

# Rainbow International Seeks Restoration Of Exclusive Use Of Its Marks

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On April 9, 2014, Rainbow International LLC ("Rainbow International"), of Waco, Texas, filed a complaint in the Middle District of Georgia against Brian Whitley, Patricia Whitley, and Quick Whits, Inc. d/b/a "Rainbow International Restoration & Cleaning" and "Rainbow International of Bibb County," all of Macon, Georgia (collectively, "Defendants"), alleging service mark infringement and other claims relating to Defendants' continued use of Rainbow International's marks following the termination of a franchise agreement.

Rainbow International is a franchisor of businesses nationwide specializing in carpet cleaning and repair services, upholstery and drapery services, deodorization services, and water and smoke restoration services. According to the complaint, Rainbow International has over 400 franchisees worldwide, each of which operates under the name and service mark RAINBOW INTERNATIONAL®. Rainbow International claims ownership of, among others, the following registered marks: U.S. Reg. No. 1,672,096 (RAINBOW INTERNATIONAL); U.S. Reg. No. 2,054,615 (THE CLEAN EXPERIENCE); U.S. Reg. No. 2,768,905 (stylized "R"); U.S. Reg. No. 2,850,175 (RAINBOW INTERNATIONAL); U.S. Reg. No. 3,207,135 (RAINBOW INTERNATIONAL RESTORATION & CLEANING); and U.S. Reg. No. 3,923,493 (WATER FIRE SMOKE & Design). Rainbow International asserts that the first five of the six marks are incontestable under 15 U.S.C. § 1065 because they have been in use in commerce for more than five years and the required affidavits of use and incontestability have been filed with the PTO.

Rainbow International alleges that it terminated a franchise agreement with Defendants due to their failure to pay royalties and advertising fees, submit royalty reports, make note payments, and respond to communications from Rainbow International. According to the complaint, Defendants continued to operate their carpet cleaning and restoration services in the Macon area despite the termination of the franchise agreement.

The complaint includes claims for service mark infringement, unfair competition, false designation of origin, and unfair and deceptive trade practices under the Lanham Act and breach of contract, service mark infringement, unfair and deceptive trade practices, and unfair competition under the Georgia Uniform Deceptive Trade Practices Act (O.C.G.A. § 10-1-370 et seq., O.C.G.A. § 23-2-55) and common law. Rainbow International seeks injunctive relief, compensatory and punitive damages, surrender of Defendants' telephone number, URLs, and email addresses, destruction of all labels,

signs, and promotional materials in Defendants' possession, and extension of Defendants' post-termination non-compete period.

The case is Rainbow International LLC v. Whitley et al., 5:14-cv-00139-MTT, filed April 9, 2014 in the Middle District of Georgia, Macon Division, and is assigned to Judge Marc T. Treadwell.

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