

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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| SUBMISSION TYPE: | NEW ASSIGNMENT |
| NATURE OF CONVEYANCE: | Court order confirming termination of license agreement (reference reel/frame 3206/0584) and related security interest (reference reel/frame 3208/0362) |

CONVEYING PARTY DATA

| Name | Formerly | Execution Date | Entity Type |
|---|----------|----------------|-----------------|
| U.S. District Court for Eastern District of Virginia, affecting the interest of AMF Billiards & Games, Inc. (f/k/a Billiards Acquisition, Inc.), et al. | | 11/05/2007 | Court: VIRGINIA |

RECEIVING PARTY DATA

| | |
|------------------------|-----------------------------|
| Name: | AMF Bowling Worldwide, Inc. |
| Street Address: | 8100 AMF Drive |
| City: | Mechanicsville |
| State/Country: | VIRGINIA |
| Postal Code: | 23111 |
| Entity Type: | CORPORATION: DELAWARE |

| | |
|------------------------|-------------------------------------|
| Name: | ABC Ventures, LLC |
| Street Address: | 8100 AMF Drive |
| City: | Mechanicsville |
| State/Country: | VIRGINIA |
| Postal Code: | 23111 |
| Entity Type: | LIMITED LIABILITY COMPANY: DELAWARE |

PROPERTY NUMBERS Total: 2

| Property Type | Number | Word Mark |
|----------------------|---------|-------------------------------------|
| Registration Number: | 2474248 | HIGHLAND SERIES AMF LIMITED EDITION |
| Registration Number: | 2013389 | AMF |

CORRESPONDENCE DATA

Fax Number: (804)698-2007

OP \$65.00 2474248

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

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Address Line 4: Richmond, VIRGINIA 23219-4030

| | |
|-------------------------|------------------|
| ATTORNEY DOCKET NUMBER: | 2032227-0175 |
| NAME OF SUBMITTER: | Robin C. Vance |
| Signature: | /Robin C. Vance/ |
| Date: | 11/20/2007 |

Total Attachments: 29

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

AMF BOWLING WORLDWIDE, INC.,
a Delaware corporation,

and

ABC VENTURES, LLC,
a Delaware limited liability company,

Plaintiffs,

v.

Civil Action No. 3:07CV430

AMF BILLIARDS & GAMES, INC.,
a Missouri corporation,

Defendant.

FINAL ORDER AND PERMANENT INJUNCTION

The matter is before the Court on Plaintiffs' Motion for Default Judgment. In accordance with the accompanying findings of fact and conclusions of law and the evidence before the Court, and upon good cause shown, it is accordingly ADJUDGED, ORDERED AND DECREED:




1. That Default Judgment is ENTERED in favor of Plaintiffs AMF Bowling Worldwide, Inc. ("AMF") and ABC Ventures, LLC ("ABC") and against Defendant AMF Billiards & Games, Inc. ("B&G"), upon Plaintiffs' Complaint;
2. That B&G breached the December 5, 2005 Asset Purchase Agreement between ABC and B&G (the "APA") by failing to indemnify ABC as required by the APA;


A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT

BY 
DEPUTY CLERK

TRADEMARK
REEL: 003664 FRAME: 0527

3. That judgment is entered for ABC and against B&G in the amount of \$174,253.00, together with interest on such amount as required by law from the date of B&G's breach until paid;
4. That AMF is the lawful owner of the trade name, trademark and service mark AMF, as used in connection with its current and former goods and services, as well as the following marks (the "AMF Billiards Marks"), and all common law rights and goodwill associated with the AMF Mark and the AMF Billiards Marks:

| Country | Trademark | Registration No. | Filing Date | Goods |
|---------|---|------------------|-------------|--|
| Canada |  AMF PLAYMASTER & Design | TMA467,917 | 12/19/1996 | Class 28: Pool and billiard tables |
| China | AMF PLAYMASTER | 803421 | 12/28/1995 | Class 28: Snooker and billiard tables and accessories, game tables |
| U.S.A |  HIGHLAND SERIES AMF LIMITED EDITION & Design | 2,474,248 | 7/31/2001 | Class 28: Pool, billiard and snooker tables |
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| Canada/ U.S.A | AMFAST | Unregistered | N/A | Cushions |
| | <amfbilliards.com> | Unregistered | N/A | Billiard equipment and accessories |

5. That, as of May 11, 2007, B&G ceased to trade, as that term is used in Section 8.2.1 of the December 5, 2005 Trademark License Agreement between AMF and B&G (the "License");
6. That AMF's June 19, 2007 termination of the License, as of May 11, 2007, was proper under the License;
7. That AMF has not breached the License;
8. That AMF was within its rights to refuse to consent to B&G's proposed transfer of its purported rights under the License to AHB Acquisition LLC;
9. That the License has no further force and effect;
10. That B&G has no right to use the AMF Billiards Marks beyond that contemplated in Paragraph 8.5 of the License, which right expires on November 7, 2007;
11. That B&G has no rights to transfer in the AMF Billiards Marks or under the License;

**IN THE UNITED STATES DISTRICT COURT
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RICHMOND DIVISION**

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a Delaware corporation,**

and

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a Delaware limited liability company,**

Plaintiffs,

v.

**AMF BILLIARDS & GAMES, INC.,
a Missouri corporation,**

Defendant.

Civil Action No. 3:07CV430

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2. That B&G breached the December 5, 2005 Asset Purchase Agreement between ABC and B&G (the "APA") by failing to indemnify ABC as required by the APA;


**A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT**

BY 
DEPUTY CLERK

**TRADEMARK
REEL: 003664 FRAME: 0531**

3. That judgment is entered for ABC and against B&G in the amount of \$174,253.00, together with interest on such amount as required by law from the date of B&G's breach until paid;
4. That AMF is the lawful owner of the trade name, trademark and service mark AMF, as used in connection with its current and former goods and services, as well as the following marks (the "AMF Billiards Marks"), and all common law rights and goodwill associated with the AMF Mark and the AMF Billiards Marks:

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6. That AMF's June 19, 2007 termination of the License, as of May 11, 2007, was proper under the License;
7. That AMF has not breached the License;
8. That AMF was within its rights to refuse to consent to B&G's proposed transfer of its purported rights under the License to AHB Acquisition LLC;
9. That the License has no further force and effect;
10. That B&G has no right to use the AMF Billiards Marks beyond that contemplated in Paragraph 8.5 of the License, which right expires on November 7, 2007;
11. That B&G has no rights to transfer in the AMF Billiards Marks or under the License;

12. That B&G, its officers, agents, servants, employees, attorneys, successors, assigns, all person or entities claiming by, through or under B&G, and all those in persons in active concert or participation with any of the foregoing who receive actual notice of the order by personal service or otherwise, are PERMANENTLY ENJOINED AND RESTRAINED from using, causing the use of, or abetting the use of the AMF Billiards Marks for any purposes; except that, pursuant to Paragraph 8.5 of the License and until November 7, 2007 only, B&G may (a) sell-off any B&G inventory bearing the AMF Billiards Mark and (b) exhaust any B&G promotional materials bearing the AMF Billiards Mark.
13. That B&G, its officers, agents, servants, employees, attorneys, successors, assigns, all person or entities claiming by, through or under B&G, and all those in persons in active concert or participation with any of the foregoing who receive actual notice of the order by personal service or otherwise, are PERMANENTLY ENJOINED AND RESTRAINED from transferring or attempting to transfer any interest in the AMF Billiards Marks or the License.
14. That ABC did not breach the APA and is liable to B&G for nothing; and
15. That AMF and ABC shall receive their costs incurred in this action.

IT IS SO ORDERED.

Date: October 5, 2007

/s/
RICHARD L. WILLIAMS
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

**AMF BOWLING WORLDWIDE, INC.,
a Delaware corporation,**

and

**ABC VENTURES, LLC,
a Delaware limited liability company,**

Plaintiffs,

v.

Civil Action No. 3:07CV430

**AMF BILLIARDS & GAMES, INC.,
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Defendant.


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2. That B&G breached the December 5, 2005 Asset Purchase Agreement between ABC and B&G (the "APA") by failing to indemnify ABC as required by the APA;

3. That judgment is entered for ABC and against B&G in the amount of \$174,253.00, together with interest on such amount as required by law from the date of B&G's breach until paid;
4. That AMF is the lawful owner of the trade name, trademark and service mark AMF, as used in connection with its current and former goods and services, as well as the following marks (the "AMF Billiards Marks"), and all common law rights and goodwill associated with the AMF Mark and the AMF Billiards Marks:

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5. That, as of May 11, 2007, B&G ceased to trade, as that term is used in Section 8.2.1 of the December 5, 2005 Trademark License Agreement between AMF and B&G (the "License");
6. That AMF's June 19, 2007 termination of the License, as of May 11, 2007, was proper under the License;
7. That AMF has not breached the License;
8. That AMF was within its rights to refuse to consent to B&G's proposed transfer of its purported rights under the License to AHB Acquisition LLC;
9. That the License has no further force and effect;
10. That B&G has no right to use the AMF Billiards Marks beyond that contemplated in Paragraph 8.5 of the License, which right expires on November 7, 2007;
11. That B&G has no rights to transfer in the AMF Billiards Marks or under the License;

12. That B&G, its officers, agents, servants, employees, attorneys, successors, assigns, all person or entities claiming by, through or under B&G, and all those in persons in active concert or participation with any of the foregoing who receive actual notice of the order by personal service or otherwise, are PERMANENTLY ENJOINED AND RESTRAINED from using, causing the use of, or abetting the use of the AMF Billiards Marks for any purposes; except that, pursuant to Paragraph 8.5 of the License and until November 7, 2007 only, B&G may (a) sell-off any B&G inventory bearing the AMF Billiards Mark and (b) exhaust any B&G promotional materials bearing the AMF Billiards Mark.
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14. That ABC did not breach the APA and is liable to B&G for nothing; and
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IT IS SO ORDERED.

Date: October 5, 2007

/s/
RICHARD L. WILLIAMS
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
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**AMF BOWLING WORLDWIDE, INC.,
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and

**ABC VENTURES, LLC,
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Plaintiffs,

v.

Civil Action No. 3:07CV430

**AMF BILLIARDS & GAMES, INC.,
a Missouri corporation,**

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court on Plaintiffs' Motion for Default Judgment. Upon default, the facts alleged in the Complaint are deemed admitted. The Court, however, must determine whether those admitted facts state a claim. *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001); *State Employees' Credit Union v. Nat'l Auto Leasing, Inc.*, No. 2:06cv663, 2007 WL 1459301, * 1 (E.D. Va. May 14, 2007); *Agri-Supply Co. v. Agrisupply.com*, 457 F. Supp. 2d 660, 662 (E.D.Va. 2006).

Default judgment is governed by Rule 55(b), which provides that "[w]hen the plaintiff's claim against a defendant is for a sum certain . . . , the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or an incompetent person." Fed. R. Civ. P. 55(b)(1). Where the dispute is not certain, as in the case of

Plaintiffs' requests for a declaratory judgment, a judgment by default can only be made by the Court. Fed. R. Civ. P. 55(b)(2).

FINDINGS OF FACT

A. Introduction

1. Plaintiffs filed this breach of contract and declaratory judgment action on July 20, 2007. This case arises from the sale of the assets of ABC's former billiards and games business to B&G. That sale was documented in part in a December 5, 2005 Asset Purchase Agreement between ABC and B&G (the "APA") and a December 5, 2005 Trademark License Agreement between AMF (ABC's indirect parent company) and B&G (the "License"). Compl. Ex. A-B.

2. AMF maintains that B&G has ceased to trade and that, as a result, AMF properly terminated the License. AMF now seeks a judgment under 28 U.S.C. § 2201 declaring AMF's and B&G's respective rights, obligations, and liabilities under the License.

3. ABC seeks a judgment that B&G breached the APA by failing to reimburse ABC for various assumed and/or indemnified liabilities under the APA, ordering B&G to pay ABC \$174,253 (plus pre-judgment interest) as damages for its breach and declaring, under 28 U.S.C. § 2201, that ABC has no further obligation to B&G under the APA.

4. Upon a full review of all the submissions before the Court, the Court finds that Plaintiffs have established the following facts by a preponderance of the evidence.

B. Parties

5. AMF is a Delaware corporation with its principal place of business in Mechanicsville, Virginia. *See* Affidavit of Daniel McCormack ("McCormack Aff."), ¶2.

6. ABC is a Delaware limited liability company with its principal place of business in Mechanicsville, Virginia. Formerly known as AMF Billiards & Games, LLC, ABC is an indirect wholly-owned subsidiary of AMF. *Id.* ¶3.





7. B&G is a Missouri corporation with its principal place of business in Bland, Missouri. At the time it entered into the APA and the License, B&G was known as Billiards Acquisition, Inc. *Id.* ¶4.

C. AMF and the AMF BILLIARDS Marks

8. AMF and its various subsidiaries are engaged in the business of operating bowling and amusement centers and hold an interest in a company that manufactures and sells bowling equipment and computer games. Through subsidiaries, AMF is the largest operator of bowling centers in the world. *Id.* ¶5.

9. Before December 5, 2005, ABC operated a billiards business that manufactured and sold billiard tables under the trade names, trademarks and service marks owned by AMF (the “AMF Billiards Business”). *Id.* ¶6.

10. AMF owns the trade name, trademark and service mark AMF, as used in connection with its current and former goods and services, as well as the following marks (the “AMF Billiards Marks”), and all common law rights and goodwill associated with the AMF Mark and the AMF Billiards Marks:

| Country | Trademark | Registration No. | Filing Date | Goods |
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Id. ¶7.

11. The AMF Billiards Marks are distinctive and have been used continuously in interstate commerce, in connection with billiards equipment, since their adoption. *Id.* ¶8.

12. Through such continuous use, the AMF Billiards Marks have become well known and widely recognized by consumers throughout the United States and the world. AMF developed a substantial reputation and valuable goodwill in the AMF Billiards Marks. *Id.* ¶9.

D. The Sale of the AMF Billiards Business to B&G

13. In 2005, ABC and AMF began to market for sale the AMF Billiards Business. These efforts culminated in the APA, which was executed and closed on December 5, 2005 (the “Closing”). *Id.* ¶10; Compl., Ex. A. Under the APA, ABC sold certain of its assets to B&G in exchange for gross cash proceeds of approximately \$4.5 million, subject to certain post-Closing adjustments. *Id.* In addition, AMF agreed to enter into the License, granting B&G certain rights to the AMF Billiards Marks. McCormack Aff. ¶10; Compl. Ex. B.

14. The post-Closing adjustments were determined by a January 9, 2006 closing statement, which set forth ABC’s final working capital as of the Closing (the “Closing Statement”). McCormack Aff. ¶11; Compl. Ex. C.

15. Among the post-Closing adjustments were obligations arising under Section 2.2.1 of the APA, which required B&G to assume a number of ABC’s liabilities concerning the operations of the AMF Billiards Business (the “Assumed Liabilities”). McCormack Aff. ¶12. The Assumed Liabilities include, but are not limited to: all liabilities reflected in the Closing Statement; all liabilities and obligations arising from the operation of the acquired assets of the AMF Billiards Business after the Closing; and all worker’s compensation claims made by former ABC employees who accepted offers to work for B&G after the Closing (“Transferred

Employees”), including claims arising from events occurring before Closing, to the extent included in the Closing Statement. *Id.*

16. Under Sections 10.1 and 10.3 of the APA, B&G agreed to indemnify and defend ABC against a wide variety of eventualities, including the Assumed Liabilities. *Id.* ¶13. In addition, under Section 8.1.1 of the APA, B&G agreed to reimburse ABC for medical claims arising from events occurring before the Closing, to the extent those claims were included on the Closing Statement. *Id.*

E. B&G’s Breach of the APA

17. B&G subsequently breached the APA by failing to reimburse ABC for three separate assumed and/or indemnified liabilities under the APA. *Id.* ¶14.

18. First, the Closing Statement includes an accrual for \$51,300 of liabilities associated with health insurance for medical claims of Transferred Employees. *Id.* ¶15. Under Sections 2.2.1, 10.1.2 and 10.1.3 of the APA, B&G is required to indemnify ABC in the amount of \$51,300 for these medical claims. *Id.* Although ABC invoiced B&G for this amount, B&G refused to pay. *Id.*

19. Second, certain Transferred Employees continued to use ABC’s health insurance programs after Closing. *Id.* ¶ 16. ABC paid its health care administrator \$5,194 for medical services obtained by Transferred Employees after Closing. *Id.* As B&G agreed in the APA to indemnify the Seller for “the operation of the Assets and the Business by Buyer after the Closing,” under Sections 2.2.1, 10.1.3 and 10.1.4 of the APA, B&G must indemnify ABC in the amount of \$5,194 for amounts that ABC paid on behalf of those Transferred Employees after Closing. *Id.* Although ABC invoiced B&G for this amount, B&G refused to pay. *Id.*

20. Third, through July 1, 2007, ABC paid \$117,759 related to the pre-Closing worker's compensation claims of Transferred Employees. *Id.* ¶17. The Closing Statement includes an accrual for \$186,600 worth of such worker's compensation liabilities. *Id.* As B&G agreed in the APA to indemnify ABC against all such claims, under Sections 2.2.1, 10.1.2 and 10.1.3 of the APA, B&G is required to indemnify ABC in the amount of \$117,759 for worker's compensation claims. *Id.* Although ABC invoiced B&G for the portion of this amount due and owing through the end of January 2007, reserving the right to seek additional reimbursement from B&G for pre-Closing worker's compensation claims to the extent of the aggregate amount accrued on the Closing Statement (*i.e.*, \$186,600), B&G refused to pay. *Id.*

21. On February 23, 2007, ABC demanded indemnification from B&G for the amounts due and owing through the end of January 2007. *Id.* ¶18.

22. B&G refused to pay the amounts it owes AMF. *Id.* ¶19. Instead, through its counsel, B&G contended that ABC must indemnify B&G under the APA in the amount of approximately \$880,000. *Id.* ABC denies this contention. *Id.*

F. B&G's Cessation of Trade Caused AMF to Terminate the License

23. The assets sold to B&G under the APA excluded the AMF Billiards Marks. *Id.* ¶20. However, as part of the sale of the AMF Billiards Business, AMF and B&G executed the License, under which AMF granted to B&G a limited right to use the AMF Billiards Marks in connection with the operation of a billiards and games business. *Id.*

24. To protect its rights in the AMF Billiards Marks, AMF demanded and received the right to terminate the trademark license granted to B&G in certain circumstances that might imperil the strength or enforceability of the AMF Billiards Marks, including if B&G ceased to

trade. *Id.* ¶21. Accordingly, Paragraph 8.2.1 of the License permitted AMF to terminate the License by written notice to AMF Billiards & Games upon B&G having ceased to trade. *Id.*

25. On or about May 11, 2007, B&G ceased to trade. *Id.* ¶22. On or about May 14, 2007, B&G's President sent a letter to B&G's suppliers informing them "that [B&G] ceased operations effective May 11, 2007 due to our bank's unwillingness to fund continuing operations." *Id.*; Compl. Ex. D. At least by mid-June, telephone calls to B&G's listed telephone numbers were answered by a recorded message also stating that B&G "ceased operations effective May 11, 2007." McCormack Aff. ¶22. In addition, B&G's website, www.amfbilliards.com, ceased to function. *Id.*

26. As a consequence, on June 19, 2007, AMF sent B&G written notice that the License was terminated effective May 11, 2007. *Id.* ¶23; Compl. Ex. E. The notice instructed B&G to cease using the AMF Name, the AMF Billiards Marks, and all promotional or other related materials consisting of or incorporating any of the foregoing. *Id.*

27. On June 21, 2007, B&G, through its counsel, responded in writing to AMF. McCormack Aff. ¶24. Notwithstanding the clear messages that B&G had sent the marketplace concerning its cessation of trading operations, B&G denied that it had ceased to trade and stated that it considered AMF's termination of the License unfounded and improper. *Id.*

28. After sending its notice of termination, AMF learned that B&G was attempting to sell its remaining assets to AHB Acquisition LLC ("AHB Acquisition"), an Ohio limited liability company that is, upon information and belief, an affiliate of American Heritage Billiards, LLC. *Id.* ¶25. AMF learned further that, as part of that prospective transaction, AHB Acquisition demanded that AMF consent to B&G's transfer to AHB Acquisition of B&G's rights under the License. *Id.* As the License had been properly terminated, nothing required AMF to consent to

this transfer. *Id.* Nevertheless, B&G demanded AMF's consent by July 17, 2007, declaring that failure to consent would violate the License. *Id.* Even though, upon information and belief, AHB Acquisition, without any involvement from AMF, made AMF's consent an express condition precedent to the proposed transaction, B&G declared that it would attempt to hold AMF to account for allegedly interfering with its business relationship with AHB Acquisition. *Id.*

29. AMF did not and need not consent to a transfer of the License. *Id.* ¶26. Once B&G ceased to trade, AMF properly terminated the License, leaving B&G no rights in the AMF Billiards Marks that it could transfer. *Id.*

30. AMF properly refused to consent to a transfer of the License and has not interfered with B&G's contract or business expectancy with AHB Acquisition, B&G's relationship or business expectancy with any other party, or with any other right held by B&G. *Id.* ¶27.

31. Under Paragraph 8.5 of the License, upon termination, B&G lost all rights in the AMF Billiards Marks, save only that, for 180 days from the date of termination – that is, until November 7, 2007 – B&G may (a) sell-off any B&G inventory bearing the AMF Billiards Marks and (b) exhaust any B&G promotional materials bearing the AMF Billiards Marks. *Id.* ¶28.

32. Any use of the AMF Billiards Marks beyond this limited phase-out right, and any attempt to transfer any interest in the License or the AMF Billiards Mark, will cause AMF to sustain losses and damages which cannot be calculated. *Id.* ¶ 29.

CONCLUSIONS OF LAW

A. Jurisdiction and Venue

1. This Court has subject matter jurisdiction over the subject matter of this action under 28 U.S.C. § 1332 because there is complete diversity between Plaintiffs and B&G and the amount in controversy exceeds \$75,000.

2. Though not qualified to do business in Virginia, B&G transacted business within the Commonwealth of Virginia by negotiating and entering into the APA and the License. In addition, any suit brought in connection with the License must be brought in the state or federal courts in the Eastern District of Virginia. Hence, B&G has consented to and is subject to this Court's personal jurisdiction over this matter under Va. Code Ann. § 8.01-328.1(1).

3. Venue is proper pursuant to 28 U.S.C. § 1391 because, under that statute, B&G is deemed to reside in this judicial district, and because a substantial part of the events or omissions giving rise to the following claims occurred in this judicial district. In addition, under the License, any suit brought in connection with the License must be brought in the state or federal courts in the Eastern District of Virginia. Hence, B&G has consented to venue in this Court.

B. B&G's Default

4. Plaintiffs served process on B&G in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure. Service was effected on July 25, 2007, by delivering a copy of the summons and of the complaint to B&G's authorized agent, C T Corporation System, at 120 South Central Avenue, Clayton, Missouri 63105.

5. B&G's response to the Summons and Complaint was due on or before August 14, 2007.

6. B&G failed to appear or file any responsive pleading and its time for doing so has expired.

7. At the Plaintiffs' request, the Clerk entered B&G's default pursuant to Federal Rule of Civil Procedure 55(a) on August 31, 2007. Pursuant to Rule 55(b), Plaintiffs moved for a default judgment on September 19, 2007.

B. AMF's Request for a Declaration of Rights under the License and in the AMF Billiards Marks.

8. AMF has established the existence of a genuine and pressing dispute as to the rights, obligations, and liabilities, if any, of AMF and B&G under the License relating to the termination of that Agreement and in reference to the AMF Billiards Marks.

9. A declaratory judgment is both necessary and proper to set forth and determine the rights, obligations, and liabilities that exist between AMF and B&G under the License and in relation to the AMF Billiards Marks, and the Court has jurisdiction to issue that declaratory judgment. 28 U.S.C. § 2201.

10. When B&G ceased to trade on or about May 11, 2007, Paragraph 8.2.1 of the License permitted AMF to terminate the License by written notice to B&G.

11. AMF's June 19, 2007 termination of the License, as of May 11, 2007, was proper under the License. Now terminated, the License has no further force and effect.

12. As a result of the termination of the License, B&G was left with no rights in the License or the AMF Billiards Marks that it could transfer. Consequently, AMF was perfectly within its rights to refuse to consent to B&G's proposed transfer of its purported rights under the License to AHB Acquisition LLC.

13. Neither AMF's termination of the License nor its refusal to consent to a transfer of B&G's purported rights to AHB Acquisition constituted interference with B&G's contract or

business expectancy with AHB Acquisition, B&G's relationship or business expectancy with any other party, or with any other right held by B&G.

14. B&G has no right to use the AMF Billiards Marks beyond that limited use contemplated in the phase-out provisions of Paragraph 8.5 of the License. Those rights expire 180 days after the May 11, 2007 termination, on November 7, 2007.

C. B&G's Breach of the APA

15. The APA is a valid, enforceable contract.

16. ABC fully performed all its obligations under the APA.

17. B&G wrongfully refused to indemnify ABC in the amount of \$51,300 for liabilities associated with health insurance for medical claims of Transferred Employees.

18. B&G wrongfully refused to indemnify ABC in the amount of \$5,194 for medical services obtained by Transferred Employees after Closing.

19. B&G wrongfully refused to indemnify ABC in the amount of \$117,759 for pre-Closing worker's compensation claims of Transferred Employees.

20. By refusing to indemnify ABC in the amount of \$174,253, B&G materially breached its obligations to ABC under the APA.

21. B&G's material breach of the APA reasonably and foreseeably damaged ABC in the amount of \$174,253, plus interest on that amount as required by law from the date of breach until paid.

22. Judgment shall be entered on that sum.

D. B&G's Request for a Declaration of Rights under the APA.

23. ABC has established the existence of a genuine and pressing dispute as to ABC's obligation to indemnify B&G in any amount under the APA. B&G demanded in correspondence

that ABC indemnify it for allegedly overstating the value of the assets sold under the APA, but has refused to respond to the Complaint denying such liability.

24. A declaratory judgment is both necessary and proper to set forth and determine the rights, obligations, and liabilities that exist between ABC and B&G under the APA, and the Court has jurisdiction to issue that declaratory judgment. 28 U.S.C. § 2201.

25. ABC did not breach any of its obligations under the APA or violate any other right or obligation of B&G under the APA.

E. Relief

26. AMF is entitled to a declaratory judgment that:

- (a) AMF's June 19, 2007 termination of the License, as of May 11, 2007, was proper under the License;
- (b) the License has no further force and effect;
- (c) the termination of the License left B&G with no rights in the License or the AMF Billiards Marks that it could transfer;
- (d) AMF was perfectly within its rights to refuse to consent to B&G's proposed transfer of its purported rights under the License to AHB Acquisition LLC;
- (e) neither AMF's termination of the License nor its refusal to consent to a transfer of B&G's purported rights to AHB Acquisition constituted interference with B&G's contract or business expectancy with AHB Acquisition, B&G's relationship or business expectancy with any other party, or with any other right held by B&G; and

(f) B&G has no right to use the AMF Billiards Marks beyond that limited use contemplated in the phase-out provisions of Paragraph 8.5 of the License, a right that expires on November 7, 2007.

27. ABC is entitled to a declaratory judgment that it did not breach any of its obligations under the APA or violate any other right or obligation of B&G under the APA.

28. ABC is further entitled to judgment in the amount of \$174,253, plus interest on that amount as required by law from the date of breach until paid.

29. In addition, the Court must inquire whether AMF is entitled to a permanent injunction. “Perhaps the most significant single component in the judicial decision whether to exercise equity jurisdiction and grant permanent injunctive relief is the court’s discretion.” *Dana Corp. v. Celotex Asbestos Settlement Trust*, 251 F.3d 1107, 1118 (6th Cir.2001) (quoting 11A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2942 (2d ed. 1995)).

30. The Court may enter a permanent injunction if (1) AMF has or will suffer an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between AMF and B&G, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *eBay Inc. v. MercExchange, L.L.C.*, 126 S.Ct. 1837, 1839 (2006).

31. “There is a compelling need for injunctive relief especially when the case involves a former licensee because, after a license has been revoked, there is an increased danger that consumers will be confused and believe that the former licensee is still an authorized representative of the trademark holder.” *Sunward Elec., Inc. v. McDonald*, 362 F.3d 17, 25 (2d Cir. 2004); *Baskin-Robbins Ice Cream Co. v. D & L Ice Cream Co.*, 576 F. Supp. 1055, 1060

(S.D.N.Y. 1983) (holding that “continued use by the defendants of a licensed trademark after the Franchise Agreement had been terminated constitutes . . . trademark infringement” and granting permanent injunction).

32. Any use by B&G of the AMF Billiards Marks beyond the limited scope of Paragraph 8.5 of the License would constitute infringement of those Marks. *See* 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 25:31 (4th ed. Sept. 2007) (“[T]he law is simple. If, as a matter of contract law, a service mark or trademark license has ended, the licensee has no right to continue use of the licensed mark. Any such use is without the trademark owner’s consent and constitutes infringement.”).

33. Similarly, any attempt by B&G to transfer a purported interest in the AMF Billiards Marks or the License would irreparably harm AMF’s ability to control and police its rights in those marks.

34. “A licensee or franchisee who once possessed authorization to use the trademarks of its licensor or franchisor becomes associated in the public's mind with the trademark holder. When such party . . . loses its authorization yet continues to use the mark, the potential for consumer confusion is greater than in the case of a random infringer. Consumers have already associated some significant source identification with the licensor. In this way the use of a mark by a former licensee confuses and defrauds the public.” *Church of Scientology Int’l v. Elmira Mission of the Church of Scientology*, 794 F.2d 38, 43 (2d Cir.1986) (“The unauthorized use of a mark by a former licensee invariably threatens injury to the economic value of the goodwill and reputation associated with a licensor's mark,” and that reputational harm is irreparable).

35. Under the circumstances, there is a considerable threat of irreparable harm to AMF, and no legal remedy, such as damages, would adequately compensate AMF for that harm.

Any unconsented use of the AMF Billiards Marks, and any attempt to transfer any interest in the License or the AMF Billiards Marks, would cause AMF to sustain losses and damages that could not be calculated. *See Nat'l Lampoon, Inc. v. Am. Broad. Co.*, 376 F. Supp. 733, 750 (S.D.N.Y.), *aff'd*, 497 F.2d 1343 (2d Cir. 1974) (“The law recognizes that the consequences of trademark infringement, or passing off, and unfair competition generally, are by their nature not fully compensable by money damages”).

36. As B&G has no rights in the AMF Billiards Marks beyond the narrow scope of Paragraph 8.5 of the License, and no rights that it can transfer under the License, neither enjoining any other use of the AMF Billiards Marks, nor enjoining any attempt to transfer any interest in those marks or the License, will visit any cognizable injury upon B&G, or any other interested party.

37. In trademark cases, the relevant public interest is the right of the public not to be deceived or confused. *Sturgis Area Chamber of Commerce v. Sturgis Rally & Races Inc.*, 2000 WL 890404, 55 U.S.P.Q.2d 1077, 1086 (D.S.D. 2000). Here, that public interest will be served by permanently enjoining conduct that would create a likelihood of confusion as to the source of origin of goods and services provided under the AMF Billiards Marks. Moreover, such a remedy will vindicate the rights of trademark owners generally.

38. It is a necessary and appropriate exercise of the Court's discretion to issue a permanent injunction implementing its declaration of the parties' respect rights and liabilities. *See Metro. Life Ins. Co. v. Colon Rivera*, 204 F. Supp. 2d 273, 280 (D.P.R. 2002) (permanently enjoining ERISA plan participant from engaging in conduct contrary to the Court's declaration that participant was not entitled to further benefits from ERISA plan).

39. In light of these considerations, to safeguard AMF's rights in its AMF Billiards Marks, the Court, in its discretion, will issue a permanent injunction enjoining B&G from using, causing the use of, or abetting the use of the AMF Billiards Marks for any purposes other than the limited use permitted by Paragraph 8.5 of the License.

40. Furthermore, the Court, in its discretion, will issue a permanent injunction enjoining B&G from transferring or attempting to transfer any interest in the AMF Billiards Marks or the License.

F. Conclusion

41. For the reasons stated, judgment by default will be entered against B&G and the attached Final Order and Permanent Injunction shall issue.

Date: October 5, 2007

/s/
RICHARD L. WILLIAMS
UNITED STATES DISTRICT JUDGE