

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION**

Achieve It, Inc.,

Plaintiff,

vs.

Napoleon Hill Foundation,

Defendant.

Civil Action No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF NON-INFRINGEMENT  
AND DAMAGES**

Plaintiff Achieve It, Inc. (“Plaintiff” or “Achieve It”) files this Complaint against Defendant Napoleon Hill Foundation (“Defendant” or “NHF”) and alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff Achieve It seeks a declaratory judgment of non-infringement of certain alleged trademark rights asserted against Plaintiff by Defendant, the cancellation of Defendant’s invalid and otherwise abandoned trademark registration and damages arising from Defendant’s tortious interference with prospective contractual relations and violations of the South Carolina Unfair Trade Practices Act.

2. NHF’s baseless allegations of trademark infringement are directed at improperly interrupting Achieve It’s business operations and gaining a competitive advantage in the marketplace by improper, unfair and deceptive means.

3. Defendant’s actions have caused and continue to cause injury and damage to Plaintiff Achieve It, including for example, lost sales revenue and market share caused by Defendant’s wrongful interruption of sales of Achieve It’s product.

### **THE PARTIES**

4. Achieve It is a corporation formed and existing under the laws of the State of Delaware with its principal office at 1208 N. Main Street, Anderson, South Carolina 29621.

5. Upon information and belief, NHF is a non-profit corporation formed and existing under the laws of the State of South Carolina, with a principal office located in Wise, Virginia.

### **JURISDICTION**

6. This Court has jurisdiction over this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Trademark Laws of the United States (15 U.S.C. § 1051, *et seq.*). This Court has supplemental jurisdiction over the remaining claims in this action pursuant to 28 U.S.C. § 1367.

7. Upon information and belief, Defendant NHF intentionally and purposefully directs its products such that the same will be sold and are sold in the State of South Carolina, including within this district.

8. Upon information and belief, pursuant to the U.S. Constitution and S.C. Code §§ 36-2-802 and 36-2-803, this Court has personal jurisdiction over NHF because it is organized and exists under the laws of South Carolina and NHF has directly or indirectly transacted business within the State of South Carolina, by actions which include offering to sell, shipping, distributing and/or selling products, directly or through intermediaries in South Carolina.

### **FACTUAL BACKGROUND**

9. For more than 10 years, Achieve It has marketed, used, offered for sale and sold the book entitled *Think and Grow Rich!* bearing ISBN- 10: 0990797600 (the “Book”).

10. Achieve It's Book is an annotated version of the public domain work entitled "Think and Grow Rich" which was written in or about 1937 by an individual named Napoleon Hill (the "1937 Work").

11. Upon information and belief, the copyright associated with the 1937 Work expired more than 50 years ago and the 1937 Work, including its title, is within the public domain.

12. The right to copy the original 1937 Work and the right to utilize the title "Think and Grow Rich" with any publication of that book is a public right because the 1937 Work is within the public domain.

13. Defendant is the owner of U.S. Trademark Registration No. 3,985,602 ("the '602 Registration")<sup>1</sup> for the mark THINK AND GROW RICH for a series of non-fiction books in the fields of self-development, self-improvement and personal achievement.

14. The '602 Registration did not issue until June 28, 2011, several decades after the right to copy the original 1937 Work and the right to utilize the title "Think and Grow Rich" with any publication of the 1937 Work became a public right.

15. NHF has alleged that Achieve It is infringing the trademark that is the subject of the '602 Registration.

16. Achieve It denies that it has infringed any trademark owned by NHF, including the '602 Registration.

17. Notwithstanding that the right to copy the original 1937 Work and the right to utilize the title "Think and Grow Rich" with any publication of the 1937 Work are public rights,

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<sup>1</sup> The '602 Registration is included herewith as Exhibit 1.

in or about May of 2016, NHF submitted a notice of alleged trademark infringement to Amazon.com, Inc. asserting that Achieve It's Book infringed the '602 Registration.

18. As a result of NHF's actions, including the submission of a notice of alleged trademark infringement to Amazon.com, Inc., Achieve It's Book was removed from Amazon.com in or about May of 2016 and is no longer offered for sale or sold by Amazon.com.

19. Amazon.com has indicated that Achieve It's Book will not be reinstated to and offered for sale by Amazon.com until NHF's notice of alleged trademark infringement is "resolved" or NHF "withdraw[s]" its claim.

20. NHF has failed or refused to withdraw its baseless notice of alleged trademark infringement related to Achieve It's Book.

21. Prior to the time that Achieve It's Book was removed from Amazon.com, Achieve It's Book was consistently ranked as the Number 1 or Number 2 seller on Amazon.com under the title "Think and Grow Rich" and was also the first or second book identified in the "search results" on Amazon.com when a search was performed for the title "Think and Grow Rich."

22. Defendant has improperly asserted, utilized and relied upon the '602 Registration to cause third party retailers and/or distributors, including Amazon.com, to cease sales of Achieve It's Book.

23. NHF's actions have caused and continue to cause injury and damage to Achieve It, including for example, lost sales revenue and market share caused by Defendant's wrongful interruption of sales of Achieve It's Book.

24. NHF's allegations of trademark infringement are an improper effort to interfere with Plaintiff's business, interrupt Achieve It's business operations and cause retailers and

consumers to stop selling, purchasing or entering into contracts with Achieve It to purchase its Book and constitute an improper effort by NHF to gain a competitive advantage in the marketplace by improper, unfair and deceptive means.

25. Achieve It has and continues to suffer damages as a direct and proximate result of NHF's aforementioned unfair and deceptive acts.

26. By virtue of all the foregoing circumstances, there is an immediate, real and justiciable controversy that exists between Achieve It and NHF, regarding Achieve It's right to make and sell its Book and utilize the public domain title "Think and Grow Rich," free of an allegation by NHF that such conduct constitutes an infringement of the '602 Registration or any other trademark rights allegedly owned by NHF or free of any threat of legal action by NHF concerning the making, marketing and/or sale of Achieve It's Book.

27. Under the circumstances alleged herein, a substantial controversy exists between Achieve It and NHF of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the parties' adverse legal interests with respect to Achieve It's Book and the right to utilize the public domain title "Think and Grow Rich."

28. Under the circumstances alleged herein, a substantial controversy exists between Achieve It and NHF of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the parties' adverse legal interests with respect to the '602 Registration, and any other registered or unregistered claimed trademark owned by NHF for the designation "Think and Grow Rich" (collectively the "Alleged Trademarks").

29. The Court may and should exercise its broad discretion to adjudicate this action under the Declaratory Judgment Act.

**COUNT 1**

**First Cause of Action: Declaratory Judgment of Non-Infringement**

30. Achieve It incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

31. Defendant NHF has clearly alleged that the marketing, use and sale of Achieve It's Book which includes the title, *Think and Grow Rich!*, would be and is an infringement of NHF's Alleged Trademarks, including the '602 Registration.

32. For the purposes of trademark law, the title of a single work or book serves to identify only that work or book but does not function to identify the source of that work or book.

33. Achieve It's use of the title, *Think and Grow Rich!*, only identifies the Book and does not function to identify the source of the Book.

34. Achieve It's use of the title, *Think and Grow Rich!*, with its single Book, is not likely to cause confusion or mistake among customers that Achieve It's Book originates with NHF, or that Achieve It is affiliated with or endorsed by NHF.

35. The use of the title, *Think and Grow Rich!*, to market and sell Achieve It's Book, does not infringe the statutory rights accorded to the '602 Registration or any other Alleged Trademark, does not constitute unfair competition and does not dilute any trademark owned by NHF.

36. Plaintiff is entitled to a declaratory judgment that by making, selling, advertising or otherwise using the title, *Think and Grow Rich!*, with its single Book, Achieve It is not infringing, has not infringed, and is not liable for infringing the '602 Registration or any other Alleged Trademark owned by NHF, either directly or by inducing others to infringe or by contributing to infringement by others.

**COUNT 2**

**Second Cause of Action: Declaratory Judgment of Non-Infringement  
(The Title “Think and Grow Rich” is Within the Public Domain)**

37. Achieve It incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

38. Achieve It’s Book is an annotated version of the public domain work entitled “Think and Grow Rich” which was written in or about 1937 (the “1937 Work”).

39. Upon information and belief, the copyright associated with the 1937 Work expired more than 50 years ago. As a result, the 1937 Work, including its title “Think and Grow Rich,” is within the public domain.

40. The right to copy the 1937 Work and the right to utilize the title “Think and Grow Rich” with any publication of that book is a public right.

41. Plaintiff is entitled to a declaratory judgment that the right to utilize the title “Think and Grow Rich” with any publication of the 1937 Work is a public right and therefore, by making, selling, advertising or otherwise using the title, *Think and Grow Rich!*, with its Book, Achieve It is not infringing, has not infringed, and is not liable for infringing the ‘602 Registration or any other Alleged Trademark owned by NHF, either directly or by inducing others to infringe or by contributing to infringement by others.

**COUNT 3**

**Third Cause of Action: Unfair Trade Practices  
(S.C. Code Ann. § 39-5-20, *et seq.*)**

42. Achieve It incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

43. At all times relevant herein, NHF has engaged in business which comprises, *inter alia*, distributing and selling books, including within South Carolina.

44. NHF has engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

45. NHF's above-described activities, including improperly asserting, utilizing and relying upon the '602 Registration to attempt to preclude the use of a title that is within the public domain and to cause the third party retailer, Amazon.com, to cease sales of Achieve It's Book, and other acts by NHF to be shown through the course of discovery constitute unfair and deceptive practices in the conduct of Defendant's trade.

46. NHF's above-described acts are capable of repetition and adversely affect the public interest, including the public interest to have access to, utilize, publish and copy books or works which have fallen into the public domain and the public interest to utilize the titles thereof.

47. NHF knew or should have known that its conduct was in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20, *et seq.*

48. As a direct, foreseeable and proximate result of NHF's unfair trade practices, Achieve It has suffered and will continue to suffer significant damage, including for example, lost sales revenue.

**COUNT 4**  
**Fourth Cause of Action: Tortious Interference with  
Prospective Contractual Relations**

49. Achieve It incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

50. Retailers of Achieve It's Book, including Amazon.com, recurrently and systematically enter into contracts with or issue purchase orders for the purpose of purchasing and re-selling Achieve It's Book, such that this Book may be offered for sale and sold in retail

locations throughout the United States, including South Carolina, and throughout the United States via the internet.

51. NHF has intentionally interfered with Achieve It's potential future contractual relations with its retailers, including Amazon.com, by improperly asserting, utilizing and relying upon the '602 Registration to interrupt Achieve It's business operations and cause retailers to stop selling, purchasing or entering into contracts with Achieve It to purchase its Book.

52. Upon information and belief, NHF has interfered with Achieve It's potential future contractual relations with retailers, including Amazon.com, to allow NHF to obtain a competitive advantage in the marketplace by improper, unfair and deceptive means.

53. As a direct, foreseeable and proximate result of NHF's interference with Achieve It's potential contractual relations, Achieve It has suffered and will continue to suffer significant damage, including for example, lost sales revenue.

**COUNT 5**

**Fifth Cause of Action: Cancellation of U.S. Trademark Registration No. 3,985,602  
(Generic - 15 U.S.C. §§ 1064 and 1119)**

54. Achieve It incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

55. The '602 Registration should be cancelled pursuant to 15 U.S.C. §§ 1064 and 1119 because the alleged trademark is merely the title of a book in the public domain and is therefore generic as a matter of law.

56. The '602 Registration was issued for the mark THINK AND GROW RICH for a series of non-fiction books in the fields of self-development, self-improvement and personal achievement.

57. The mark THINK AND GROW RICH is not an arbitrary mark to designate a series of books, rather the mark is merely the title of one or more of the books in NHF's purported series.

58. The mark THINK AND GROW RICH denotes only the title of one or more books and does not denote the source thereof.

59. The '602 Registration is generic within the meaning of Section 14 of the Lanham Act (15 U.S.C. § 1064) and is not entitled to protection as and cannot legally function as a trademark for a series of books. The '602 Registration, must be cancelled pursuant to Section 37 of the Lanham Act (15 U.S.C. § 1119).

**COUNT 6**

**Sixth Cause of Action: Cancellation of U.S. Trademark Registration No. 3,985,602  
(Abandonment)**

60. Achieve It incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

61. The '602 Registration is invalid and should be cancelled pursuant to 15 U.S.C. §§ 1064 and 1119 because NHF has abandoned its alleged trademark by failing to adequately police its alleged trademark and by failing to control the nature and quality of the products sold under the alleged trademark.

62. Upon information and belief, for at least a decade, including during the years since the '602 Registration issued, countless unrelated companies and individuals have used the designation "Think and Grow Rich," including as the title of a book or as part of the title of a book.

63. Upon information and belief, NHF has been aware of Achieve It's publication of its Book and the use of "Think and Grow Rich" for more than a decade. Despite such

knowledge, for more than a decade NHF did not object to or made any effort to police or control Achieve It's use of the designation "Think and Grow Rich."

64. NHF's first and only effort to police or control Achieve It's use of the designation "Think and Grow Rich" occurred in or about May of 2016, when NHF submitted a notice of alleged trademark infringement to Amazon.com, Inc.

65. A simple search of Amazon.com reveals more than fifty (50) books or other products being sold by unrelated entities with or using the designation "Think and Grow Rich" with their products, including as the title of a book or as part of the title of a book.

66. NHF has failed to take action, much less adequate action or legal action, to police the use of its alleged trademark by other companies and individuals, despite NHF's knowledge of other companies' or individuals' use of the designation and alleged trademark "Think and Grow Rich" with their products, including as the title of a book or as part of the title of a book.

67. NHF's failure to take action to police the use of its alleged trademark by others and the use of the designation "Think and Grow Rich" by countless other unrelated companies or individuals has become so widespread that the public does not associate the mark THINK AND GROW RICH with NHF.

68. The '602 Registration has been abandoned by NHF within the meaning of Section 14 of the Lanham Act (15 U.S.C. § 1064) and is not entitled to protection as and cannot legally function as a trademark. The '602 Registration, must be cancelled pursuant to Section 37 of the Lanham Act (15 U.S.C. § 1119).

### **Request for Relief**

Wherefore, Achieve It respectfully requests the entry of judgment against Defendant NHF providing the following relief:

A. Finding that Achieve It is not infringing, has not infringed, and is not liable for infringing the '602 Registration or any other Alleged Trademark owned by NHF, either directly or by inducing others to infringe or by contributing to infringement by others by making, selling, advertising or otherwise using Achieve It's Book and using the title, *Think and Grow Rich! The Original Version, Restored and Revised*;

B. Finding that the right to utilize the title "Think and Grow Rich" with any publication of the 1937 Work is a public right and therefore, by using the title, *Think and Grow Rich! The Original Version, Restored and Revised*, with Achieve It's Book, Achieve It is not infringing, has not infringed, and is not liable for infringing the '602 Registration or any other Alleged Trademark owned by NHF, either directly or by inducing others to infringe or by contributing to infringement by others;

C. Awarding Plaintiff damages in an amount that will be proved at trial and that will adequately compensate Plaintiff for Defendant's violation of the S.C. Unfair Trade Practices Act;

D. Awarding Plaintiff damages in an amount that will be proved at trial and that will adequately compensate Plaintiff for Defendant's tortious interference with Plaintiff's prospective contractual relations;

E. Increasing the damages awarded to Plaintiff up to three times the amount of Plaintiff's actual damages, costs and attorneys' fees as authorized by S.C. Code Ann. § 39-5-20, *et seq.*;

F. Finding that this is an exceptional case and awarding Plaintiff its attorneys' fees and other expenses of litigation pursuant to 15 U.S.C. § 1117 and/or other applicable laws;

G. Awarding Plaintiff prejudgment interest;

H. Finding that the trademark THINK AND GROW RICH is generic and further finding that the '602 Registration must be cancelled;

I. Finding that the '602 Registration has been abandoned within the meaning of Section 14 of the Lanham Act (15 U.S.C. § 1064) and therefore, must be cancelled pursuant to Section 37 of the Lanham Act (15 U.S.C. § 1119); and

J. Granting such other legal and equitable relief that the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all those issues so triable to a jury.

This the 30<sup>th</sup> day of November, 2016.

Respectfully submitted,

s / Jason A. Pittman  
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