

CAUSE NO. 20-CV-0244

TRINITY EPISCOPAL SCHOOL § IN THE DISTRICT COURT OF
 §
 §
VS. § GALVESTON COUNTY, TEXAS
 §
 § Galveston County - 122nd District Court
IBILEY UNIFORM, INC. § _____ JUDICIAL DISTRICT

**PLAINTIFF TRINITY EPISCOPAL SCHOOL'S
ORIGINAL PETITION**

To the Honorable Judge of the Court:

Plaintiff TRINITY EPISCOPAL SCHOOL files this Original Petition against defendant IBILEY UNIFORM, INC. D/B/A IBILEY UNIFORMS & MORE (“Ibiley”) and would respectfully show the Court the following:

I. REASON FOR ACTION

1. This is a suit for breach of contract and for declaratory relief arising out of a vendor agreement between Trinity School and Ibiley to sell school uniforms to students. A dispute has arisen between Trinity School and Ibiley over the interpretation of the Agreement and whether it automatically renewed. Trinity School timely provided notice of termination and in the alternative has terminated the Agreement for cause.

II. DISCOVERY CONTROL PLAN

2. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169 because this is a suit for declaratory and non-monetary relief.

3. Plaintiff seeks monetary relief of \$100,000 or less and nonmonetary relief. Tex. R. Civ. P. 47(c)(2).

III. PARTIES

4. Plaintiff TRINITY EPISCOPAL SCHOOL is a non-profit registered to do business in the State of Texas with its primary location at 720 Tremont Street, Galveston, Texas 77550.

5. Defendant IBILEY UNIFORM, INC., a foreign corporation organized and existing under the law of the State of Florida, whose principal office is located at 2263 SW 12TH St., Miami, FL 33135, and may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, TX 78701 as its agent for service because IBILEY UNIFORM, INC. is required to register with the Secretary of State but has not appointed or maintained a registered agent for service of process in Texas.

IV. JURISDICTION AND VENUE

6. Plaintiff seeks damages within the jurisdictional limits of this Court.
7. Venue is proper in Galveston County, Texas because plaintiff Trinity School is a resident of Galveston County and the contract is performable in Galveston County. Namely, Ibiley promised to provide uniforms, commissions and services to Trinity School at its location in Galveston County, Texas.

V. FACTS

8. On March 9, 2018, Trinity School entered into an Agreement with Ibiley to be the vendor to provide school uniforms to students. *See* Exhibit 1—Agreement.

A. Trinity provided written notice to terminate the Agreement before the automatic renewal.

9. Section I of the Agreement states that it will expire “by its own terms at the end of the school calendar year on August 31, 2020.” The termination is subject “to clause contained” in the Agreement.
10. Section VI of the Agreement states that the agreement “may only be terminated **prior** to the aforementioned expiration, **with cause...**”
11. Section VI states that a school that wants to terminate **for cause**, it shall provide notice to Ibiley via registered mailed, return receipt requested. **Importantly, under the plain language of the Agreement, the notice provision requiring certified mail only applies to terminations for cause.**
12. The last sentence of Section VI addresses automatic renewals, and states “If no written notice of termination is provided during the aforementioned time-frame, this agreement shall automatically renew.” There is no requirement that the written notice of termination to avoid an automatic renewal be sent via registered mail, return receipt requested.
13. To the extent there is an ambiguity in the termination provision, the ambiguity will be strictly construed against Ibiley as the sole drafter of the Agreement.
14. Trinity School provided timely written notice to Ibiley that it would terminate the Agreement and avoid the automatic renewal. On November 11, 2019, Mark Ravelli, the Head of School, sent Terri Frisk at Ibiley the attached written notice that Trinity School would not renew the Agreement which ends on August 31, 2020. *See Exhibit 2—Termination Notice.*
15. Ibiley acknowledged the receipt of the non-renewal notice by calling Trinity School and attempting to convince it to renew the Agreement.

16. In total, Trinity School followed the Agreement and provided timely and written notice avoiding the automatic renewal.

B. Ibiley's Prior Breach of the Agreement.

17. Trinity School's decision to not renew the Agreement resulted from Ibiley's prior breach of the Agreement.

18. Under the Agreement, Ibiley has the following obligations:

- a. To create and keep current the custom inventory. *See* Agreement at Section II.
- b. To partner with the PTA for Trinity School fundraisers. *See Id.*
- c. To provide a written sales report to Trinity School every school year. *See* Agreement at Section III. a.

19. Furthermore, Ibiley promised to provide high quality uniforms and customer services to the students of Trinity School. Instead, Ibiley committed prior breaches to the Agreement by:

- a. Failing to maintain customized inventory levels;
- b. Failing to partner with the PTA for fundraisers;
- c. Failing to provide a written sales report to Trinity School every year;
- d. Failing to satisfy customer service expectations; and
- e. Failing to provide quality and consistent uniforms.

20. Each of these failures constitutes an independent and material breach of the Agreement and provides a basis for Trinity School to terminate for cause.

21. On February 18, 2020, Trinity School sent notice via Certified U.S. Mail, return receipt requested, to Ibiley notifying that it was terminating the agreement for cause, in the alternative to the prior non-renewal, effective on August 31, 2020, the same date as the expiration of the Agreements primary term.

VI. CAUSES OF ACTION

COUNT 1—Breach of Contract

22. Plaintiff incorporates by reference the facts alleged above. Plaintiff performed its obligations under the Agreement. Ibiley breached the Agreement by failing to perform its obligations under the Agreement. Ibiley's breach of the Agreement is without excuse. As a result, Plaintiff has suffered damages.

23. **Attorney's Fees.** Plaintiff seeks recovery of its attorney's fees for breach of contract as allowed under Civil Practices and Remedies Code Ch. 38 *et seq.*

COUNT 2—Declaratory Judgment

24. Plaintiff incorporates by references the facts alleged above.

25. Plaintiff seeks a declaration that the Agreement will terminate on August 31, 2020 because it did not automatically renew.

26. **Attorney's Fees.** Plaintiff is entitled to recover reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice & Remedies Code section 37.009 because this is a suit for declaratory relief. *See* Tex. Civ. Prac. & Rem. Code § 37.009.

VII. REQUEST FOR DISCLORE

27. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose, within fifty (50) days of service of this request, all information and material described in Rule 194.2(a)-(1). Tex. R. Civ. P. 194.2.

VIII. RULE 193.7 NOTICE

28. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, plaintiff Trinity School gives actual notice to Defendant that any and all documents and materials produced in response to written discovery or at a deposition may be used as evidence in this case; and, that any such materials may be used as evidence against the party producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the document and/or materials produced in discovery.

IX. REQUEST FOR RELIEF

29. For these reasons, Plaintiff requests the following relief:
- a. A Declaratory Judgment that the Agreement is and nothing further is owed by Trinity School;
 - b. Actual damages of \$25,000;
 - c. Prejudgment Interest;
 - d. Post-judgment interest;
 - e. Attorney's Fees;
 - f. Court costs; and
 - g. All other relief in law or equity to which Plaintiff may show himself justly entitled.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

2228 Mechanic St., Suite 400

Galveston, TX 77550

Phone/Fax: 409.761.4001

By: 

Robert E. Booth

Texas Bar No. 24040546

rbooth@millsshirley.com

**ATTORNEYS FOR PLAINTIFF
TRINITY EPISCOPAL SCHOOL**

IBILEY UNIFORMS & MORE
UNIFORM SERVICES AGREEMENT



I. Duration of Agreement

The following is an agreement between IBILEY (hereinafter referred to as “IBILEY” and Trinity Episcopal School, (hereinafter referred to as “Contracting School”, or the school. This agreement shall commence upon the date of execution when signed by the Officer, Director, Principal, Agent/Representative with binding authority to act on behalf of Contracting School, and shall remain in full force and effect for the two school calendar years of #2018 to 2019# and #2019 to 2020#, expiring by its own terms at the end of the school calendar year on August 31, 2020, subject to clauses contained herein.

II. Terms and Conditions

Contracting School, shall undertake the following duties and responsibilities during the duration of this agreement:

- a. Contracting School, agrees not to allow any other uniform services vendor to utilize its school logo; agrees to have IBILEY as the preferred supplier of uniforms and to inform the parents of its students as necessary; and agrees to distribute IBILEY marketing material to students/parents to promote uniform specials throughout each school year.
- b. Contracting School, agrees not to promote any other uniform services vendor; or to advertise on behalf of same; or to allow same to promote or advertise its services through any means available via Contracting School, [Including but not limited to: On campus promotional/marketing materials, school websites, school-sponsored/related social media accounts, student/parent mailing lists, etc.]. Contracting School, also agrees not to sell merchandise itself to its students in lieu of uniforms sold by Plaintiff.
- c. Contracting School, agrees to provide timely notice to IBILEY regarding any proposed changes to Contracting School ’s dress code as soon as said changes are approved by Contracting School, and not later than the November prior to the next school year.
- d. Ibiley agrees to any and all changes made by Contracting School, to dress code, if submitted no later than November of the preceding school year. No changes to Contracting School’s dress code may be implemented after the month of November of the prior school calendar year. [Including but not limited to: School logo, colors, styles, etc.]. EXHIBIT A – Copy of Dress Code Page from IBILEY’s website.

IBILEY shall undertake the following duties and responsibilities during the school duration of the agreement:

- a. IBILEY agrees to create and keep current the custom inventory of the Contracting School, dress code in designated store locations and on IBILEY's website.
- b. IBILEY agrees to partner with Contracting School's PTAS/PTSA for fundraiser purposes.

III. Commissions

- a. Every school year (September 1st through August 31st), for years within the confines of this agreement, IBILEY will provide a written sales report to Contracting School, and will pay to it earned six percent (6%) commission based on sales, no later than December of said year.
- b. Commission is defined as the Contracting School, total sales divided by the number of enrolled students of the preceding school year equaling the average receipt.
- c. All commissions earned on sales attributed to Contracting School, from the day that the agreement is executed through the start of that current school year will be paid in December of the same year.
 - a. *Ex: Commission earned during the months of September 1, 2015 – August 31, 2016; commissions paid to school no later than December 31, 2016.*

IV. Uniforms

- a. IBILEY shall provide customized inventory in accordance with the Contracting School's specifications as found in the "DRESSCODE" which is attached to this agreement, and as per the conditions prefaced herein.

V. Effective Date and Signature

- a. This agreement shall be effective upon the signing of this agreement by the agents of with binding authority acting on behalf of Contracting School, and IBILEY for a period of two school calendar years expiring by its own terms at the end of the school calendar year on August 31, 2020.

VI. Termination

This agreement may only be terminated prior to the aforementioned expiration, with cause, being defined as:

- a. Failure to maintain customized inventory at predetermined locations. IBILEY will use its inventory par formula based on Contracting School's enrollment to predetermine quantities as historical sales data is not available. IBILEY will strive to maintain adequate customized inventory levels available. However, should customized product not be readily available, customers have the option to purchase plain product and have it embroidered at the store level for pickup no later than fifteen (15) school calendar days.

- b. Making changes to uniform dress code without consent of Contracting School.
- i. Should Contracting School, desire to terminate this agreement for cause, it shall provide notice of termination, in writing by registered mail, return receipt requested to IBILEY at 2263 SW 12th Street, Miami, Florida, 33135, no later than December 31st of the second-year term of this agreement. If no written notice of termination is provided during the aforementioned time-frame, this agreement shall automatically renew for each following school calendar year period, short termination in accordance with this section.

VII. Liability Clause

a. In the event that Contracting School, discontinues its operations, indefinitely suspends same, or permanently/indefinitely closes/shuts down but timely provides notice as per this agreement to IBILEY during its **“inventory pre-production period”** then **NO costs or penalties shall be assessed against Contracting School.**

b. In the event that Contracting School, discontinues its operations, indefinitely suspends same, or permanently/indefinitely closes/shuts down but timely provides notice to IBILEY during its **“inventory production period”** then any customized inventory already produced shall be purchased by the school at cost of the inventory retail price, with a 40% discount applied.

i. For the purposes of defining this section, the duration of IBILEY’s pre-production period runs between September and February preceding school calendar year commencing in August. The duration of IBILEY’s production period runs between March and July preceding the school calendar year, commencing August.

c. Should Contracting School, violate any of the terms and conditions outlined in section II of this agreement or if Contracting School, terminates this agreement prior to the completion of the contract term **without cause**, any customized inventory will have to be purchased by the school cost of the inventory retail price, with a 40% discount applied.

d. Damages for Breach of Contract – In the event that Contracting School, breaches this contract, in whole or in part, Contracting School, shall be liable for general, actual and consequential damages in addition to any other legal or equitable remedy IBILEY may be entitled to.

Both parties represent that they have read this agreement, understand it and agree to be bound by all the terms and conditions stated herein and acknowledge receipt of a signed, true and correct copy of this agreement together with such documents referenced within which shall constitute the entire agreement with respect to the subject matter herein.

Name of School: Trinity Episcopal School

Name of Vendor: IBILEY UNIFORMS & MORE

Name of Officer: Mark Powell Name of Officer: Terri Frisk

Title: Head of School Title: Area Representative

Signature: [Handwritten Signature] Signature: [Handwritten Signature]

Date: 3/8/18 Date: 3/9/18

Subject: Fw: School enrollment
Date: Wednesday, February 12, 2020 at 2:17:26 PM Central Standard Time
From: Chloe Knauer
To: Robert Booth, Mark Ravelli



Attorney-Client

Thank you,
Chloe Knauer / Director of Advancement and Admission
Trinity Episcopal School
720 Tremont Street Galveston, TX 77550
409.765.9391 <https://tesgalv.org>

From: Mark Ravelli <mravelli@tesgalv.org>
Sent: Tuesday, November 12, 2019 11:03 AM
To: Chloe Knauer <cknauer@tesgalv.org>
Subject: FW: School enrollment

FYI

From: Mark Ravelli <mravelli@tesgalv.org>
Sent: Monday, November 11, 2019 6:03 PM
To: Terri Frisk <terri.frisk@ibiley.com>
Subject: Re: School enrollment

Terri,
After much consideration we are looking at moving on from Ibiley. We will finish out our contact and then look at other options.

Mark Ravelli

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From: Terri Frisk <terri.frisk@ibiley.com>
Sent: Monday, November 11, 2019 2:43:37 PM
To: Mark Ravelli <mravelli@tesgalv.org>
Subject: School enrollment

Hi Mr. Ravelli,

How are you? Hope all is well and you have had a great weekend! We are in the process of closing all our purchase orders for the 2020 summer production in the coming 2 weeks.

We are committed to having a great upcoming summer and what is key in making it a success is knowing your school's enrollment.

Currently I have your school with a total of 253 students.

What we need the most is confirmation that your enrollment is staying the same or if it is changing.

If you are staying the same please reply back, "no changes in enrollment." This lets us know that we can order safely based off of last year's sales.

If you are changing enrollment:

1. Adding a grade level/s
2. Adding a class section or increasing class sizes
3. Removing a classroom or grade level.

If any of these are true for you please reply back with the change and division by gender. These numbers allow us to invest properly for the upcoming school year.

Once again, thank you for your partnership and we are looking forward to serving your families.

Best,

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Terri Frisk
IFit Education Area Representative
Ibiley Uniforms and More
terri.frisk@ibiley.com
832-461-6444