

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRUCE CHAPMAN; and
HANDLE WITH CARE BEHAVIOR
MANAGEMENT SYSTEM, INC.

Plaintiffs

-against-

NEW YORK STATE DIVISION FOR YOUTH;
NEW YORK STATE DEPARTMENT OF SOCIAL
SERVICES; NEW YORK STATE OFFICE OF
CHILDREN & FAMILY SERVICES; JOHN JOHNSON,
Commissioner of New York State Office of Children and Family
Services and former Commissioner of the New York State
Division for Youth, in his official and individual capacity;
MARGARET DAVIS, former Director of Training for the New
York State Division for Youth, and former Director of Training for
New York State Office of Children and Family Services, in her
official and individual capacity; PATSY MURRAY, former
Associate Training Technician for the New York State Division
for Youth, and current position as Trainer for New York State
Office of Children and Family Services, in her official and
individual capacity; CORNELL UNIVERSITY; JEFFREY
LEHMAN, President of Cornell University, in his official and
individual capacity; HUNTER RAWLINGS III, former President of
Cornell University, in his official and individual capacity; NEW
YORK STATE COLLEGE OF HUMAN ECOLOGY; FAMILY LIFE
DEVELOPMENT CENTER; RESIDENTIAL CHILD CARE
PROJECT; THERAPEUTIC CRISIS INTERVENTION;
MARTHA HOLDEN, Project Director of the Residential Child
Care Project and Therapeutic Crisis Intervention Trainer and
Coordinator, in her official and individual capacity; MICHAEL
NUNNO, Project Director of the Residential Child Care Project
and Therapeutic Crisis Intervention Trainer and Coordinator, in
his official and individual capacity; HILLSIDE
CHILDREN'S CENTER; DENNIS RICHARDSON, President and
CEO of Hillside Children's Center, in his official and individual
capacity; DOUGLAS BIDLAMAN, Employee of Hillside
Children's Center and Therapeutic Crisis Intervention Trainer, in
his official and individual capacity; JOHN DOE 1 through 99

Index No:

COMPLAINT

Filed:

Assigned To:

Defendants

JURISDICTION AND VENUE

1) Plaintiffs bring this action for treble damages and injunctive relief for violations of the federal copyright laws, 17 U.S.C. A. §§501, 502, 503, 504, 505 & 511, the federal antitrust laws 15 U.S.C.A. §§1, 2 and violations of civil rights under color of law pursuant to 42 U.S.C.A. 1983, for misappropriation of confidential business information and for tortuous interference with actual and prospective business relationships. The Court has jurisdiction over this action pursuant to 15 U.S.C.A. §§15 and 26, 28 U.S.C.A §§1331, 1343, 1337 and under principals of supplemental jurisdiction, 28 U.S.C.A. §1367.

2) Venue is proper in the Northern District of New York under 15 U.S.C.A. §§15 and 22 and 28 U.S.C.A. §§1391 and 1400.

PARTIES

3) Plaintiff, Bruce Chapman, is the president of Handle With Care Behavior Management System, Inc. and resides in New York.

4) Plaintiff, Handle With Care Behavior Management System, Inc. (“HWC”) is a New York Corporation with its principal place of business in Gardiner, New York. At all times relevant herein, it was engaged in providing crisis intervention services in interstate commerce. Bruce Chapman and Handle With Care Behavior Management System, Inc. are collectively hereinafter referred to as “Plaintiff”.

5) Defendant, New York State Division for Youth (“DFY”), on information and belief was a New York State Agency that operated juvenile facilities until 1998.

6) Defendant, New York State Department of Social Services (“DSS”), on information and belief was a New York State Agency that licensed, regulated and supervised child care providers until 1998.

7) Defendant, New York State Office of Children and Family Services (“OCFS”), on information and belief is a New York State Agency that from 1998 assumed the functions and obligations of DFY and DSS.

8) Defendant, John Johnson, individually and in his capacity as former Commissioner of New York DFY, Commissioner of New York State OCFS. On information and belief John Johnson resides in New York.

9) Defendant, Margaret Davis, individually and in her capacity as former Director of Training for New York DFY, and former Director of Training for New York OCFS. On information and belief Margaret Davis resides in North Carolina.

10) Defendant, Patsy Murray, individually and in her capacity as former Associate Training Technician for New York DFY, and current position as Trainer for New York OCFS. On information and belief Patsy Murray resides in New York.

11) Defendant, Cornell University, is a New York Not For Profit Corporation with its principal place of business in Ithaca, New York.

12) Defendant, Jeffrey Lehman, individually and in his capacity as the President of Cornell University. On information and belief Jeffrey Lehman resides in New York.

13) Defendant, Hunter Rawlings III, individually and in his capacity as the former President of Cornell University. On information and belief Hunter Rawlings III resides in New York.

14) Defendant, New York State College of Human Ecology, on information and belief is a Statutory College of the State University of New York formed by the New York State legislature.

15) Defendant, Family Life Development Center, on information and belief is a subsidiary of Cornell University New York State College of Human Ecology.

16) Defendant, Residential Child Care Project, on information and belief is a subsidiary of Cornell University and New York State College of Human Ecology.

17) Defendant, Therapeutic Crisis Intervention (“TCI”), on information and belief is a subsidiary of Cornell University and New York State College of Human Ecology.

18) Defendant, Martha Holden, individually and in her capacity as the Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator. On information and belief Martha Holden resides in New York.

19) Defendant, Michael Nunno, individually and in his capacity as the Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator. On information and belief Michael Nunno resides in New York.

20) Defendant, Hillside Children's Center ("HCC"), on information and belief is a New York Not For Profit Corporation with its principal place of business in Rochester, New York.

21) Defendant, Dennis Richardson, individually and in his capacity as the President and CEO of HCC. On information and belief Dennis Richardson resides in New York.

22) Defendant, Douglas Bidleman, individually and in his capacity as the Coordinator for Sociotherapy Training at HCC. On information and belief Douglas Bidleman resides in New York.

FACTUAL ALLEGATIONS

23) New York State DFY was the agency responsible for the regulation, organization and operation of state-owned juvenile facilities throughout New York until 1998. New York State DSS was the agency responsible in New York for the regulation, licensing and supervision of child care providers until 1998. In 1998 DFY merged with parts of DSS to form OCFS.

24) Prior to 1998, DFY was responsible for the care and welfare of all the juveniles in state's custody. The particular responsibility pertinent in this action was DFY's obligation to create procedures and train staff in techniques to physically restrain juveniles in certain circumstances; for example when a

juvenile threatened immediate injury to themselves, a DFY staff member or other juveniles.

25) On information and belief DFY created a use of force policy that determined when restraint techniques could be applied.

26) Between 1994 and 1996 DFY staff, using the DFY physical force procedures, inflicted permanent catastrophic mental and physical injuries on one juvenile and killed another.

27) On information and belief, to avoid further injury or death, DFY retained HWC to provide a safe use of force program and to train DFY staff in that program which included restraint techniques.

28) HWC trained DFY staff and licensed DFY to use HWC's program and techniques for one year commencing at the date of training.

29) On information and belief, DFY misappropriated HWC's property, program and techniques after the license period expired.

30) On information and belief, after DFY merged into OCFS, OCFS misappropriated HWC's property, program and techniques.

31) When DFY merged with DSS, OCFS assumed responsibility for the regulation, licensing and supervision of private child care providers.

32) Pursuant to New York State regulations, private child care providers and residential treatment centers are required to submit for OCFS's approval a use of force policy at the time of license application and every two years thereafter.

33) Child care providers and residential treatment centers frequently employ vendors like HWC to provide a use of force program and train staff.

34) Upon information and belief, OCFS has violated its own regulations by systematically refusing to allow agencies to submit use of force policies.

35) Upon information and belief, OCFS developed its own use of force program in conjunction with Cornell University and the State of New York College of Human Ecology. This program is called TCI and is owned by the State of New York and administered and controlled by Cornell University.

36) Upon information and belief, OCFS unlawfully compels private child care providers to use TCI as their use of force/behavior management training/crisis intervention training provider.

37) Upon information and belief, TCI revised its program illegally incorporating techniques, methods, materials and information unique to and identified with HWC's program and training.

38) TCI's theft coupled with OCFS's disallowance of private child care provider's ability to contract with vendors other than TCI gives the State of New York, Cornell University and TCI a monopoly situation within the State of New York.

39) Upon information and belief, federal monies through grants and matching funds are being used to fund payment for TCI's training services to New York State child care providers.

40) Upon information and belief, TCI is currently charging the State of New York 4-10 times the amount that it charges out of state customers for the same services.

41) HWC routinely competes with TCI for contracts. TCI's current possession and use of property stolen from HWC is giving them an unfair advantage in obtaining new and maintaining their old contracts.

CAUSES OF ACTIONS AGAINST DEFENDANTS OCFS, DFY, DSS, JOHN JOHNSON, MARGARET DAVIS, AND PATSY MURRAY IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

**FIRST CAUSE OF ACTION: COPYRIGHT INFRINGEMENT
Federal court jurisdiction under federal copyright act of 1976 as amended 17 U.S.C.A §§101 et seq. and Judicial Code 28 U.S.C.A. 1338**

42) Paragraphs 1 through 41 are incorporated herein by reference as though fully set forth here.

43) Plaintiff is a citizen of the United States and is the author and owner of the copyright of a series of manuals and audio visual productions on the topic of crisis intervention as well as the owner of all copyright derivative rights including presentational rights associated with the aforementioned manuals and videos.

44) On June 7, 1984, Bruce Chapman obtained registration 1-TX36499 of the copyright of the trainer's manual titled "Handle With Care – A Revolutionary Approach to Behavior Management". Derivative works include a performance based training program, updated manuals and numerous audio

video productions. All significant updates in tangible materials have been deposited with the Register of Copyrights and have since supplemented the original work.

45) At all times Plaintiff had copyright notification affixed to the front cover of all written materials stating “©*HANDLE WITH CARE. All rights reserved. None of the contents of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means (electronic, mechanical, photocopying, recording or otherwise) without the prior written permission of HWC.*”

46) On information and belief, OCFS (formerly DFY), without license, assignment or permission, took Plaintiff’s copyrighted materials, and has been reproducing such protected materials without Plaintiff’s license, authorization, permission or compensation to Plaintiff.

47) Plaintiff has given notice that OCFS’s activities constitute infringement of Plaintiff’s copyright, and OCFS has continued such activities notwithstanding.

48) Plaintiff has been damaged as a result of OCFS’s activities.

SECOND CAUSE OF ACTION: BREACH OF CONTRACT

49) Paragraphs 1 through 48 are incorporated herein by reference as though fully set forth here.

50) On or about April 23, 1997 a contract was entered into between Plaintiff and DFY, whereby Plaintiff agreed and did in fact deliver 12 days of training, certify DFY staff as instructors and provide written and audio visual training materials.

51) The contract provided that DFY to reproduce such written and audio visual materials for the benefit of its trainers and staff for a period of one year commencing on the date of training and ending on the training's one year anniversary.

52) The contract also provided that DFY trainers could train DFY staff in Plaintiff's program for a period of one year commencing on the date of training and ending on the training's one year anniversary.

53) On information and belief, DFY (now known as OCFS) has continued to reproduce said written and audio visual materials beyond the time allowed in the contract.

54) On information and belief, DFY (now known as OCFS) has continued to allow its staff to train others in Plaintiff's program beyond the time allowed in the contract.

55) Plaintiff learned of defendant's breach in 2003.

56) Plaintiff has not been compensated for DFY's continued reproduction of Plaintiff's proprietary materials precipitating damages in the estimated amount of at least \$160,000.00.

THIRD CAUSE OF ACTION: FRAUD

57) Paragraphs 1 through 56 are incorporated herein by reference as though fully set forth here.

58) On information and belief, prior to contracting for Plaintiff's services, DFY had two significant restraint incidents. The first occurred in 1994 where staff was restraining a juvenile and the juvenile died. The second was in 1996 where staff was restraining a juvenile and the juvenile incurred permanent catastrophic mental and physical injuries.

59) On information and belief, to avoid further catastrophic injury or death, DFY decided to retain HWC to provide a safe use of force program and to train DFY staff in that program.

60) DFY's then Director of Training, Margaret Davis, contacted Bruce Chapman, president of HWC and represented that DFY would like to contract for his program materials and training services.

61) Terms were reached whereby Plaintiff would train and provide written and audio visual training materials to DFY that DFY would be allowed to reproduce for a period of one year from the date of training and were reduced to a written contract drafted by DFY.

62) Plaintiff also obtained signed contracts from each DFY staff person trained pursuant to the aforementioned contract, including former Director of Training, Margaret Davis. In this contract each staff person trained acknowledged that their ability to train Plaintiff's program terminated one year post training.

63) Plaintiff relied on the contract generated from DFY specifying a one year term, along with the written assurance of each staff person trained acknowledging that their certification to train expired in one year post training.

64) The material representations that DFY and Margaret Davis made to Plaintiff were intentionally false and were known to be false when made. Neither DFY nor Margaret Davis had any intention of adhering to the terms of their contract, and both had the intention of gaining access to Plaintiff's proprietary materials, property, program, training and expertise through the guise of a valid contract for the purpose of misappropriating such program to adopt as their permanent crisis intervention/use of force program thereby causing injury to Plaintiff.

FOURTH CAUSE OF ACTION: CONVERSION

65) Paragraphs 1 through 64 are incorporated herein by reference as though fully set forth here.

66) Plaintiff granted DFY a one year reproduction right to said training written and audio visual materials. After the contracted for term, all rights title and interest to reverted back to Plaintiff.

67) Plaintiff has demanded the return of said property.

68) DFY has systematically ignored Plaintiff's demand for said property, thereby causing injury to Plaintiff.

FIFTH CAUSE OF ACTION: TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

69) Paragraphs 1 through 68 are incorporated herein by reference as though fully set forth here.

70) Plaintiff is one of a limited number of vendors known to the private child care agencies.

71) Specific agencies expressed preference to our programs but were coerced by defendants from availing themselves of our services.

72) Other agencies that had not contacted Plaintiff specifically that may have availed themselves of Plaintiff's services were coerced by the defendants to refrain from availing themselves of Plaintiff's services.

73) Defendant intended to preclude Plaintiff and other vendors from the marketplace to insure that the State's program had exclusive access to the market.

74) Defendants unlawful conduct successfully precluded Plaintiff from competing in the marketplace causing economic damage to Plaintiff.

CAUSES OF ACTIONS AGAINST DEFENDANTS HCC, DENNIS RICHARDSON AND DOUGLAS BIDLEMAN IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

SIXTH CAUSE OF ACTION: BREACH OF CONTRACT

75) Paragraphs 1 through 74 are incorporated herein by reference as though fully set forth herein.

76) On or about October, 2001 Plaintiff entered into a contract with HCC stating that “upon the scheduling and delivery of training and training materials, the contractual terms included herein are accepted unless otherwise agreed to in writing.”

77) The contract further provided that “the Agency and/or employee of the Agency receiving Handle With Care’s program and training acknowledges that the Program and Training contain confidential information and trade secrets developed and owned by Handle With Care and agrees to treat such information as confidential.”

78) On or about November 8, 2001, Bruce Chapman personally provided HWC training and training materials to HCC, and HCC paid Plaintiff for its services.

79) On or about August, 2002, Plaintiff discovered that HCC and Douglas Bidleman, an employee of HCC and TCI trainer, appeared in TCI’s training manual and video illustrating proprietary HWC information covered under the confidentiality clause the contract.

80) HCC and Douglas Bidleman thereby breached the terms of their contract causing injury to Plaintiff in an amount not yet ascertainable.

**CAUSES OF ACTIONS AGAINST ALL DEFENDANTS IN THEIR OFFICIAL
AND INDIVIDUAL CAPACITIES**

**SEVENTH CAUSE OF ACTION: MONOPOLIES, RESTRICTION OF TRADE
AND UNFAIR COMPETITION**

81) Paragraphs 1 through 80 are incorporated herein by reference as though fully set forth herein.

82) OCFS is the State Agency in charge of all state-owned youth facilities in New York State. OCFS is also in charge of licensing all child care providers.

83) Pursuant to New York State regulations, private child care providers and residential treatment centers are required to submit for OCFS's approval a use of force policy at the time of license application and every two years thereafter.

84) OCFS's regulation states that "*an authorized agency shall not use any method of restraint unless it has submitted its restraint policy to the department and such policy has been approved in writing by the department*" NYRR 441.17 (c).

85) Child care providers and residential treatment centers frequently employ vendors like HWC to provide a use of force program and train staff.

86) On information and belief, OCFS has violated its own regulations by systematically refusing to allow agencies to submit use of force policies.

87) On information and belief, New York State owns its own use of force program in conjunction with Cornell University and the State of New York College of Human Ecology. This program is called TCI and is owned by the State of New York and administered and controlled by Cornell University.

88) On information and belief, OCFS has created an environment whereby private child care providers can only use TCI as their use of force

training provider or risk their license and ability to do business within the State of New York.

89) OCFS has told private child care providers under color of state law that the only approved restraint training vendor is TCI, and despite regulations to the contrary, private agencies can not contract with Plaintiff or any other restraint training vendor for services or risk their license and ability to do business within the State of New York.

90) On information and belief, OCFS in conjunction with Cornell University, New York State College of Human Ecology and TCI have illegally coerced a monopoly control over crisis intervention, behavior management and restraint training services to private child care providers located within the State of New York.

91) On information and belief, this monopoly control is further evidenced by the fact that TCI is currently charging New York State 4-10 times the rate that it charges for identical services provided to out-of-state customers.

92) On information and belief, federal monies through grants and matching funds have been and are being used to fund payment for TCI's training services to New York State child care providers. These funds are being procured at 4-10 times the rate that TCI charges to its out of state customers.

93) On information and belief, this monopoly affects interstate commerce as many of the child care providers licensed in New York have multiple interstate locations (e.g. Catholic Charities) and are often headquartered outside New York State. Private child care providers have limited training dollars

to spend on crisis intervention/use of force restraint training. If New York is prohibiting the use of programs other than the State owned TCI program, it becomes cost and administratively prohibitive for these national child care providers to contract for multiple training crisis intervention vendors thereby affecting Plaintiff's ability to fairly compete for national and international training contracts thereby causing injury to Plaintiff.

EIGHTH CAUSE OF ACTION: CONSPIRACY TO MONOPOLIZE AND RESTRICT TRADE

94) Paragraphs 1 through 93 are incorporated herein by reference as though fully set forth herein

95) On information and belief, Cornell University, New York State University College of Human Ecology, Family Life Development Center, Residential Child Care Project, TCI, OCFS, HCC, Dennis Richardson individually and as CEO and President, Douglas Bidleman individually and as an employee of HCC, Martha Holden individually, Michael Nunno individually, OCFS, Jeffrey Lehman as President of Cornell University and individually, and Hunter Rowlings as former President of Cornell University and individually, John Johnson as OCFS Commissioner and individually, all knew, participated in, acquiesced, benefited from or accepted the plan by which under color of state law TCI was allowed to obtain an exclusive monopoly over the right to train private child care providers situated in New York State.

96) On information and belief, all of the foregoing entities and persons mentioned also knew or should have known that substantial amounts of federal monies were being procured and used to perpetuate this illegal scheme.

97) On information and belief, all the foregoing entities and persons mentioned also knew or should have known that the funds being procured to pay for training services provided were 4-10 times the rate out of state customers were being charged.

98) On information and belief, this conspiracy to monopolize affects Plaintiff's ability to fairly compete for national and international training contracts thereby causing injury.

**NINTH CAUSE OF ACTION: MISAPPROPRIATION
TORT FOR BUSINESS SCHEME AND TORT OF TRADE SECRET
SERVICE MARK DILUTION AND UNFAIR COMPETITION AT COMMON LAW**

99) Paragraphs 1 through 98 are fully incorporated herein by reference as though fully set forth herein.

100) Plaintiff created an intangible asset in the form of a crisis intervention training program including but not limited to theoretical models, teaching methodologies, spotting system, verbal counts, physical techniques, expertise, presentation methods and exercises, demonstrations, performances, workshops and seminars (collectively "HWC Training Program")

101) The HWC Training Program was developed with much effort and is of great value.

102) Plaintiff has taken appropriate steps to maintain the confidentiality and secrecy of the HWC Training Program described, and accordingly, the HWC Training Program could not be properly obtained from other sources.

103) Defendants Doug Bidleman, OCFS and HCC contracted with Plaintiff under circumstances acknowledging that the parties contemplated the maintenance of secrecy.

104) Upon information and belief, defendants took Plaintiff's assets and made commercial use of them despite agreements to the contrary.

105) Upon information and belief, defendants improperly disclosed and misappropriated Plaintiff's proprietary information.

106) Upon information and belief, TCI improperly gained access to Plaintiff's program and knew or had reason to know that the information being disclosed belonged to Plaintiff. Defendants disregarded ownership thereby taking Plaintiff's assets and portraying them as their own.

107) Plaintiff demanded the return of said assets and was refused, causing injury to Plaintiff.

108) Defendants by intentionally passing off of HWC's assets as their own are diluting HWC's established reputation as a quality service provider. Defendants are also diluting the recognition and goodwill HWC enjoys because defendants have taken assets associated with and connected to HWC's program and incorporated into their own without license or mention of source. This is confusing to the industry and has done enormous damage to Plaintiff.

109) Defendant, OCFS is currently using the term “Primary Restraint Technique” and have included an illustration of the Primary Restraint Technique (“PRT”) in its manual. The term Primary Restraint Technique (“PRT”) is a common law trademark as well as a registered service mark owned by Plaintiff. The illustration of the Primary Restraint Technique as it appears in OCFS’s manual is also a common law trademark as well as a registered service mark owned by Plaintiff.

110) OCFS improper use of Plaintiff’s service marks creates the appearance that Plaintiff authorized or endorsed its use or is connected with Plaintiff or Plaintiff’s services causing injury to Plaintiff.

TENTH CAUSE OF ACTION: UNJUST ENRICHMENT

111) Paragraphs 1 through 110 are fully incorporated herein by reference as though fully set forth herein.

112) Defendants have been unjustly enriched by the misappropriation and unlawful use of Plaintiff’s materials and HWC Training Program (as previously defined).

113) Defendants must disgorge the unjust gains, and restore Plaintiff’s status quo.

WHEREFORE, Plaintiffs requests for an order of judgment against defendants as follows:

1. For damages according to proof at trial;
2. For three times the amount of actual damages suffered by plaintiffs as a result of defendant's violation of all applicable federal statutes;
3. For preliminary and permanent injunctive relief prohibiting defendants from continuing the violations of law set forth herein and from taking any punitive action against plaintiffs in retaliation for the filing of this suit.
4. For costs of this suit and attorneys' fees;
5. For such other and further relief as this Court deems just and proper.

DATED: _____

Hilary Adler, Of Counsel
Handle With Care Behavior Management
System, Inc.
184 McKinstry Road, Gardiner, NY 12525
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DEMAND FOR JURY TRIAL.

Plaintiff demands trial by jury of all issues.

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