

NO. 2014-2014-2287-3

Roberta Jewell

BAYLOR UNIVERSITY,

Plaintiff,

vs.

BAYLOR UNIVERSITY
ALUMNI ASSOCIATION,

Defendant.

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IN THE DISTRICT COURT OF

MCLENNAN COUNTY, TEXAS

74TH JUDICIAL DISTRICT

ORIGINAL PETITION

Plaintiff Baylor University ("Baylor" or "the University") files this Original Petition for Declaratory Judgment, Termination or Modification of an Express Trust, Breach of Contract, Trademark Infringement, Trademark Dilution, and Breach of Fiduciary Duties against the Baylor University Alumni Association ("BAA").

I. PARTIES

1. **Baylor University.** Baylor is a Texas non-profit corporation with its principal office in Waco, Texas. Baylor was chartered as an institution of higher education in 1845 by the Republic of Texas.

2. **Baylor University Alumni Association.** BAA is a Texas non-profit corporation with its principal office in Waco, Texas. It is a membership-based, dues-paying organization. It may be served by service upon its registered agent, Mr. Chad Wooten, its Chief Operating Officer, at 600 Austin Avenue, Waco, Texas.

II. VENUE AND JURISDICTION

3. Venue and jurisdiction are proper in this court pursuant to Texas Civil Practice and Remedies Code §§ 15.002(a)(1), 15.002(a)(3), 37.003, and 37.004(a)-(b). McLennan County is the county in which all or a substantial part of the events or omissions giving rise to the claims occurred.

III. DISCOVERY AND DISCLOSURES

4. Plaintiff respectfully requests that discovery be conducted at Level 2, pursuant to Texas Rule of Civil Procedure 190.3.

5. Baylor formally requests that BAA disclose, within fifty (50) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2(a) - (l). Copies of any documents or materials disclosed in response to this request must be produced before the expiration of fifty (50) days of the service hereof at the office of the undersigned counsel or at a place otherwise agreed by counsel.

IV. FACTUAL BACKGROUND

Summary

6. BAA was formed to serve Baylor, its students and its alumni. BAA has not fulfilled, nor does it have capacity to fulfill, its charitable purposes, which include providing financial aid to Baylor and its students. BAA publicly announced a \$1,000,000 gift to Baylor for scholarships; not one dollar has been paid to fulfill this pledge. BAA has failed in its purpose to serve Baylor, its students and its alumni, as outlined in paragraphs 37 through 62. As relief, Baylor seeks, among other things, to limit BAA's purposes by reformation to provide only financial aid to Baylor students. If such reformed purpose is not possible, then termination of BAA's charitable purposes is appropriate.

Roles of the Parties and Additional Proper Party

7. Baylor was a trademark licensor to BAA. Baylor is a beneficiary of BAA because BAA is the trustee of an express charitable trust that names Baylor University as the only specific beneficiary.

8. BAA is organized exclusively for charitable and educational purposes. BAA was a trademark licensee of Baylor for certain products and services relating to alumni relations. BAA is

a charitable trust under Texas Property Code Section 123.001(2), and qualifies as an express trust under Section 111.004(4). BAA is the trustee and has power to serve as trustee of that trust. Tex. Bus. Org. Code §2.106. BAA's governance structure is entirely independent of Baylor. BAA is a membership organization that requires payment of dues. BAA has served less than ten percent of all Baylor alumni.

9. The Texas Attorney General is a proper, but not necessary, party to this litigation inasmuch as BAA is a charitable trust. Moreover, Baylor University, as the specific beneficiary, seeks, along with other relief, to reform the instruments creating the charitable trust under the doctrine of cy pres. The Texas Attorney General, as the State's Chief Constitutional Legal Officer, will be provided notice under Texas Property Code Section 115.011(c).

Baylor's Alumni Relations Aspirations

10. Baylor has approximately 165,000 living alumni.

11. In May 2012, Baylor launched a strategic vision called *Pro Futuris*. One of the strategic vision's five aspirational statements is this: "Baylor will be a community . . . where the dedication of alumni and friends advances Baylor through sustained involvement and philanthropy."

12. Before adopting *Pro Futuris*, Baylor conducted a survey using an independent research center at the University of New Hampshire. The survey results reflect that 91% of Baylor alumni consider it important that Baylor as a university itself support and staff an alumni outreach program. The survey also demonstrated that such a university-led outreach program should be open and cost-free to *all* alumni, as well as national in focus and scope.

13. For Baylor, alumni involvement and philanthropy is an integral part of the unifying strategic vision. Baylor's goal is to "engage all Baylor alumni and friends in the life and aspirations of the university."

14. Baylor's unifying vision is fully consistent with best practices in higher education. The Council for Advancement and Support of Education, the primary professional association regarding institutional advancement (which in higher education is far more than fundraising alone), explains why alumni relations is vitally important:

In the past, alumni relations, or engagement, tended to be treated as a stand-alone activity divorced from fundraising and other advancement activities. Indeed, some alumni associations were entirely independent of their parent institutions, and whilst their members interacted with each other, they had very little interaction with the institution. Today, alumni relations is an important part of an institution's advancement activities for many reasons

15. As a strategic initiative, Baylor, through its internal programs, seeks to engage and serve *all* 165,000 living alumni without imposing a membership (or dues-paying) requirement.

BAA's Past Role in Alumni Relations as Trademark Licensee

16. In connection with its operations, Baylor has adopted, used, and licensed others to use, various trademarks and service marks, many of which include the word "Baylor" (the "Baylor Marks"). In addition to its extensive common law rights, Baylor University has registered at least two of the Baylor Marks with the State of Texas: BAYLOR UNIVERSITY (Reg. 4375417) and BAYLOR (Reg. 4383217); copies of the Registration certificates are attached as Exhibit A. Over the years, Baylor University has built up enormous goodwill and reputation in the Baylor Marks. The general public widely recognizes such marks as a symbol of quality. The Baylor Marks are valuable assets of the University.

17. In 1993, Baylor provided BAA a license (the "1993 License Agreement," attached as Exhibit B) to use certain trademarks owned by Baylor, subject to quality control of the licensed alumni-related products and services offered by BAA. Specifically, those marks were: Baylor Alumni Association, Baylor University Alumni Association, and The Baylor Line (a periodical publication), although BAA could from time to time use other Baylor Marks on products (collectively the "Licensed Baylor Marks").

18. In the 1993 License Agreement, Baylor granted a license for the Licensed Baylor Marks to BAA as long as BAA, “[a]t a minimum,” continued to:

- a. Serve as the general alumni organization of Baylor, including coordination of alumni activities;
- b. Maintain an administrative office in Waco, Texas;
- c. Carry out all purposes, objects, and activities set forth in the “Constitution and Bylaws of the Baylor Alumni Association” as now existing or subsequently amended;
- d. Publish an alumni magazine; [and]
- e. Organize and sponsor activities for the Baylor Homecoming on at least an annual basis.

19. At any time, BAA could unilaterally decide to stop performing these obligations. The only consequence that BAA would face is that BAA would lose the license to use the Licensed Baylor Marks—i.e., the 1993 License Agreement would terminate. BAA would not owe damages to Baylor, nor would Baylor be able to force BAA to continue to perform the obligations under the agreement. BAA could unilaterally terminate the agreement at will at any time by simply ceasing to perform. The 1993 License Agreement was indefinite in duration.

20. In 1994, among other provisions, Baylor extended to BAA official recognition (the “1994 Recognition,” attached as Exhibit C [Exhibits B and C together are the “BAA Agreements”]) as “the general alumni organization of all the academic units of Baylor University” (as opposed to an internal alumni association of academic units such as the Hankamer School of Business or School of Social Work). (The other provisions provided a license to use the Hughes-Dillard Alumni Center on the Baylor campus. Baylor and BAA terminated this license by agreement on May 31, 2013.)

21. The 1994 Recognition provided that, as long as BAA maintained the services

(essentially those in the 1993 License Agreement) and sought to enroll Baylor University graduates as members, Baylor would consider BAA as its general alumni organization. The 1994 Recognition is likewise indefinite in duration.

22. Effective September 8, 2013, Baylor terminated both the 1993 License Agreement and the 1994 Recognition. Notice of termination was by letter dated May 31, 2013. It was thereafter confirmed by letter dated September 10, 2013. Baylor provided BAA 90 days, until December 8, 2013, to cease use of the Licensed Baylor Marks.

23. BAA has continued to use the Licensed Baylor Marks and to hold itself out as an official alumni organization of Baylor, both over Baylor's express objections, and despite Baylor's ongoing requests that it cease and desist.

24. BAA's continued use of the Licensed Baylor Marks in BAA's identification, products or services, and continued representations of affiliation with Baylor, infringe upon and dilute the Baylor Marks.

Baylor University's Efforts to Unify Alumni Relations

25. Beginning at least as early as 2009, Baylor approached BAA with proposals to have BAA terminate its independent governance and become part of Baylor University.

26. In 2010, the current President of Baylor University called upon all Baylor constituents, including BAA, to join together with unity of purpose and to provide a comprehensive, no-cost, university-based alumni outreach program for all alumni, not only the members of BAA.

27. Two other entities affiliated with Baylor but governed separately have responded to the call for unity and voted to be integrated into Baylor University. Those two entities are the Baylor Bear Foundation and the Baylor B (Lettermen) Association.

28. In 2012, members of the governing boards of Baylor and BAA undertook

negotiations to find a mutually agreeable solution that would integrate BAA's operations into Baylor. The efforts culminated in May, 2013, when Baylor's Board of Regents and the Executive Committee of BAA's board of directors approved a Transition Agreement, subject to approval by BAA's members.

29. The Transition Agreement would have (a) terminated, by agreement, both the 1993 License Agreement and the 1994 Recognition; (b) dissolved BAA's current corporate structure; and (c) placed all operations save one, and legal control, within Baylor University. The Transition Agreement would have permitted BAA to reorganize independently; to change its name; and to publish the periodical, "The Baylor Line," subject to a new trademark license with standard quality control by Baylor.

30. The Transition Agreement was widely endorsed by all key campus constituencies, including Baylor's administration, Faculty Senate, Staff Council, and Student Congress.

31. The Transition Agreement was subject to approval by BAA's voting members. BAA Bylaws required approval by 2/3 of the voting members actually present at a meeting.

32. The Transition Agreement was approved by over 55% of BAA voting members present at a meeting on September 7, 2013 (the vote was 830 to 669 in favor of the Transition Agreement). However, because under BAA's Bylaws a 2/3 vote was necessary, the Transition Agreement could not be implemented. A total of only 1,499 members voted, about ten percent of BAA's claimed membership.

33. When the Transition Agreement was not approved, Baylor terminated the 1993 License Agreement and the 1994 Recognition effective September 8, 2013.

34. Baylor provided BAA until December 8, 2013 to cease and desist use of the Licensed Baylor Marks. On repeated occasions both before and after, Baylor University has asked BAA to provide a plan (a) to cease use of the Licensed Baylor Marks and (b) to reform its purposes

in a way supportive of the needs of the beneficiaries of its charitable purpose. BAA has provided no plan to do either.

BAA as Charitable Trust and Trustee

35. BAA's charitable purposes are published in its Articles of Incorporation and Constitution and Bylaws, which provide in pertinent part: "The purposes for which the corporation is organized are exclusively charitable and educational and to be accomplished:

- a. By extending financial and other aid to Baylor University and to students thereof,
- b. By generally encouraging sentiments favorable to education,
- c. By promoting union of and good fellowship among former students of Baylor University,
- d. [By] coordinat[ing] all alumni activities [of Baylor],
- e. [By] serv[ing] as the general alumni organization of Baylor, and
- f. [By] maintain[ing] the administrative agency and executive personnel needed to provide for a continuity of alumni activity, interest and financial support of Baylor University." (hereinafter "Charitable Purposes").

36. BAA owes statutory and common law fiduciary duties directly to Baylor.

Failure of BAA's Charitable Purposes

37. As a membership organization, BAA purports to serve approximately 15,000 members who are living alumni or friends of Baylor University. The members are also members of the BAA non-profit corporation, but must pay dues to be "voting members." The requirement to pay dues has apparently existed since 1976. It is estimated that Baylor has graduated 65,000 students since 1990 and that fewer than five percent have become BAA members.

38. Although the first method of accomplishing BAA's purpose is to extend financial and other aid to Baylor, Baylor has over the years provided substantial financial support to BAA.

Baylor's financial support was finally ended, effective in February 2008, when Baylor ended an agreement to pay BAA for any services. Subsequently, BAA has apparently expended significant amounts of its "savings" in order to balance its budget.

39. Over the years, BAA's "financial and other aid to Baylor and its students" has been minimal. For example, BAA's own publication indicated that, in 2012, BAA had contributed \$8,381 to Baylor and \$60,000 to students for scholarships. Yet, personnel costs and professional fees paid by BAA totaled \$1,207,059.

40. In 2011, Baylor honored BAA as a new member of Baylor's Golden Bear Circle. The Golden Bear Circle is a Baylor donor recognition program honoring donors who, over a lifetime, have contributed at least \$250,000 to endowed scholarships. Accordingly, assuming the BAA's lifetime began in 1976 when it was incorporated, this amount of financial support represents endowed scholarship contributions of about \$7,150 annually from 1976 to 2011.

41. In February 2013, BAA publicly announced that BAA had approved a \$1,000,000 gift to Baylor for student scholarships.

42. In announcing the gift, the then-Executive Director of BAA reportedly indicated that all funds for the gift had been finalized. He further indicated: (a) that BAA "regularly hear[s] from alumni that the need for scholarships is near and dear to their hearts," (b) that scholarships are "one of the most important things at Baylor," and (c) that providing scholarships gives BAA "a chance to support Baylor and serve the interests of our alumni." He also indicated that he expected the funding would be available by June 1, 2013.

43. To date, not one dollar of the purported gift has been received, nor has BAA communicated how or when the publicly announced gift was funded. Yet BAA has not publicly announced, nor otherwise informed Baylor, or its membership, that BAA would not complete the gift.

44. Entirely without BAA's gift or assistance, the Baylor University President's Scholarship Initiative raised substantially over \$100,000,000 in less than three years.

45. After September 8, 2013, BAA authorized all save one of its approximately 12 employees to be hired by Baylor or to accept employment elsewhere. BAA has an office in Waco, Texas, but no longer has "administrative agency and executive personnel needed to provide for continuity of alumni activity, interest and financial support of Baylor University."

46. After September 8, 2013, Baylor has added to its own alumni outreach programs the programs previously offered by BAA.

47. Baylor's alumni outreach programs, in contrast to BAA, has 22 full-time staff and approximately 650 volunteers. In a single year, Baylor sponsored 860 events with 36,000 attendees (more than twice BAA's total membership).

48. Baylor's alumni publication reaches approximately 150,000 alumni, about 91% of all alumni. BAA's publication typically reaches approximately seven percent of Baylor alumni.

49. Baylor's Facebook followers number about 140,000 (BAA's about 8,700), Instagram followers about 23,000 (BAA's was about 200 but has been discontinued), Twitter followers about 25,000 (BAA's about 1,600), and LinkedIn contacts about 54,000 (BAA's about 2,600).

50. BAA has no capacity to "coordinate all alumni activity [of Baylor] nor to "serve as the general alumni organization of Baylor University," nor is it likely to acquire such capacity.

51. After September 8, 2013, a significant number of BAA's directors, believed to be 19 in total, resigned. Baylor believes that many of the resignations have been precipitated by disagreements among BAA's leadership in finding a path forward that is supportive of Baylor, its students and alumni.

52. For example, one director who resigned stated: "The [BAA's] Constitution, which

we are sworn to follow, uses phrases like ‘unity of purpose,’ ‘the best interest and support of the University,’ and ‘a genuine interest in Baylor’s welfare.’ I cannot personally reconcile these promises, which I hold deeply, with any prospect of full-blown litigation against Baylor.”

53. In September 2013, BAA conducted a survey of its membership to determine what BAA’s next steps should be. In the survey almost 70% of BAA’s members indicated that BAA, as an organization, should undergo significant change. Specifically, BAA’s survey results indicated: 50% of BAA’s members want to “seek to make organizational changes to try to maintain control of the . . . endowment, possibly to become a foundation that primarily provides scholarships,” and 19% of BAA’s members want to change its name and operate wholly outside of Baylor University, meaning it would no longer be a trademark licensee. Only 30% percent of BAA’s members wanted to continue to use the Licensed Baylor Marks and seek to defend the 1993 License Agreement and 1994 Recognition terminated by Baylor.

54. The report of survey results also indicated that BAA would continue to meet throughout the fall of 2013 “to decide” BAA’s next steps.

55. On January 25, 2014, BAA passed the following resolution: “The appointment of a committee by the president to prepare proposed amendments to the constitution and bylaws to reflect the continued support of Baylor University through the publication of the Baylor Line, existing endowment funds, any other endowment funds that may be created by the Baylor Alumni Association in the future and other such support as the committee may deem appropriate.”

56. Although BAA had indicated that it would have a decision about a path forward in the Fall of 2013, the resolution represents only more study by current directors, which would exclude those who have resigned. Based upon information and belief, this study committee has not taken any substantial action nor has it proposed any plan of action; however, BAA apparently intends to survey its membership again. The purpose of another BAA survey would be to

determine if the membership wants to (a) become a scholarship foundation, or (b) continue to communicate with its members, or (c) become a combination of (a) and (b).

57. Despite repeated requests, BAA has not provided Baylor any plan to cease use of the Licensed Baylor Marks and to reform BAA's charitable purpose.

58. On March 10, 2014, an email from BAA stated that it planned to publish a new issue of the *Baylor Line* "that upholds the tradition of unflinching independence and transparency that makes the *Line* (sic) indispensable for our members."

59. On or about May 15, 2014, BAA, in an unauthorized and flagrant infringement of Baylor's trademark rights, published the Spring 2014 issue of the *Baylor Line* ("Spring 2014 issue").

60. The Spring 2014 issue (at page 25) quotes President Starr: "Let's all get in the same boat, let's pick our oars and let's start rowing, and stop hitting one another over the head." The BAA's 2012-2013 leadership sought to heed Judge Starr's rallying cry. As the Spring 2014 Issue notes, "after months of good faith negotiations," Baylor's student government and faculty senate endorsed the Transition Agreement and the majority of BAA's membership voted in favor of it.

61. The Spring 2014 issue purports to tell "the Real Story." In the introduction, BAA's president wrote that BAA's "Executive Committee debated the merits of opening old wounds with a cover story that chronicles this sad history." But that is exactly what the Spring 2014 issue does. It largely ignores the current administration's efforts (and the 2012-2013 BAA's Executive Committee's efforts) to peacefully transition the organization in an orderly fashion. The publication of the Spring 2014 issue further demonstrates that BAA is continuing to rely on Baylor's marks and good will to publish a magazine that does not promote union and good fellowship among Baylor alumni. It is BAA's stated position and course of action that it will

continue to rely on Baylor Marks and good will to raise financial support for BAA's own operations, as opposed to raising support for Baylor, as defined by its Charitable Purposes.

62. BAA's stated position and course of action have created and will continue to create confusion in the marketplace with respect to the source of the solicitations and the ultimate use of any gifts. The BAA's stated position and course of conduct constitutes an infringement and dilution of Baylor University's marks under state and common law, as well as a pursuit outside of the Charitable Purposes of the trust.

V. CAUSES OF ACTION

63. Baylor hereby incorporates and re-alleges the foregoing paragraphs as though set forth herein in their entirety.

Declaratory Judgment

The BAA Agreements

64. Under the Texas Uniform Declaratory Judgment Act, a person or entity interested under a written contract or other writings, or whose rights, status, or other legal relations are affected by a contract or writings may seek to have determined any question of construction or validity arising under such contracts or writings and obtain a declaration of rights, status, or other legal relations thereunder.

65. In order to resolve the controversies and uncertainties existing between the parties, Baylor is entitled to a judicial determination and declaration with respect to the 1993 License granted BAA, as well as the 1994 Recognition Agreement.

66. Baylor has terminated the BAA Agreements. Upon information and belief, Baylor believes that BAA will seek to hold Baylor liable for breach of these agreements based on Baylor's termination of the agreements, and no one claimed such terminations were not effective. Therefore, Baylor seeks a declaration that the agreements were terminable at will and termination

of the agreements was not a breach of the agreements. Baylor respectfully requests that this Court declare that, under Texas law, the BAA Agreements were properly terminable at will by Baylor because they are (a) indefinite in duration and (b) terminable at will by BAA by its terms and therefore terminable at will by either party.

67. The BAA Agreements are governed by Texas law. Texas law does not favor perpetual contracts and presumes that any such contract is terminable at will. In the alternative, should the Court find that any of the BAA Agreements were not terminable at will, Baylor's signatory was not authorized to bind Baylor beyond a reasonable time, and such time had passed before Baylor noticed the termination of the BAA Agreements. In any interim period up to the time Baylor terminated the BAA Agreements, BAA used the Baylor Marks under an implied license, which is terminable at will under Texas law.

68. The 1993 License Agreement and 1994 Recognition Agreement impose obligations upon BAA that BAA may abandon at any time. Therefore, the 1993 License is terminable at will, at the election of either party to it. Similarly, the 1994 Recognition Agreement states that Baylor will recognize BAA as the official alumni organization "as long as" BAA performs its obligations (that are similar to the five obligations in the 1993 License Agreement) outlined in the agreement.

69. The 1993 License Agreement and 1994 Recognition Agreement are also terminable at will by either party because, by their express terms, they are terminable at will by BAA.

The BAA's Charitable Purposes

70. Declaratory and injunctive relief are also proper because a bona-fide dispute exists between Baylor, as the direct beneficiary of BAA's Charitable Purposes, and BAA. BAA is a charitable trust under Texas law. The BAA has abandoned its Charitable Purposes. Moreover, it appears that carrying out the Charitable Purposes has become impossible, impractical or

inexpedient, or they have been abandoned, or cannot be carried out, such that current operations of BAA have deviated, and will continue to deviate, from the Charitable Purposes. To resolve the controversies and uncertainties existing between the parties, Baylor is entitled to a judicial determination and declaration, and injunctive relief, with respect to BAA's abandonment of its Charitable Purposes, or the impossible, impractical or inexpedient nature thereof.

Termination or Modification of the Trust

71. Section 112.054(a) of the Texas Trust Code provides in pertinent part that "a court may issue orders regarding a trust upon petition of a beneficiary. Among other things, a 'court may order . . . that the terms of the trust be modified, . . . or that the trust be terminated in whole or in part' under certain circumstances." In addition, the court has equity powers to reform the trust.

72. These circumstances include, but are not limited to: (a) continuation of the trust is not necessary to achieve any material purpose of the trust, or (b) the order is not inconsistent with a material purpose of the trust. Texas Trust Code Sections 112.054(a)(2) and (5).

73. The facts alleged demonstrate that BAA cannot fulfill its purposes, that the settlors did not anticipate the change of circumstances since formation of BAA in 1976, and that continuation of the trust is no longer necessary to achieve any material purpose of the trust.

Breach of Contract

74. Section 6.2 of the 1993 License Agreement states, "In the event of termination of this License Agreement, [BAA] shall have 90 days to phase out and discontinue all use of the Licensed Marks, and thereafter shall not use said marks, or any other name or mark including (or confusingly similar to) the word BAYLOR." BAA breached this provision of the 1993 License Agreement by continuing to use certain Baylor Marks, including the name of the entity, Baylor Alumni Association after the 90-day phase out period following Baylor's termination of the agreement expired. Notice was repeatedly given by Baylor, requesting BAA to cease its use of the

Baylor Marks, and consenting to a phase out period, which BAA failed to honor. Therefore, Baylor seeks injunctive relief in order to prevent BAA's further breach of contract, as well as to protect the Baylor Marks.

Trademark Infringement

75. As noted above, Baylor has registered certain of the Baylor Marks with the State of Texas pursuant to Chapter 16 of the Texas Business & Commerce Code. BAA has infringed the Baylor Marks in violation of Section 16.102 of the Texas Business & Commerce Code, and under common law, because BAA has used certain Baylor Marks, including the name of the entity, Baylor Alumni Association, and a publication, The Baylor Line, in the State of Texas without Baylor's consent in connection with selling, distributing, offering for sale, or advertising goods or services when the use is likely to cause confusion or mistake as to the source or origin of the goods or services, and by applying imitations of certain Baylor Marks to a label, sign, print, package, wrapper, receptacle, or advertisement intended to be used in selling or distributing, or in connection with the sale or distribution of, goods or services in the State of Texas.

76. BAA has infringed the Baylor Marks with knowledge of the Baylor Marks.

77. In this regard, Baylor respectfully requests injunctive relief to prevent BAA from continuing to use the Baylor Marks.

Trademark Dilution

78. BAA's unauthorized use of certain of the Baylor Marks is likely to cause dilution of the Baylor Marks in violation of Texas Business & Commerce Code Section 16.103.

79. The Baylor Marks are famous and distinctive, inherently or through acquired distinctiveness, as they are widely recognized by the public throughout Texas or in a geographic area in Texas as a designation of source of the goods or services of Baylor. The Baylor Marks were famous before BAA commenced its unauthorized use of such marks.

80. BAA's actions have been with knowledge of the Baylor Marks.

81. Baylor therefore respectfully requests injunctive relief to prevent BAA from continuing to use the Baylor Marks.

Breach of Fiduciary Duties

82. In its position as the named beneficiary of the BAA's Charitable Purposes, Baylor is owed common law fiduciary duties by BAA. In abandoning its Charitable Purposes, and acting inconsistent with its duties and otherwise failing to act in the best interests of Baylor, BAA has breached its fiduciary duties owed to Baylor and its fiduciary duty of obedience and care to comply with its Articles of Incorporation. As a result of BAA's breach of fiduciary duties, Baylor seeks equitable and declaratory relief as set out below.

Attorneys' Fees

83. Baylor is entitled to recover reasonable and necessary attorneys' fees (a) that are equitable and just under Texas Civil Practice and Remedies Code Section 37.009, because this is a suit for declaratory relief, (b) under Texas Civil Practice and Remedies Code Section 38.001 because this is a suit for breach of contract, and (c) under Texas Business and Commerce Code Section 16.104, because this is a suit for trademark infringement and dilution of trademark and BAA's actions have been with knowledge of the Baylor Marks. Baylor seeks such recovery for fees incurred on or after December 8, 2013, when BAA should have discontinued use of the Licensed Baylor Marks.

VI. RELIEF SOUGHT

84. Baylor seeks non-monetary relief and monetary relief (attorneys' fees incurred thus far in protecting the Baylor Marks) in an amount over \$100,000 but not more than \$200,000, and the following specific relief:

- a. A declaratory judgment that the BAA Agreements were properly terminable at will by Baylor because they are (1) indefinite in duration and

(2) terminable at will by BAA by its terms and therefore terminable at will by either party.

- b. A declaratory judgment that BAA has abandoned its Charitable Purposes and/or that the Charitable Purposes have become impossible, impractical or inexpedient for BAA to carry out and either (i) that the trust be terminated or (ii) that the Charitable Purposes of BAA should be reformed and limited to the provision of financial aid to Baylor and Baylor students.
- c. Termination or modification of the express trust pursuant to the Texas Trust Code,
- d. A finding that BAA violated § 6.2 of the 1993 License Agreement.
- e. A finding that BAA has infringed the Baylor Marks.
- f. A finding that BAA has diluted the Baylor Marks.
- g. A finding that BAA is not a trademark licensee of Baylor University.
- h. A finding that BAA is not an official alumni organization of Baylor University.
- i. A finding that BAA has breached its fiduciary duties owed to Baylor and has caused Baylor harm in doing so.
- j. Appropriate injunctive relief to effectuate the declaratory judgments and findings.
- k. An award of reasonable and necessary attorneys' fees.
- l. Any and all other relief, in law or equity, to which Baylor is justly entitled.

VII. PRAYER

Baylor University respectfully requests that this Court grant the relief requested herein, and any and all other relief, in law or equity, to which the University is justly entitled.

[Signature block on next page]

Respectfully submitted,

FULBRIGHT WINNIFORD

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**ATTORNEYS FOR PLAINTIFF,
BAYLOR UNIVERSITY**

EXHIBIT “A”



Office of the Secretary of State

**CERTIFICATE OF RENEWAL OF TRADEMARK OR SERVICE MARK
REGISTRATION
OF**

BAYLOR UNIVERSITY

In accordance with the provisions of Chapter 16, Texas Business and Commerce Code, the attached Application for Renewal has been filed in the Office of the Secretary of State on the date noted below to renew the registration listed below for an additional 10 year term.

Registration Number: 4375417
Original Date of Filing: 07/27/1984
Dated: 07/23/2004



A handwritten signature in black ink, appearing to read "G. Connor".

Geoffrey S. Connor
Secretary of State



Office of the Secretary of State

**CERTIFICATE OF RENEWAL OF TRADEMARK OR SERVICE MARK
REGISTRATION
OF**

BAYLOR

In accordance with the provisions of Chapter 16, Texas Business and Commerce Code, the attached Application for Renewal has been filed in the Office of the Secretary of State on the date noted below to renew the registration listed below for an additional 10 year term.

Registration Number: 4383217
Original Date of Filing: 08/17/1984
Dated: 07/23/2004



A handwritten signature in black ink, appearing to read "G. S. Connor".

Geoffrey S. Connor
Secretary of State

EXHIBIT “B”

**LICENSE AGREEMENT
BETWEEN BAYLOR UNIVERSITY
AND**

This License Agreement is between Baylor University (hereinafter referred to as LICENSOR), a Texas non-profit corporation with its principal office in Waco, Texas 76788, and Baylor University Alumni Association (hereinafter referred to as LICENSEE), a Texas non-profit corporation having an address of P.O. Box 97116, Waco, Texas 76788-7116. In consideration of the mutual promises contained in this Agreement, LICENSOR and LICENSEE agree as follows:

1. BACKGROUND

1.1 Baylor University was chartered as an institution of higher education in or around 1845 by the Republic of Texas, and was incorporated under the laws of the State of Texas in or around 1886. Since its founding, Baylor University has operated an educational institution, offering a wide range of educational services, and related services and products.

1.2 In connection with its business, LICENSOR has adopted and used, and licensed others to use, various trademarks and service marks, many of which include the word BAYLOR (hereinafter referred to as the "BAYLOR Marks"). Through providing high quality services and products over the years, LICENSOR has built up enormous goodwill and reputation in the BAYLOR Marks, and the public widely recognizes such marks as a symbol of quality. The BAYLOR Marks are valuable assets of LICENSOR. It is expressly agreed and acknowledged that the essence of this Agreement is founded on the goodwill associated with the BAYLOR Marks and the value of that goodwill in the minds of the consuming public.

2. LICENSE GRANT

2.1 LICENSOR grants to LICENSEE a perpetual and fully paid-up license to use the following names and marks:

(1) BAYLOR UNIVERSITY ALUMNI ASSOCIATION and BAYLOR ALUMNI ASSOCIATION for alumni association services and collateral products; and

(2) THE BAYLOR LINE for audio, video, printed or electronic publications.

(The marks licensed under this paragraph are hereinafter referred to as the "Licensed Marks"). The license may be terminated only as provided in section 6 below.

2.2 The right of LICENSEE provided herein to use the marks BAYLOR UNIVERSITY ALUMNI ASSOCIATION and BAYLOR ALUMNI ASSOCIATION shall be sole and exclusive. For so long as LICENSEE publishes a magazine entitled THE BAYLOR LINE, the right of LICENSEE provided herein to use THE BAYLOR LINE as a mark for magazines shall be sole and exclusive. LICENSOR reserves the non-exclusive right to use THE BAYLOR LINE and to license others to use THE BAYLOR LINE mark for products or services except for magazines.

2.3 All use of the Licensed Marks shall inure to the benefit of LICENSOR.

2.4 LICENSEE acknowledges that ownership of all right, title, and interest to the Licensed Marks remains vested solely in LICENSOR, and LICENSEE disclaims any ownership right or interest therein or the goodwill derived therefrom.

3. ROYALTIES

3.1 Except as provided in the following paragraph, the license provided in this agreement is fully paid-up.

3.2 All collateral products bearing the mark BAYLOR UNIVERSITY ALUMNI ASSOCIATION or BAYLOR ALUMNI ASSOCIATION sold by a third party (e.g. a manufacturer) to LICENSEE are subject to a royalty at the then-standard rate in effect at the time of the sales (currently 7.5 % at the time of this agreement) payable to

LICENSOR. LICENSOR shall donate all such royalty payments to LICENSEE in consideration for services it performs for LICENSOR.

3.3 The parties contemplate that, as in the past, LICENSEE may from time to time sell certain specialty items bearing other marks of LICENSOR (such as BAYLOR or BU) to be produced exclusively for sale or other distribution by LICENSEE. When such arrangements are made, LICENSOR shall donate royalty payments on such items to LICENSEE in further consideration for services it performs for LICENSOR.

4. **REGISTRATION**

LICENSOR may, at its sole option and expense, apply to register any of the Licensed Marks. LICENSEE shall provide to LICENSOR free of cost such information and materials as are reasonably necessary to prepare any such applications.

5. **QUALITY CONTROL**

5.1 Because of the long relationship between LICENSOR and LICENSEE, and LICENSEE'S history of providing high quality services and products under the Licensed Marks, LICENSOR has come to trust and rely on LICENSEE to maintain such quality. It is agreed that the previous quality of services and products of LICENSEE were acceptable and reasonable. LICENSEE agrees that it shall at all times maintain the quality of the services and products provided by LICENSEE at a reasonable level. At a minimum, LICENSEE shall continue to:

- (1) Serve as the general alumni organization of Baylor University, including coordination of alumni activities;
- (2) Maintain an administrative office in Waco, Texas;
- (3) Carry out all of the purposes, objects, and activities set forth in the "Constitution and Bylaws of the Baylor Alumni Association" as now existing or subsequently amended;
- (4) Publish an alumni magazine;

(5) Organize and sponsor activities for the Baylor Homecoming on at least an annual basis.

5.2 Upon written request, LICENSEE shall furnish to LICENSOR free of cost a sample of any product for LICENSOR'S inspection. LICENSOR shall have two weeks from receipt of such sample to notify LICENSEE in writing of any objection by LICENSOR to the sale or distribution of such products. In the absence of such written notice by LICENSOR, LICENSEE may deem the sample approved and sell or distribute such products. LICENSOR'S approval of any product or service shall not be unreasonably withheld.

5.3 LICENSOR shall have the right to ascertain whether the services and products offered or sold under this License Agreement are of an acceptable and reasonable level of quality, and LICENSEE shall cooperate in LICENSOR'S exercise of this right. LICENSOR shall not be unreasonable in making this determination.

5.4 If LICENSOR finds that the quality of any service or product being offered or sold under this License Agreement is not reasonable and is unacceptable to LICENSOR, it shall specifically notify LICENSEE in writing of the changes which LICENSOR deems necessary to attain an acceptable and reasonable level of quality. LICENSEE agrees that upon such notice, it shall make such reasonable changes within a reasonable period of time and shall thereafter maintain an acceptable and reasonable level of quality.

5.5 LICENSEE agrees to make proper use of the Licensed Marks in accordance with accepted trademark practice.

6. TERMINATION

6.1 In the event LICENSEE fails to substantially comply with any of its obligations owed to LICENSOR under this License Agreement, LICENSOR may serve on LICENSEE a written notice of default, specifying the nature of the default and what is reasonably and specifically required to remedy the default. If a default is not cured within a reasonable time (not to exceed 120 calendar days) after service of the notice of default, LICENSOR may then immediately give written notice of its termination of this License Agreement.

B.2 In the event of termination of this License Agreement, LICENSEE shall have 90 days to phase out and discontinue all use of the Licensed Marks, and thereafter shall not use said marks, or any other name or mark including (or confusingly similar to) the word BAYLOR.

7. NON-ASSIGNABILITY

The license granted herein to LICENSEE shall not be assignable or transferable except with the prior written consent of LICENSOR which consent shall not be unreasonably withheld. Subject to the preceding sentence, this License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. INDEMNITY/HOLD HARMLESS

8.1 LICENSEE agrees that it is wholly responsible for all services and products offered and sold by it under the Licensed Marks, and that LICENSOR shall have no liability for any such services and products.

8.2 LICENSEE indemnifies and holds harmless LICENSOR and the officers, employees and agents thereof, from any claims, demands, causes of action, and damages, including reasonable attorneys' fees, caused by or arising out of use of the Licensed Marks, or workmanship, material or design of any service or product offered

by LICENSEE under the Licensed Marks, including without limitation, claims or actions for product liability and patent or copyright infringement.

9. STATUS OF PARTIES

9.1 This License Agreement is not intended to create, and may not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between LICENSOR and LICENSEE, and no representation to the contrary is binding upon LICENSOR.

9.2 In fact, the parties agree and acknowledge that LICENSEE is completely independent from LICENSOR, and except for LICENSEE'S obligations to properly use the Licensed Marks and maintain an acceptable and reasonable level of quality as defined above, LICENSOR has no control over LICENSEE. For example, it is understood that LICENSEE is an independent "voice" of alumni of Baylor University, and the positions taken by LICENSEE (editorial and otherwise) which may be contrary to the administration of the University or its Board of Regents shall not be alleged by LICENSOR to constitute insufficient quality and shall not be grounds for LICENSOR'S termination of this License Agreement.

10. MISCELLANEOUS

10.1 LICENSOR and LICENSEE intend all provisions of this License Agreement to be enforced to the fullest extent permitted by law. If, however, any provision of this License Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision is fully severable and this License Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

10.2 This License Agreement is made in the State of Texas and for all purposes is governed by and construed in accordance with the laws of Texas.

10.4 This License Agreement may not be altered, amended, or rescinded, nor may any of its provisions be waived, except by an instrument in writing signed by both LICENSOR and LICENSEE or, in the case of an asserted waiver, by the party against whom the waiver is sought to be enforced.

This License Agreement is effective as of the 25 day of June, 1993.

BAYLOR UNIVERSITY

BAYLOR UNIVERSITY ALUMNI ASSOCIATION

CLPUB/DOC/DA/FL/0021/DOC

EXHIBIT “C”

OFFICIAL RECOGNITION AND LICENSE AGREEMENT BETWEEN BAYLOR UNIVERSITY AND THE BAYLOR UNIVERSITY ALUMNI ASSOCIATION FOR AN ON-CAMPUS ALUMNI CENTER

I. OFFICIAL RECOGNITION OF THE BAYLOR UNIVERSITY ALUMNI ASSOCIATION

Baylor University ("Baylor") hereby recognizes the Baylor University Alumni Association ("Baylor Alumni Association") as the official alumni organization of Baylor University and all of its academic units.

In consideration for this recognition, the Baylor Alumni Association hereby agrees to support the purpose and goals of Baylor University as expressed in its original charter and to:

- (1) Serve as the general alumni organization of all of the academic units of Baylor University, including all of its colleges and schools, and by coordinating the alumni activities of Baylor's academic units with those of the university in general;
- (2) Maintain an administrative office on Baylor's Waco campus;
- (3) Carry out all of the purposes, objectives, objects, and activities set forth in the "Constitution and Bylaws of the Baylor Alumni Association" as now existing or subsequently amended;
- (4) Publish an alumni magazine; and
- (5) Organize and sponsor activities for an annual, university-wide Baylor Homecoming.

As long as the Baylor Alumni Association maintains the above services on behalf of Baylor University and continually and consistently seeks to enroll graduates as members of the Baylor Alumni Association, Baylor shall consider the Baylor Alumni Association to be "the general alumni organization of all the academic units of Baylor University."

II. GRANT OF LICENSE

Baylor University ("Baylor") hereby grants to the Baylor University Alumni Association ("Baylor Alumni Association") an exclusive license to occupy for its exclusive use a building on the Waco campus of Baylor for the purposes set forth in Section I above.

III. EXCLUSIVE USE OF HUGHES-DILLARD ALUMNI CENTER

The Baylor Alumni Association presently occupies a building on the Baylor campus known as the Hughes-Dillard Alumni Center. The license granted to the Baylor Alumni Association by this agreement includes the exclusive right to occupy and use the Hughes-Dillard Alumni Center building, including its driveways and parking lot, and the land on

which they are located. The Baylor Alumni Association's exclusive right to occupy and use the Hughes-Dillard Alumni Center is for an indefinite term. Baylor may terminate the Baylor Alumni Association's right to use the Hughes Dillard Alumni Center only in the event that Baylor University needs the land on which the center is located for its purposes and no other land is reasonably available to Baylor for the purpose for which the land is needed. Should the Baylor Alumni Association's right to use the Hughes-Dillard Alumni Center be so terminated by Baylor, Baylor shall provide the Baylor Alumni Association with another building on the Baylor campus, the size, condition, quality of construction, and location of which is approximately the same as the size, condition, quality of construction, and location of the Hughes-Dillard Alumni Center.

IV. TERM OF LICENSE

The term of the license granted by Baylor to the Baylor Alumni Association under Section II of this agreement is indefinite and may be terminated by Baylor only in the event the Baylor Alumni Association defaults by ceasing to carry out in good faith all of the purposes set forth under Section I above. Baylor shall give the Baylor Alumni Association written notice of the default, specifying the nature of the default and what is reasonably and specifically required to remedy the default. If the Baylor Alumni Association fails to cure the default within 120 calendar days and service of the notice of default, Baylor may immediately terminate the recognition granted in Section I and the license granted in Section II of this agreement by giving the Executive Vice President of the Baylor Alumni Association written notice of immediate termination.

IV. EFFECTIVE DATE

This license is effective May 27, 1994.

This agreement is executed at Waco, Texas this 27th day of May, 1994.
BAYLOR UNIVERSITY

By: Herbert H. Reynolds
Herbert H. Reynolds, President

BAYLOR UNIVERSITY ALUMNI ASSOCIATION

By: Judy Battles
Judy Battles, President