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## BLOGS

Post-Termination Injunctions: Noncompetes

# Alabama Federal Court Refuses to Grant Complete Injunction

In *Sylvan Learning, Inc. v. Learning Solutions, Inc.*, 2011 U.S. Dist. LEXIS 64492 (S.D. Ala. June 17, 2011), a federal court in Alabama granted in part and denied in part a preliminary injunction against a licensee for continuing to operate business locations following the licensor's termination of the license agreements. The defendant operated three Sylvan Learning centers under separate license agreements, two in Mississippi and one in Alabama. Richard Blow, a signatory to all the license agreements and partial owner of the defendant entity, was convicted of felony bank fraud. The Alabama license agreement had specific language that any felony conviction by *any signatory* to the agreement was an incurable breach. The Mississippi agreements had less specific language allowing termination of the agreement for "conviction of a Licensee of a felony or misdemeanor relevant to the operation of the Center." Based on the felony convictions, Sylvan terminated the license agreements due to incurable breaches.

In addressing the first factor for preliminary injunctive relief, the judge determined that there was a likelihood of success on the merits in terms of the Alabama agreement, but that Sylvan had not presented valid grounds to terminate the Mississippi agreements because Blow, as a signatory (who had a 50 percent interest in the licensee entity) was not the actual licensee. The court emphasized that the signatory was an individual, not a "licensee" under the agreement, so that there had been no felony conviction of a "licensee" as a basis for terminating the Mississippi agreements. Another clause addressing an "incurable tarnishment" of Sylvan's reputation was determined to be ambiguous and also not applicable to an individual's convictions. The court then extensively addressed, for the Alabama agreement only, the preliminary injunction factor of irreparable injury, and whether there is a presumption of irreparable harm once a plaintiff establishes the likelihood of success on the merits of a trademark infringement claim. As a precaution because of contrary cases, the court also did a specific analysis of the irreparable injury threat, determining that because Sylvan had lost control of its reputation and ability to control the nature and quality of services provided by the infringing defendants, Sylvan did stand to suffer irreparable harm by unauthorized use of the marks.