts to renew the Agreement as merely a matter of obtaining the proper signatures during times of family and/or personal crisis. At no previous time have you indicated to us in any way whatsoever that you never intended to renew the Agreement and maintain our business relationship. In fact, you have continued to operate the franchised business utilizing the ServiceMaster brand name and system of operation and to receive business support services from us.

55. The Tirellas and Stacy Tirella continue to operate a contract services cleaning business in the same territory, with the same employees, the same equipment and providing services to the same customers as when they operated as a ServiceMaster franchisee.

56. Stacy Tirella is operating a Contract Services business in direct competition with ServiceMaster and its other franchisees using the confidential information, training, programs, good will, contacts and other valuable information provided to the Tirellas and Stacy Tirella as part of the ServiceMaster Business System. Stacy Tirella is using this information in direct competition with ServiceMaster and its other franchisees in the Denver market.

57. The Defendants continue to use ServiceMaster's federally registered trademarks and trade names in the operation and promotion of their directly competitive Contract Services cleaning business in the same territory as their former franchise.

58. On March 24, 2008, ServiceMaster called the telephone number for the Tirellas' ServiceMaster franchised business. The answering service answered the phone as "Colorado Commercial Cleaning." A subsequent search of the Colorado Secretary of State records reveals that the "Tirella Corporation" filed a d/b/a for "Colorado Commercial Cleaning" on December 17, 2007, with a description of the services to be provided as "janitorial services."

59. The telephone used by the Tirellas and Stacy Tirella in the operation of "Colorado Commercial Cleaning" (303-763-7419) is the same phone number formerly associated with the Tirellas' and Stacy Tirella's ServiceMaster franchise business. When customers, contacts and referral sources dial the telephone number previously associated with the Tirellas' and Stacy Tirella's ServiceMaster business, they reach Colorado Commercial Cleaning, a direct competitor of ServiceMaster and its franchisee in the Colorado market.

60. A search of commonly used telephone directory databases reveals that the telephone number being used by Colorado Commercial Cleaning is still associated with ServiceMaster's federally registered trademarks in multiple directories. A true and correct copy of several of these current directory listings is attached hereto as Exhibit C.

61. The Tirellas and Stacy Tirella are continuing to use the telephone number associated with their former ServiceMaster franchise business for the purpose of trading on the goodwill associated with ServiceMaster's registered trademark and diverting customers, clients and referral sources from ServiceMaster to "Colorado Commercial Cleaning".

62. Because Stacy Tirella claims to have a Power of Attorney for her parents, she could have taken actions with respect to Global Management and the Tirellas' ServiceMaster

franchise business without the knowledge or approval of the Tirellas, she could execute documents on behalf of Global Management and her parents.

COUNT I: FEDERAL TRADEMARK INFRINGEMENT

63. ServiceMaster hereby incorporates paragraphs 1 through 62 herein.

64. ServiceMaster's parent organization, The ServiceMaster Company, was granted registration of its trademarks by the United States Commissioner of Patents and Trademarks, Certificate of Registration Nos. 782,584, 1,931,212, 2,085,318 and 2,254,065. ServiceMaster's parent has subsequently registered other related trademarks and trade names and licensed their use to ServiceMaster.

65. Since registering its trademarks, ServiceMaster has extensively advertised its trademarks and trade names in connection with its various franchised businesses.

66. Defendants' right to use ServiceMaster's registered trademarks and trade names ceased on March 11, 2008, when the parties' Franchise Agreement terminated.

67. Despite termination, Defendants continued to use and display ServiceMaster's trademarks and trade names in connection with their cleaning business after March 11, 2008 in telephone directory listings and on information and belief, equipment and otherwise.

68. Defendants' continued use and display of ServiceMaster's trademarks and trade names after termination constitutes willful and intentional infringement of ServiceMaster's trademarks and trade names in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

69. As a result of Defendants' infringement, ServiceMaster has been damaged in an amount measured by the revenues realized by Defendants from the sale of services using

ServiceMaster's trademarks and trade names after termination, and by the deprivation of the benefit and goodwill attached to ServiceMaster's trademarks and trade names.

70. Pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. §§ 1116 and 1117(a), ServiceMaster is entitled to temporary and permanent injunctive relief and damages in the amount of Defendants' revenues, plus ServiceMaster's costs, disbursements and attorneys' fees incurred in this action.

71. Because Defendants' infringement of ServiceMaster's trademarks and trade names was willful and intentional, ServiceMaster is also entitled to treble damages pursuant to 15 U.S.C. § 1117(b).

72. The revenue realized by Defendants as a result of their infringement of ServiceMaster's trademarks and trade names is unknown to ServiceMaster. ServiceMaster therefore demands that Defendants provide an accounting of their sales and revenues realized from the sale of services after expiration of the Franchise Agreement for the purposes of ascertaining damages herein.

73. Unless injunctive relief is granted, Defendants will continue to infringe upon ServiceMaster's trademarks and trade names and will cause further irreparable injury to ServiceMaster from lost revenues and deprivation of the benefit and goodwill attached to ServiceMaster's trademarks and trade names.

COUNT II: UNFAIR COMPETITION (FEDERAL)

74. Plaintiffs hereby incorporate by reference paragraphs 1 through 73 above.

75. ServiceMaster has acquired and established a reputation, demand and goodwill for its products and services under the name "ServiceMaster," which name has special significance in the eyes of the public and represents the highest standards of quality and service.

76. ServiceMaster has the exclusive right to use the trademarks associated with "ServiceMaster" and to the goods, services and businesses associated with those trademarks and trade names.

77. Defendants have infringed upon the rights of ServiceMaster and ServiceMaster's trademarks and trade names by using ServiceMaster's Marks in connection with services rendered and by continuing to use ServiceMaster's Marks after termination of the Franchise Agreement and without authority.

78. Due to Defendants' infringement, customers are likely to be confused and induced into purchasing cleaning services from Defendants with the belief that those services were or are likely to be delivered by an authorized ServiceMaster franchisee. Customers are likely to be confused as to the sponsorship of the products and services sold by Defendants after termination while they continue to use ServiceMaster's trademarks.

79. Defendants' actions constitute Federal Unfair Competition in violation of 15 U.S.C. § 1125(a).

80. As a direct result of Defendants' actions, as described above, ServiceMaster has been damaged.

81. ServiceMaster is entitled to preliminary and permanent injunctions enjoining Defendants from any future use of ServiceMaster's Marks and any other terms associated with ServiceMaster in connection with their activities in Central Colorado or elsewhere.

82. ServiceMaster is entitled to an accounting of Defendants' earnings and revenues for the time period in which Defendants have used ServiceMaster's Marks without authorization. ServiceMaster is entitled to recover damages equal to three times Defendants' earnings and profits during the infringement of its Marks.

COUNT III: UNFAIR COMPETITION

83. Plaintiffs hereby incorporate paragraphs 1 through 82 herein.

84. Defendants' actions, as set forth herein, constitute unfair competition, in that they have the natural and probable tendency to deceive so as to pass off the business of one person as and for that of another.

85. Defendants' acts of unfair competition include using ServiceMaster's Marks in connection with the operation of their directly competitive cleaning business after termination of the Franchise Agreement.

86. ServiceMaster is entitled to preliminary and permanent injunctive relief against Defendants' continued use of ServiceMaster's trademarks and trade names in connection with their cleaning business.

87. ServiceMaster is entitled to recover damages, together with costs and disbursements, costs of investigation and attorneys' fees, and to receive other equitable relief, as determined by the Court, including permanent injunctive relief.

COUNT IV: MISAPPROPRIATION OF GOODWILL

88. ServiceMaster hereby incorporates paragraphs 1 through 87 herein.

89. Defendants' unauthorized use of ServiceMaster's trademarks and trade names, as set forth above, constitutes unfair competition and misappropriation of ServiceMaster's valuable goodwill, reputation and business property.

90. ServiceMaster has had a long-standing presence in the Denver market, including several ServiceMaster franchisees prior to the time that the Tirellas purchased their ServiceMaster franchise in 1996.

91. Because of ServiceMaster's long-standing presence in the Denver market, ServiceMaster's trademark and trade name has developed significant goodwill in that market and has come to represent the highest standards of quality and service.

92. Pursuant to Paragraph 6.1.3 of the Tirellas' Franchise Agreement, the Tirellas acknowledged that any and all goodwill associated with ServiceMaster's proprietary trademarks, the licensed system and licensed program inures exclusively to ServiceMaster's benefit and that upon expiration of the Franchise Agreement, no monetary amount would be assigned as attributable to any goodwill associated with franchisee's use of the system, program or ServiceMaster's proprietary marks.

93. By continuing to operate a directly competitive cleaning business in the same market from the same location for the same customers, defendants have misappropriated ServiceMaster's goodwill and are using that goodwill for their direct benefit and profit.

94. As a direct result of Defendants' actions, as described in the preceding paragraphs, ServiceMaster has been damaged.

95. ServiceMaster is entitled to an accounting of Defendants' earnings and revenues and damages for their unauthorized misappropriation of ServiceMaster's goodwill for the time period after expiration of the Franchise Agreement.

COUNT V: BREACH OF NON-COMPETE AGREEMENT

96. ServiceMaster hereby incorporates paragraphs 1 through 95 herein.

97. Paragraph 15 of the Franchise Agreement requires that, for a period of one (1) year after the expiration of the Franchise Agreement, the Tirellas shall not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, persons, partnership or corporation:

a. Divert or attempt to divert any business or customer of the business licensed hereunder to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with ServiceMaster's Marks and System;

* * *

b. Own, maintain, engage in, or have any interest in any other business which performs any of the various programs and services licensed by ServiceMaster included within the system, or other systems licensed by ServiceMaster under the proprietary marks, within the territory assigned to the Tirellas.

98. As the operator of the Tirellas' ServiceMaster business and family member with the Tirellas, Stacy Tirella is a person who may not do indirectly what the Tirellas cannot do directly in terms of the noncompete provisions of the Franchise Agreement.

99. The Tirellas have breached Paragraph 15 of the Franchise Agreements by continuing to own, maintain and have an interest in a business that sells cleaning services in the territory previously assigned to the Tirellas.

100. The Tirellas, through Stacy Tirella, are operating a directly competitive business which performs the same programs and services as ServiceMaster in the same territory formerly licensed to the Tirellas by ServiceMaster.

101. As a result of Defendants' operation of a directly competitive business in the same territory as formerly licensed to the Tirellas in their ServiceMaster Franchise Agreement, ServiceMaster has suffered irreparable harm and will continue to suffer irreparable harm as a result of the Tirellas' continued breach of the noncompete provision of the ServiceMaster Franchise Agreement, by and through their daughter, Stacy Tirella.

102. ServiceMaster has no adequate remedy at law to protect its substantial business and property rights, and the damages from Defendants' activities are considerable and continuing and thus not capable of ascertainment at this time.

103. The Tirellas and Stacy Tirella have deliberately attempted to evade the terms of the noncompete provision by constructing an apparent transfer of the ServiceMaster business to Stacy Tirella, who is now operating as "Colorado Commercial Cleaning."

104. The Tirellas and Stacy Tirella's activities in owning and operating a directly competitive business in the same location as their former ServiceMaster business is causing

irreparable harm and damage to ServiceMaster and its other franchisees in Central Colorado and elsewhere and interfering with ServiceMaster's ability to place new franchisees in the territory.

105. ServiceMaster is entitled to preliminary and permanent injunctive relief enforcing the noncompete provision of the Franchise Agreement between ServiceMaster and the Tirellas.

COUNT VI: BREACH OF CONTRACT – POST-TERMINATION OBLIGATIONS

106. ServiceMaster hereby incorporates paragraphs 1 through 105 herein.

107. Paragraph 15.2.1 of the Franchise Agreement requires that, for a period of one year after the expiration of the Franchise Agreement, the Tirellas shall not, directly or indirectly, for himself, or through, on behalf of, or in conjunction with any person, persons, partnership or corporation, divert or attempt to divert any business or customer of his ServiceMaster franchise business to any competitor by direct or indirect inducement or otherwise or to do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with ServiceMaster's proprietary Marks or System.

108. The Tirellas, through Stacy Tirella, have breached paragraph 15.2.1. of the Franchise Agreement by purposely and intentionally directing all customers formerly serviced by them as a ServiceMaster franchisee to Stacy Tirella's cleaning business, Colorado Commercial Cleaning, a direct competitor of ServiceMaster and its other authorized franchisees in the Denver market.

109. The Tirellas, through Stacy Tirella, have breached paragraph 15.2.1. of the Franchise Agreement by taking action injurious and prejudicial to the goodwill associated with ServiceMaster's proprietary Marks and System by purposely and intentionally diverting

customers formerly serviced by the Tirellas as a ServiceMaster franchisee to Stacy Tirella's cleaning business, a direct competitor of ServiceMaster and its franchisees in the Denver market.

110. As a direct result of the Tirellas' and Stacy Tirella's actions and conduct, ServiceMaster has suffered monetary damages as well as loss of goodwill. ServiceMaster is entitled to a preliminary injunction preventing the Tirellas and Stacy Tirella from violating the provisions of the Franchise Agreement and monetary damages for breach of his ServiceMaster Franchise Agreement.

**COUNT VII: BREACH OF CONTRACT—AMOUNTS OWED UNDER
FRANCHISE AGREEMENT**

111. ServiceMaster incorporates herein by reference the preceding paragraphs 110 of this Complaint.

112. The Tirellas and Global Management breached the Franchise Agreement by refusing to pay all fees due and owing to ServiceMaster.

113. ServiceMaster is entitled to an accounting and judgment against the Tirellas and Global Management for all fees due and to recover its costs, expenses, and attorneys' fees incurred in this action, pursuant to the terms of Article 22 of each Franchise Agreement.

**COUNT VIII: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS—
STACY TIRELLAS**

114. ServiceMaster hereby incorporates paragraphs 1 through 113 herein.

115. ServiceMaster and the Tirellas are parties to a written contract in the form of the Franchise Agreement attached hereto as Exhibit A.

116. Stacy Tirella was aware of the existence of the Franchise Agreement between ServiceMaster and the Tirellas, as it formed the basis of the relationship between the parties. On

many occasions, Stacy Tirella was involved in discussions with ServiceMaster personnel regarding the potential renewal of the Franchise Agreement from January 2006 through February 2008. ServiceMaster provided Stacy Tirella with multiple copies of ServiceMaster's UFOC and Renewal Agreement, which she claims was reviewed by her attorney and signed by her parents.

117. Stacy Tirella was aware of the post-termination obligations contained in the Franchise Agreement, including the post-termination noncompete provisions of the Franchise Agreement that restricted the Tirellas' activities after termination.

118. Stacy Tirella tortiously interfered with ServiceMaster's contractual relationship with the Tirellas by constructing an apparent transfer of the Tirellas' ServiceMaster business and customers to Stacy Tirella and "Colorado Commercial Cleaning" with the purpose and objective of interfering with ServiceMaster's post-termination rights pursuant to the terms of the written Franchise Agreement.

119. Stacy Tirella purposely timed and constructed her apparent transfer transaction with the intent to evade and interfere with ServiceMaster's post-termination rights under the terms of the Franchise Agreement, including ServiceMaster's right to prevent the Tirellas from diverting or attempting to divert any business or customer to a competitor, or to own, maintain, engage in or have any interest in any other business which performs any of the various programs and services licensed by ServiceMaster for a period of one year from the date of the last use of ServiceMaster's trademarks.

120. Stacy Tirella's tortious interference with ServiceMaster's contractual rights was intentional and without justification.

121. As a result of Stacy Tirella's tortious interference with ServiceMaster's contractual rights, ServiceMaster has been damaged and will continue to suffer damages as a result of Stacy Tirella's actions and conduct.

122. ServiceMaster is entitled to damages against Stacy Tirella as and for tortious interference with its contractual relationship with the Tirellas.

COUNT IX: CIVIL CONSPIRACY – STACY TIRELLA AND THE TIRELLAS

123. ServiceMaster hereby incorporates paragraphs 1 through 122 herein.

124. The Tirellas and Stacy Tirella were aware of the existence and terms of the ServiceMaster Franchise Agreement, including the post-termination noncompete obligations.

125. With full knowledge of their post-termination noncompete obligations, the Tirellas brought Stacy Tirella into their ServiceMaster business with the intent that she transition into full-time day-to-day operation of the Tirellas' ServiceMaster business. By 2000, Stacy Tirella had, in fact, assumed responsibility for the day-to-day operations of the Tirellas' ServiceMaster business and was the primary contact between the business and ServiceMaster

126. On numerous occasions from January 2006 through February 2008, ServiceMaster contacted and met with The Tirellas and/or Stacy Tirella for the purpose of providing them the opportunity to renew the ServiceMaster Franchise Agreement. ServiceMaster made many attempts to accommodate the Tirellas' health concerns and actively encouraged the Tirellas to renew their ServiceMaster Agreement, and/or transfer the Franchise Agreement directly to Stacy Tirella, as per their stated desire. At no time prior to February, 2008, did the Tirellas state that they were refusing to sign a renewal ServiceMaster Franchise Agreement.

127. With full knowledge of the post-termination obligations contained in the Franchise Agreement, the Tirellas, by and through Stacy Tirella, agreed to develop a plan and scheme to transfer the Tirellas' ServiceMaster franchise business to Stacy Tirella with the specific purpose of diverting the business and customers from the Tirellas' ServiceMaster business to Stacy Tirella's "Colorado Commercial Cleaning" business and evading the post-termination provisions of the Franchise Agreement, including the noncompete provision.

128. The purpose and objective of the Tirellas and Stacy Tirella's conduct was to make customers cease doing business with the Tirellas' ServiceMaster business and transfer those customers to Stacy Tirella's "Colorado Commercial Cleaning" business while at the same time avoiding the Tirellas' post-termination obligations under the terms of the ServiceMaster Franchise Agreement.

129. In furtherance of the conspiracy described above, the Tirellas, by and through Stacy Tirella, constructed an apparent assignment or transfer of the Tirellas' ServiceMaster business to Stacy Tirella. Stacy Tirella has, in fact, established a new business under the name "Colorado Commercial Cleaning" and is actively soliciting the Tirellas' former ServiceMaster customers and contacts and performing cleaning services for these customers.

130. The Tirellas, by and through Stacy Tirella, created, planned and implemented their conspiracy to deprive ServiceMaster of the opportunity to retain the goodwill developed under its trademarks and to avoid their contractual obligations under the terms of their Franchise Agreement.

131. The Tirellas' and Stacy Tirella's actions, as alleged above, were undertaken in secret, pursuant to a conspiracy to damage ServiceMaster's goodwill and to deprive

ServiceMaster of the benefit of the post-termination provisions of the ServiceMaster Franchise Agreement, including the noncompete provision.

132. As a result of the Tirellas' and Stacy Tirella's actions, ServiceMaster has sustained damages in the form of damage to its goodwill, damage to its business reputation and damage from the loss of opportunity to maintain the goodwill developed in the Tirellas' market under ServiceMaster's trademarks, all in an amount to be determined at the time of trial, but believed to be in excess of \$250,000.

COUNT X: BREACH OF CONTRACT—POST-TERMINATION OBLIGATIONS

133. ServiceMaster hereby incorporates paragraphs 1 through 132 herein.

134. The Franchise Agreement between ServiceMaster and the Tirellas has terminated and the Tirellas have no rights thereunder.

135. Paragraph 14 of the Franchise Agreement specifies the Tirellas' obligations after termination, including their obligation to:

- a. Cease and terminate all use of the ServiceMaster Marks and the word "ServiceMaster," in any manner whatsoever, or any colorable imitation thereof, including identification on equipment; withdraw all advertising matter; destroy all letterhead; remove all signs and any other articles which display ServiceMaster's Marks or trade dress associated with ServiceMaster;
- b. Not use any reproduction, counterfeit, copy or colorable imitation of the ServiceMaster Marks either in connection with another business or the promotion thereof which is likely to cause confusion, mistake or

deception, or which is likely to dilute ServiceMaster's exclusive rights in and to the ServiceMaster Marks, and not to use any trade dress or designation of origin or description or representation which falsely suggests or represents an association or connection with ServiceMaster so as to constitute unfair competition;

- c. Instruct all telephone service providers to transfer all telephone numbers and listings under which the Tirellas received calls for their franchised business to ServiceMaster or another franchisee designated by ServiceMaster;
- d. Immediately turn over to ServiceMaster the Manuals and all manuals, records, files, instructions, and any and all other materials relating to the operation of the Franchised Business in their possession, and all copies thereof, and not to retain any copy or record of any of the foregoing;
- e. Take such action as may be necessary to cancel any assumed name or equivalent registration which contains the word "ServiceMaster" or any other proprietary ServiceMaster mark and to furnish ServiceMaster with satisfactory evidence of compliance with this obligation within thirty (30) days of termination.

136. The Tirellas have failed to comply with their post-termination obligations set forth in paragraph 14 of the Franchise Agreement.

137. The Tirellas and Stacy Tirella continue to use and accept telephone calls under the number 303-763-7419, which was the telephone number associated with the Tirellas'

ServiceMaster business for over ten years. When customers, contacts or referral sources call this telephone number associated with ServiceMaster's trademarks, the phone is answered by "Colorado Commercial Cleaning," a direct competitor that has no authority to use or trade upon ServiceMaster's trademarks or trade names.

138. The Tirellas have failed to return all manuals and other materials.

139. Defendants' failure and refusal to comply with each and every post-termination obligation set forth in the Franchise Agreement is causing irreparable harm and damage to ServiceMaster and will impair the goodwill associated with ServiceMaster's names and trademarks.

140. ServiceMaster has no adequate remedy at law to protect its substantial business and property rights and the damages from Defendants' failure to comply with post-termination obligations are considerable and continuing and thus not capable of ascertainment at this time.

141. ServiceMaster is entitled to preliminary and permanent injunctive relief enforcing the post-termination obligations of the Franchise Agreement, including the immediate assignment and transfer of all phone numbers formerly associated with the Tirellas' ServiceMaster business, and for damages for the Tirellas' breach of the Franchise Agreement.

COUNT XI: VIOLATION OF DECEPTIVE TRADE PRACTICES

142. ServiceMaster hereby incorporates paragraphs 1 through 141 herein.

143. Defendants' actions, as set forth herein, constitute a deceptive trade practice, with the intent that others rely thereon in connection with the sale of products and services to the general public.

144. Defendants' deceptive trade practices include the continued use of ServiceMaster's Marks after termination, and the continued use of telephone numbers associated with ServiceMaster trademarks to promote a directly competitive business.

145. ServiceMaster is entitled to preliminary and permanent injunctive relief against Defendants' continued use of ServiceMaster's trademarks and trade names in connection with their activities in Central Colorado.

146. ServiceMaster is entitled to recover damages, together with costs and disbursements, costs of investigation and attorneys' fees, and to receive other equitable relief, as determined by the court, including permanent injunctive relief.

COUNT XII: IMPLIED IN FACT CONTRACT

147. ServiceMaster hereby incorporates paragraphs 1 through 146 herein.

148. In the alternative, if an express contract does not exist between ServiceMaster and Defendants, then ServiceMaster is entitled to relief under an implied in fact contract that arose between the parties.

149. Upon the expiration of the 2001 Franchise Agreement in May 2006, an implied in fact contract arose between ServiceMaster and all Defendants.

150. The terms of the parties' implied in fact contract are the same as the terms of the 2001 Franchise Agreement, as Defendants continued to operate their franchised business according to those terms after May 2006.

151. ServiceMaster is entitled to recover damages in the amount of the fees that Defendants should have paid under the 2001 Franchise Agreement since May 2006.

ServiceMaster is further entitled to enforce the 2001 Franchise Agreement's post-termination obligations against Stacy Tirella.

COUNT XIII: IMPLIED IN LAW CONTRACT

152. ServiceMaster hereby incorporates paragraphs 1 through 151 herein.

153. In the alternative, if an express contract does not exist between ServiceMaster and Defendants, then ServiceMaster is entitled to relief under an implied in law contract that arose between the parties upon the expiration of the 2001 Franchise Agreement in May 2006.

154. After May 2006, Defendants continued to make use of the SERVICEMASTER® trademarks and confidential business information to operate their cleaning business as a SERVICEMASTER® business.

155. Defendants have been unjustly enriched by their use of ServiceMaster's trademarks and Business System without payment to ServiceMaster of all the fees owed for the use of those Marks and Business System.

156. ServiceMaster is entitled to recover damages in the amount of the fees that Defendants should have paid under the 2001 Franchise Agreement since May 2006. ServiceMaster is further entitled to enforce the 2001 Franchise Agreement's post-termination obligations against Stacy Tirella.

COUNT XIV: PROMISSORY ESTOPPEL

157. ServiceMaster hereby incorporates paragraphs 1 through 156 herein.

158. As set forth above, Stacy Tirella represented to ServiceMaster that her parents had executed a power of attorney that gave her the authority to operate the SERVICEMASTER® franchised business.

159. Stacy Tirella thus served as the de facto franchisee of the SERVICEMASTER® business, such that the franchise rights owned by Global Management Services were transferred to Stacy Tirella.

160. Stacy Tirella promised to execute a renewal Franchise Agreement on numerous occasions.

161. Stacy Tirella knew or should have known that ServiceMaster would rely on her promise to execute a renewal Franchise Agreement.

162. ServiceMaster relied on Stacy Tirella's promise to its detriment, permitting Stacy Tirella to continue operating the franchised business using ServiceMaster's Marks and Business System.

163. Stacy Tirella received an unfair benefit as a result of her false representation to ServiceMaster, in that she was permitted to use ServiceMaster's Marks and Business System without paying the full amount of fees owed to ServiceMaster.

164. ServiceMaster is entitled to recover damages in the amount of the fees that Stacy Tirella should have paid under the 2001 Franchise Agreement since May 2006. ServiceMaster is further entitled to enforce the 2001 Franchise Agreement's post-termination obligations against Stacy Tirella.

PRAYER FOR RELIEF

WHEREFORE, ServiceMaster prays for judgment against Defendants as follows:

1. For a preliminary and permanent injunction against Defendants, their directors, officers, agents, servants, employees and attorneys, and all others in active concert or participation with them, preventing them from owning, maintaining, engaging in, or having any

interest in any other business which performs any of the various programs and services licensed by ServiceMaster in their former territory for one (1) year from the date of said injunction;

2. For a preliminary and permanent injunction preventing Defendants, their directors, officers, agents, servants, employees and attorneys, and all others in active concert or participation with them from using any or all of the trademarks associated with "ServiceMaster," including any reference to Defendants' former ServiceMaster franchise;

3. For a preliminary and permanent injunction preventing Defendants, their directors, officers, agents, servants, employees and attorneys, and all others in active concert or participation with them from failing to comply with all post-termination obligations in the Franchise Agreement.

4. For an accounting of Defendants' revenue, earnings and profits for the purpose of determining damages;

5. For an award of an amount equal to three (3) times the earnings and profits obtained by Defendants from their wrongful infringement of ServiceMaster's trademarks, trade names, and service marks and from their other wrongful acts in an amount in excess of \$250,000;

6. For damages in the amount of no less than \$250,000 for Defendants' breach of the Franchise Agreement and other wrongful conduct;

7. For Plaintiffs' costs, disbursements, costs of investigation and attorneys' fees incurred in this action; and

8. For such other and further relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs hereby demand trial by jury.

Respectfully submitted this 26th day of August, 2008.

s/Martha M. Tierney

MARTHA M. TIERNEY
Kelly Garnsey Hubbell + Lass LLC
1441 Eighteenth Street, Suite 300
Denver, Colorado 80202-1255
(303) 296-9412
mtierney@kghllaw.com

and

Michael R. Gray (MN 175602)
Jason J. Stover (MN 30573X)
GRAY, PLANT, MOOTY, MOOTY &
BENNETT, P.A.
500 IDS Center
80 S. Eighth St.
Minneapolis, MN 55402
(612) 632-3078
mike.gray@gpmlaw.com
jason.stover@gpmlaw.com
ATTORNEYS FOR PLAINTIFF

VERIFICATION

I, Charlie Kerr, Regional Director of ServiceMaster Residential/Commercial Services, L.P., under penalty of perjury, verify that the facts contained in the foregoing Verified Complaint are true and correct according to the best of my knowledge, information, and belief. I have reviewed the exhibits attached to the Verified Complaint, and, to the best of my knowledge, information, and belief the documents attached to this Verified Complaint are true and correct copies.

Executed on August 25, 2008

s/Charlie Kerr
Charlie Kerr

Signed and sworn to before me
this 25 day of August, 2008.

s/Janet C. White
Notary Public