

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-000653-GPG-STV

ASCENT CLASSICAL ACADEMIES,

Plaintiff,

v.

**ASCENT CLASSICAL ACADEMY CHARTER SCHOOLS, INC.; LANDS' END, INC.
a/k/a LANDS END DIRECT MERCHANTS, INC.,**

Defendants.

**PLAINTIFF'S RULE 59(e) MOTION FOR RECONSIDERATION OF ORDER [ECF NO.
76] GRANTING MOTION TO DISMISS THREE FEDERAL CLAIMS**

This Court granted Defendants Ascent Classical Academy Charter Schools, Inc. ("ACACS") and Lands' End, Inc.'s (collectively, "Defendants"), Motion to Dismiss (the "Motion"). Pursuant to Fed. R. Civ. P. 59(e), Plaintiff Ascent Classical Academies ("Ascent") requests reconsideration of the Court's Order (the "Order").

Specifically, Ascent submits that reconsideration is warranted because, first, the Court committed clear error in its interpretation of the management agreement between the parties by relying on extrinsic evidence, including its apparent findings of fact relating to trade usage in the education field with no finding of ambiguity in the contract. Second, the Court committed clear error by giving ACACS an unfettered license to use an "identified name," rather than analyzing the specific trade names and trademarks—legal terms of art that the Parties used in the Agreement. Finally, the Order would cause a manifestly unjust result to Ascent, who has effectively had its rights in its intellectual property decimated despite investing years of time and money in building a brand.

I. BACKGROUND

This case is a business dispute between Ascent and ACACS. Ascent is a charter management organization, and ACACS was once a school within that organization that became a network of four schools, all managed by Ascent. Both organizations were formed by the same person—Derec Shuler. (ECF No. 11, Am. Compl. ¶¶ 7-17). The vision for these entities was that Ascent would act as a charter school management organization, and ACACS would be the first of many schools within the fledgling network. (*Id.* at ¶¶ 10-11). Thus, the two entities were originally formed by the same person to be operated toward a common purpose.

In October 2017, Ascent and ACACS entered into the first of several management agreements (the “Management Agreement”) for a school in Douglas County, which was attached as Exhibit 1 (ECF No. 23-1) to ACACS’s Motion to Dismiss (ECF No. 23).¹ For the reasons stated in the Amended Complaint, the relationship between ACACS and Ascent became strained over the years, ultimately leading to this lawsuit.

In the lawsuit Ascent alleged that ACACS infringed on certain trademarks owned by Ascent (the “Ascent Marks,” as that term is defined in the Amended Complaint) in violation of the Lanham Trademark Act, 15 U.S.C. § 1051, *et seq.* (the “Lanham Act”).

The Management Agreement addressed intellectual property in the following passage:

ASCENT hereby grants the School [ACACS] the non-exclusive, non-transferable license to use ASCENT’s trade name and any trademark(s), as they now exist or in the future, to promote and advertise the School. No other use of ASCENT trademarks is permitted without ASCENT’s prior written permission. The School shall acquire no rights in the ASCENT

¹ As the Court observes, Ascent has alleged that the subsequent management agreements were identical except for the names discussed under each and the locations of the schools. Thus, most of Ascent’s argument is made simply under this first Management Agreement for sake of brevity.

trademarks, and all goodwill of the ASCENT trademarks shall inure to the benefit of and remain with ASCENT. Ascent shall have preapproval rights for each form and manner of public display of the ASCENT trademarks. However, the name “Ascent Classical Academy of Douglas County” shall be a trade name of the School, and the School shall have the right to use the same after termination of this Agreement without additional compensation to ASCENT.

(ECF No. 23-1, pp. 6-7).

The Court found that the final sentence of this segment created an “unlimited right to use the identified name,” that “identified name” being “Ascent Classical Academy of Douglas County.” In finding that this right permits ACACS to also use shortened permutations of this name, the Court ignored the previous four sentences clearly stating that Ascent retained full control of the Ascent Marks except that ACACS had the right to use the Ascent Marks “to promote and advertise the School” while the Agreement was in force. And the Court made factual findings of trade usage in the educational field, suggesting that such usage is common in the trade. This rationale was not supported by any citation to any authority. (See ECF No. 76, Order at pp. 6-7).

The Court expressly stated that it made its Order based on contract interpretation and did not reach issues related to Ascent’s claims of infringement. (Order at 7 n.5). Therefore, Ascent’s discussion of issues arising under trademark law and the Lanham Act is limited to their bearing on the interpretation of the Management Agreement.

II. STANDARD OF REVIEW

Under Fed. R. Civ. P. 59(e), a litigant may file a motion to alter or amend a judgment within 28 days after the entry of judgment. A motion for reconsideration is treated as a motion to alter or amend the judgment under Rule 59(e) if filed within the time period prescribed by Rule 59(e). See *Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005) (addressing filing a motion to reconsider under the old Rule 59(e), which

prescribed a 10-day period). Relief is available for a motion to reconsider under Rule 59(e) where (1) there has been an intervening change in the controlling law; (2) new evidence exists which was previously unavailable; or (3) there is a need to correct clear error or prevent manifest injustice. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citing *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)).

The Tenth Circuit defines clear error as “an arbitrary, capricious, whimsical, or manifestly unreasonable judgment.” *Wright ex rel. Trust Co. of Kan. v. Abbott Labs, Inc.*, 259 F.3d 1226, 1236 (10th Cir. 2001). Manifest injustice is “more than just a clear and certain prejudice to a moving party, but also a result that is fundamentally unfair in light of governing law.” See *Thymes v. Verizon Wireless, Inc.*, 2017 U.S. Dist. LEXIS 3846, at *6 (D.N.M. Jan. 6, 2017) (quoting *Smith v. Lynch*, 115 F. Supp. 3d (D.D.C. 2015)).

III. ARGUMENT

Ascent seeks reconsideration of the Court’s Order for three reasons. The first is the Court committed clear error by using extrinsic evidence, even though (1) a ruling on a motion to dismiss is limited to the allegations in the four corners of the complaint; (2) the court made no finding of ambiguity that would allow it to consider extrinsic evidence; and, (3) neither party submitted any evidence that would support the Court’s factual conclusions.

Second, the Court committed clear error by interpreting the Agreement to give ACACS an unfettered license to use an “identified name,” rather than identifying specific trade names and trademarks, which are specifically defined terms under the Lanham Act.

And third, the Court's ruling would result in manifest injustice: its ruling effectively destroys Ascent's rights to its trademarks by assigning Ascent's intellectual property to ACACS, even though Ascent spent considerable time and money building brand value for its operations.

A. The Court improperly used extrinsic and parol evidence to determine that ACACS was entitled to shortened versions of the school's name.

A motion to dismiss is to be decided solely upon the facts in the Amended Complaint. *Dillinger v. North Sterling Irrigation Dist.*, 308 P.2d 608, 609 (Colo. 1957) (reversing a motion to dismiss where the "trial court went beyond the allegations of the complaint and took into consideration" facts outside the complaint). Here, the Court went beyond the four corners of the Amended Complaint to make factual determinations properly left to the trier of fact. (Order, pp. 6-7). The Federal Rules of Civil Procedure prohibit courts from considering evidence outside of the four corners of the Amended Complaint. Rather, the Rules required courts to convert a motion to dismiss into a motion for summary judgment and to give notice to the parties that it is so converted, thus allowing the non-moving party the opportunity to contest summary judgment by either submitting undisputed evidence or demonstrating a dispute about material facts. *Cuervo v. Sorenson*, 112 F.4th 1307, 1312 (10th Cir. 2024) ("The district court must inform the parties of its conversion and give the parties a reasonable opportunity to accumulate and present all relevant evidence."); Fed. R. Civ. P. 12(d).

Had the Court followed this approach, Ascent would have had the opportunity to demonstrate that the Court's factual findings were not "facts" but were merely opinions about how some schools operate. But the Court committed clear error by denying Ascent

its due process right to challenge the factual basis that the Court relied upon to eliminate Ascent's intellectual property and its rights in its own trademarks. *Id.*

Similarly, the Court's ruling also violated the parol evidence rule. When interpreting a contract, a court must give the words used their plain and generally accepted meaning. *Sch. Dist. No. 1 v. Denver Classroom Teachers Ass'n*, 433 P.3d 38, 41 (Colo. 2019). Only if there is an ambiguity may a court go beyond the plain words in the contract. *Klun v. Klun*, 442 P.3d 88, 92 (Colo. 2019). The Supreme Court explained the process to determine ambiguity in a contract:

In determining whether a contractual provision is ambiguous, "the instrument's language must be examined and construed in harmony with the plain and generally accepted meaning of the words used," with reference to all of the agreement's provisions, and a provision is ambiguous "if it is fairly susceptible to more than one interpretation."

Dorman v. Petrol Aspen, Inc., 914 P.2d 909, 912 (Colo. 1992). But here the Court did not identify any ambiguity in the Contracts—for good reason. No ambiguity exists; the words are clear. When a contract is complete and free from ambiguity, the courts must enforce it based on the plain and generally accepted meaning of the words used. *Denver Classroom Teachers Ass'n*, 433 P.3d at 41. Absent ambiguity, a court will not look beyond the four corners of the agreement to ascertain the parties' intent. *Klun*, 442 P.3d at 92.

In ruling that ACACS has an "unlimited, irrevocable right to use its identified names," the Court made several findings of fact that it was not permitted to do. It relied upon extrinsic evidence, and it improperly turned to parol evidence absent a well-grounded finding of ambiguity.

First, the Court found: "Unvaried reproduction of a full legal name is not and has never been how school names are used and cannot have been the intent of the parties at the time the contract was signed." (Order at pp. 6-7). This is a fact-based conclusion

concerning uniform, uninterrupted historical usage by *all* schools throughout the nation, and the Court may not make fact-based determinations at this stage of the case. Indeed, there are no facts in the Amended Complaint to support this allegation, which means the Court could not reach this conclusion without converting the Motion to Dismiss to one for summary judgment and giving Ascent an opportunity to present relevant evidence. *Cuervo*, 112 F.4th at 1312. Importantly, ACACS did not raise this issue, most likely because it knew that such an argument was improper at this stage of the proceedings.

Ascent respectfully states that the Court's factual finding was simply wrong, and Ascent would have submitted contrary evidence about how schools use their names had the Court given it the chance. Indeed, the Court's factual determination ignored how trademarks and trade names are used under the Lanham Act, *see infra*, and the Court cannot reach these factual conclusions without analyzing that law. ACACS did not, and cannot, argue that it was entitled to the shortened version of its name ("Ascent Classical"), based on the limited license Ascent granted it in the specific school's name, especially at this early stage since the Amended Complaint plainly alleged that the term "Ascent Classical" is one of Ascent's trademarks. This allegation itself raises a factual issue that this Court cannot resolve in a motion to dismiss or a motion for summary judgment.

Second, the Court held that, "[S]chools customarily identify themselves only by a portion of their name and do so without confusion." (Order at pp. 6-7). Again, there is no evidence in the record of this "custom," nor of perceived confusion. Customs and industry standards are issues requiring expert testimony. *See South Park Aggregates, Inc., v. Northwestern Nat. Ins. Co. of Milwaukee, Wis.*, 847 P.2d 218, 225 (Colo.App.1992). This Court jumped right past that obvious requirement and substituted its own perception of

how schools operate—and how the public perceives schools—to make a finding without evidentiary support. This was clear error. A court cannot substitute its judgment for that of the trier of fact and certainly cannot make factual determinations at this stage of the proceedings. *Cuervo*, 112 F.4th at 1312.

Finally, the Court held that, “There are countless schools across the country and even in individual states referred to as, for example, ‘Central,’ with school gear bearing only that one word even though that is not the full legal name of any school.” (Order at pp. 6-7). Again, there is no evidence of this in the record. More importantly, the analogy fails because “Central” as used by the Court, would be a geographically descriptive mark, not registrable on the principal trademark register. See 15 U.S.C. 1052(e)(2); *see also In re Newbridge Cutlery Co.*, 776 F.3d 854, 859 (Fed. Cir. 2015) (discussing test for geographically descriptive marks). Further, the analogy itself does not provide an uncontested factual framework, because counter-examples exist. The University of Texas trademarked the term “Texas,” *see USPTO Reg. No. 1231407, attached as Exhibit 1*,² thereby making it so that no other university with “Texas” in the name can refer to itself on its marketing material as just “Texas.” There are undoubtedly numerous other similar examples that Ascent could have presented, if this Court had afforded Ascent the opportunity to address this argument through the discovery process and then in a summary judgment motion or at trial.

The Court also erred in making a determination with respect to the parties’ intent. Instead of allowing the parties to argue the issue of intent regarding the school names

² This exhibit is included not to convert the Motion to Dismiss into a summary judgment motion but to show that the Court’s finding of fact on this issue is disputed.

and the subsidiary words in those names, the Court improperly assumed the role of the trier of fact and inferred the parties' intent based upon its own view of customary, historical, and analogous school name usage. This is all extrinsic evidence of trade usage with respect to the education sector's treatment of intellectual property—specifically trade names used as school names. This was clear error, and the Court cited to no authority supporting its decision to make factual findings.

And again, the Court erred in its conclusion. The Agreements themselves, along with the principle that terms of art must afforded their legal meaning, support the conclusion that that the parties in fact intended that trademarks and trade names governed by the Agreement be treated as separate and distinct. *See, e.g., In re Quadruple D Trust*, 639 B.R. 204, 230 (Colo. Bkrptcy. 2022). And they intended to limit ACACS's use of the name "Ascent Classical Academy of Douglas County" (as well as names addressed by the subsequent management agreements) to use only in their entirety and only for their respective entities.

Finally, the Court assumed that shortened versions of school names (even geographic ones like "Central") are used all over and without confusion. And this assumption was critical to the Court's finding that Ascent had no basis to protect against ACACS's use of "Ascent" or the other Ascent Marks and thus received little or no trademark protection. Again, the Court's assumption is belied by actual, publicly available examples of trade usage. Trademark registrations exist where schools have protection for shortened versions of their names, even where that shortened version is simply the name of an entire state. As noted above, The Board of Regents for the University of Texas

system trademarked TEXAS to keep other Texas universities from using the term. See **Exhibit 1**.

B. The Court committed clear error by conflating trade names with trademarks, as defined by Federal law and used in the agreement.

Under Colorado law, the interpretation of a written contract is a question of law. *E.g. People ex rel. v. Rein v. Jacobs*, 465 P.3d 1, 11 (Colo. 2020). If a contract is complete and free from ambiguity, the courts must enforce it based on the plain and generally accepted meaning of the words used. *E.g., Denver Classroom Teachers Ass’n*, 433 P.3d at 41. “The mere fact that the parties differ on their interpretations of an instrument does not of itself create an ambiguity.” *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 912 (Colo. 1996) *quoting Fibreglas Fabricators, Inc. v. Kylberg*, 799 P.2d 371, 374 (Colo. 1990). And, while the determination of whether a contract is ambiguous is a question of law for the Court, the meaning of those ambiguous terms is “an issue of fact to be determined in the same manner as other disputed factual issues,” *i.e.*, by the trier of fact and not at the motion to dismiss stage. *Id. quoting Union Rural Elec. Ass’n v. Public Utils. Comm’n*, 661 P.2d 247, 251 *n.5* (Colo. 1983).

This Court erred in interpreting the Agreement by not giving the words in the agreement their plain meaning. The Court’s error originated with clear error concerning the difference between “trademarks” and “trade names.”

1. Trademarks and Trade Names are distinct and different legal terms.

Trademarks and trade names are defined and distinguished in the Lanham Trademark Act. A “Trademark” is “any word, name, symbol, or device, or any combination thereof” that is used to “identify and distinguish” a person’s goods or products.¹⁵ U.S.C. § 1127 (emphasis added). A “trade name,” on the other hand, is defined as “any name

used by a person to identify his or her business or vocation.” *Id.* Thus, a trademark is a source-identifier of goods and services provided by a business, while a trade name identifies the business itself.

The Tenth Circuit explained this distinction: “a trade-mark is applicable to the vendible commodity to which it is affixed, and a trade name to a business and its good will.”³ *Standard Oil Co. v. Standard Oil Co.*, 252 F.2d 65, 71 n.9 (10th Cir. 1958); *see also E.F. Pritchard Co. v. Consumers Brewing Co.*, 136 F.2d 512, 518-19 (6th Cir. 1943) (discussing the difference between a trademark and trade name in the context of licensing). “[T]he terms ... are not interchangeable.” *Coin-Tainer Co v. Pap-R Prods. Co.*, 2021 U.S. Dist. LEXIS 137210, at *17-18 (S.D. Ill., April 26, 2021)”. In fact, only a “trademark” can be registered; a trade name cannot. *Id.* at *18. The *Coin-Tainer* court noted this distinction when holding that the settlement agreement at issue there conveyed rights in a trade name, “Coin-Tainer,” but not any other trademarks. *Id.* at 19-20.

In interpreting the Agreement, “Trademark” and “Trade Name” should be given their legal meaning as terms of art related to intellectual property rights. *See Bledsoe Land Co. LLLP v. Forest Oil Corp.*, 277 P.3d 838, 843 (Colo. App. 2011) (“When parties are engaged in a trade or technical field, ‘[u]nless a different intention is manifested . . . technical terms and words of art are given their technical meaning when used in a transaction within their technical field.’”) (quoting Restatement (Second) of Contracts § 202(3)(b)); *see also Washington County Board of Equalization v. Petron Development*

³ The *Standard Oil* Court noted that the difference was “immaterial” in an unfair competition action because the “law protects against the appropriation of either upon the same fundamental principles.” *Standard Oil*, 252 F.3d at 71. However, the difference is indeed material when it comes to parsing the parties’ intent under the Agreement.

Co., 109 P.3d 146, 153 (Colo. 2005) (technical meanings refer to terms with a unique definition within a specific industry, or to legal terms of art).

The parties chose the legal terms “Trademark” and “Trade Name” in allocating respective rights under the Agreement. To determine the parties’ intent, the legal meaning of these terms, as defined in the Lanham Act, should be followed.

2. The Court erred when it found that the Agreements granted ACACS rights in Ascent’s trademarks.

The Court committed clear error in its interpretation of the Agreement by (1) finding the Agreement granted ACACS an “unlimited right to use the identified name” of “Ascent Classical Academy of Douglas County” as opposed to making findings with respect to the trademarks and trade names contemplated by the Agreement; and (2) using extrinsic evidence as a basis for finding that the parties intended ACACS to have the right to use shortened permutations of the “identified name.”

The parties intended to allocate specific, and different, rights to the use of Ascent’s trademarks and trade names. To the extent ACACS was granted a right to use the trade name, that right extended specifically to the name placed in quotes in the Agreement, and no other permutations thereof: “Ascent Classical Academy of Douglas County.”

a. The Court Erred by finding that Ascent intended to grant an “unlimited right to use the identified name” of “Ascent Classical Academy of Douglas County”

The language of the Agreements that addresses Ascent’s trademarks and the trade names to which Ascent granted rights to ACACS states:

ASCENT hereby grants the School the non-exclusive, non-transferable license to use ASCENT's trade name and any trademark(s), as they now exist or in the future, to promote and advertise the School. No other use of ASCENT trademarks is permitted without ASCENT's prior written permission. The School shall acquire no rights in the ASCENT trademarks, and all goodwill of the ASCENT trademarks shall inure to the benefit of and

remain with ASCENT. ASCENT shall have pre-approval rights for each form and manner of public display of the ASCENT Trademarks. However, the name “Ascent Classical Academy of Douglas County” shall be a trade name of the School, and the School shall have the right to use the same after termination of this Agreement without additional compensation to ASCENT.

Agreement, pp. 6-7 (the “Trademark/Trade Name Language”). The Court held that the last sentence of this provision “provides ACACS an unlimited right to use the identified name.” (Order at p. 5.) The Court attempted to avoid wading into the Lanham Act’s trademark and trade name definitions by stating, in a footnote, “[t]he Court finds the term ‘the same’ refers to the antecedent ‘name’ and is not limited to ‘trade name.’” (Order at p. 5, n. 3). This footnote effectively found that the parties intended for Ascent to grant ACACS a nondescript bundle of rights in neither a trademark nor a trade name, but simply in the “identified name.”⁴ This is contrary to the plain language of the Agreement, see *Dillinger*, 308 P.2d at 609, which demonstrates that Ascent only granted post-termination rights to ACACS for the schools’ trade names.

And the Court committed clear error by interpreting the word “same” to modify ‘name’ rather than the commonly used legal phrase ‘trade name.’ (Order at 5, n. 3). The final sentence in the paragraph uses the phrase “trade name” repeatedly, and it clearly defines “Ascent Classical Academy of Douglas County” as a “trade name.” To find otherwise, the Court substituted the general word “name” (which is *never* used alone in the paragraph in question) for the consistent usage of the legal term “trade name,” thus making the legal term “trade name” in that section meaningless. Any rights the Agreement grants to “the name” can only be in the context of its status as a trade name. This

⁴ Indeed, the Court’s later analysis concerning ACACS’s use of other permutations containing “Ascent” necessarily flows from the elimination of this distinction. (See Order at p. 6.)

paragraph, at most, means that the parties intended Ascent to grant to ACACS the right to use “Ascent Classical Academy of Douglas County” *only and specifically* as a trade name, i.e., as an identifier of ACACS’s business and not as a trademark, i.e., as a source identifier for goods or services. *See Standard Oil Co.*, 252 F.2d at 71 n.9; *E.F. Pritchard Co.*, 136 F.2d at 518-19. And Ascent’s *Amended Complaint* further supports this distinction, noting that the rights it has in the Ascent Marks (as that term is defined in the Amended Complaint) are due to its use of them as source identifiers. (Am. Compl. ¶ 295.).

The parties’ intent to carefully allocate rights in intellectual property is highlighted by the section that sets forth those rights. (Agreement, Art. III, §R, pp. 5-7). The parties first allocated rights to curriculum and educational materials based on which party paid for and developed them. The parties then addressed derivative curriculum and educational materials. And finally, Ascent granted a “non-exclusive, non-transferable license” to use Ascent’s owned curriculum and educational materials and addresses payment and use rights post-termination.

After this thorough and detailed allocation of rights and ownership of a variety of curriculum and educational materials, the agreement addressed Ascent’s trademarks and the school’s tradenames both during the Agreements and post-termination. *Id.* Immediately before the above-referenced passage, the first sentence of Ascent’s grant of rights makes mention of **both** a trade name (singular) and trademarks (plural), creating separate categories of intellectual property:⁵

ASCENT grants the School the non-exclusive, non-transferable license to use ASCENT’s trade name **and** any trademark(s), as they now exist or in the future, to promote and advertise the School.

⁵ Again, trademarks and trade names should be distinguished and interpreted according to their technical meanings.

(Agreement, Art. III, §R, p. 6). Ascent then conferred the status of “trade name” upon “Ascent Classical Academy of Douglas County” and provides post-termination rights specifically related to that name, while calling for the reversion of all rights relating to the Ascent Marks (the trademarks). And, most importantly, Ascent specifically retains all of its rights and interests in the Ascent marks: “The School shall acquire no rights in the ASCENT trademarks, and all goodwill of the ASCENT trademarks shall inure to the benefit of and remain with ASCENT.”

Despite the parties’ separate use of “trade name” and “trademark” when allocating intellectual property rights, and despite Ascent’s clear retention of all of its rights in its trademarks, the Court instead simply found that ACACS was granted rights to “the identified name,” and derivatively in Ascent’s trademarks in “Ascent,” “Ascent Classical,” and “Ascent Classical Academy.” First, the “identified name” itself is put in quotes as “Ascent Classical Academy of Douglas County,” signifying that the rights are limited to that very specific combination of words. If the parties wanted to provide ACACS the ability to use other permutations of this specific name, they would have expressed that. Indeed, use of this term, rather than another, shows that the parties did *not* grant rights in the term “Ascent Classical” or “Ascent Classical Academy” under the canon of construction known as *expression unius exclusion alterius*. Under that principle, where one thing is expressed or included it “implies the exclusion of the other, or of the alternative.” See *Ford Motor Co. v. Walker*, 517 P.3d 653, 658 n.3 (Colo. 2022) (quoting Black’s Law Dictionary (11th ed. 2019)).

Second, the Court’s finding is out-of-step with the actual language used in the Agreement, which uses specific legal terms from the Lanham Act, which expresses the

intent of the parties. In fact, under the Court’s ruling, it is not possible to tell exactly what was licensed under this Agreement. The Court has lumped together into a bundle of rights (a nebulous “identified name”) two technical categories of intellectual property which the parties expressly and deliberately parsed.

Finally, as the Court notes and as Ascent alleged in the *Amended Complaint*, Ascent and ACACS entered into multiple management agreements. (Order at p. 3). Each Agreement was essentially identical with the exception of the trade name licensed under each. (*Id.*). For example, Ascent licensed to ACACS the trade name “Ascent Classical Academy of Northern Colorado.” (Am. Compl. ¶ 75). If the parties intended to grant such a broad and irrevocable license to an “identified name,” and intended that to extend to rights to shortened versions of the “identified name” in each agreement, then the parties would have had no reason to include licenses in any subsequent management agreement. Under the Court’s framework, ACACS could have used “Ascent Classical Academy of ...” for *any* school it opened with no restrictions—and a license for those schools would be unnecessary. But the Parties licensed three more trade names after the first management agreement: Ascent Classical Academy of Northern Colorado, Ascent Classical Academy of Grand Junction, and Ascent Classical Academy of 27J. These names were intended to be business identifiers subject to individual licenses with respect to each school—each trade name refers to a different school. This further demonstrates the parties’ intent that the trade name licenses were meant to be granted only with respect to the use of specific trade names for specific schools, and only to be used in their entirety.

Based on the foregoing, the Court committed clear error by not analyzing the Lanham Act designations of “trade name” and “trademark” when determining what was

licensed under the Agreement. It erroneously found that the parties intended ACACS to have a broad and irrevocable license to an “identified name.” This interpretation is contrary to the express language of the Agreement and contrary to the parties’ intent, which was to license “Ascent Classical Academy of Douglas County,” and the other three school names, as trade names to be used in their entirety. The parties’ intent was clear—that Ascent granted to ACACS certain rights to the schools’ trade names that would survive termination, but these rights were limited to the specific school names and did not give ACACS any post termination rights in Ascent’s trademarks. The Court erred in finding that ACACS’s rights in the trade names encompassed shortened versions of those names to include Ascent’s trademarks.

b. Permitting ACACS to retain the schools’ names enables ACACS to avoid the bureaucratic red-tape a name-change would entail.

The Agreement notes in its Recitals that ACACS was granted a charter by the Douglas County School District and is subject to certain laws applicable to Colorado public schools. (ECF No. 23-1 at p. 1). C.R.S. § 22-30.5-104(4)(a) provides that charter schools are administered and governed by the local board of education and must organize as nonprofit corporations under the Colorado Nonprofit Corporation Act. As a registered business and educational institution, ACACS was thus subject to certain regulatory requirements involving the use of its legal name, Ascent Classical Academy of Douglas County (as well as the other trade names addressed in later management agreements).

The grant of the trade name to ACACS avoided a situation where ACACS, upon termination of the Agreement, would need to change its legal name (i.e. its business identifier) with any regulatory authority or business partner, such as a bank or a landlord.

To the extent the Court did not believe there is a purpose to limit ACACS's rights to the specific, and full, trade names, this disabuses the Court of this notion. The structure the parties bargained for means that ACACS does not need to change the school names and deal with the bureaucratic red tape such a name change would entail.

C. The Court's Order resulted in manifest injustice because it removes Ascent's intellectual property.

The result reached by the Court resulted in manifest injustice to Ascent. This Court's interpretation of the Agreement has all but stripped Ascent's ownership of its trademarks and awarded them to ACACS.

Ascent and ACACS were both formed by the same person, Derec Shuler. (Am. Compl. ¶¶ 7-17). The vision for these entities was that Ascent would act as a charter school management organization, and ACACS would be the first of many schools that Ascent would manage. (*Id.* at ¶¶ 10-11). Thus, the same person formed the two entities, for a common purpose.

When the parties entered into the Agreement (the first of the management agreements) in October 2017, they made a detailed and thoughtful allocation of their intellectual property rights. (Agreement, Art. III, § R). They deliberately addressed the curriculum and educational materials and distinguished Ascent's "trademarks" from the school's trade name. (*Id.*). And the Agreement specifically declined to give ACACS any rights in *any* of Ascent's trademarks, while granting ACACS the limited right to use only the school's trade name post termination. This Agreement was repeated for each school the parties opened; each new management agreement contained a license for a specific school name.

For almost the entirety of its relationship with ACACS, Ascent had no reason to believe that ACACS claimed ownership or an unfettered license to the Ascent Marks. Because Ascent always believed it had protectable rights in this intellectual property and believed that it and ACACS were engaged in a common purpose, Ascent spent significant time, money and effort establishing its rights in the Ascent Marks and building brand equity. Since 2017, Ascent has spent more than \$274,000 marketing, advertising and promoting the educational services in association with the Ascent Marks. (Am. Compl. ¶ 291). This spending created brand awareness in Ascent and its work.

While purporting not to rule on ownership, the effect of the Court granting a “broad irrevocable right to use” any permutation of the trade names, including “ASCENT,” “ASCENT CLASSICAL,” and “ASCENT CLASSICAL ACADEMY,” is that the Court has eliminated Ascent’s valuable interest in its trademarks, in which it invested substantial time and money. ACACS made no such investments, yet ACACS stands to reap the benefits from Ascent’s expensive and time-consuming work in building its brand equity. The Court’s ruling also renders the marks essentially unsaleable, as no reasonable purchaser would buy intellectual property subject to such a broad, irrevocable and temporally unlimited license to a third party.

The Court’s Order presented sufficient unfairness and prejudice to Ascent that it is manifestly unjust. And Ascent accordingly moves the Court to reconsider its Order.

IV. CONFERRAL

As required by D.C.COLO.LCivR 7.1, counsel for Plaintiff has conferred with counsel for the Defendants and they oppose the relief sought herein.

V. CONCLUSION

For the foregoing reasons, Ascent respectfully requests that the Court grant this motion, reconsider the findings in its Order, and withdraw its Order granting ACACS's Motion.

Dated: April 1, 2025.

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CERTIFICATE OF SERVICE

I certify that on this 1st day of April, the foregoing was electronically served via CM/ECF on all parties via their counsel of record as follows:

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