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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

NOBLE ROMAN’S, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:14-cv-500
	)	
SAHARA SAM’S INDOOR WATER	)	
PARK, LLC,	)	
	)	<b>JURY TRIAL DEMANDED</b>
Defendant.	)	

**COMPLAINT FOR DAMAGES**

Plaintiff, Noble Roman’s, Inc., for its claim for relief against the Defendant, Sahara Sam’s Indoor Water Park, LLC, alleges and states:

**I. Parties**

1. Plaintiff, Noble Roman’s, Inc. (“Noble Roman’s”), is an Indiana corporation with its principal place of business located in Indianapolis, Marion County, Indiana.

2. Noble Roman’s is in the business of franchising the operation of Noble Roman’s pizza franchises that feature pizza, breadsticks, Tuscano’s Italian Style Subs®, featuring submarine sandwiches and wraps, and other related food items to various franchisees throughout the world.

3. Defendant, Sahara Sam’s Indoor Water Park, LLC (“Sahara”), a New Jersey Limited Liability Company with its principal place of business in Pennsauken, New Jersey. Sahara is believed to be a citizen of New Jersey.

## **II. Jurisdiction and Venue**

4. Noble Roman's brings this action pursuant to 15 U.S.C. §§ 1114 and 1125 and under common law.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332(a)(2), 1337 and 1338. The parties are diverse in citizenship pursuant to 28 U.S.C. § 1332 and the amount in controversy, exclusive of interest and costs, is in excess of \$75,000.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Indiana. In addition, the parties have agreed in Section XIX.G of the Agreements referenced herein to submit any disputes arising thereunder to a court in Indianapolis, Indiana.

7. The Court has personal jurisdiction over Sahara under Fed. R. Civ. Pr. 4(k)(1)(A) and Indiana Trial Rule 4.4(A).

## **III. Facts Applicable to All Claims**

8. Noble Roman's registered the Noble Roman's® word mark on the Principal Register of the United States Patent and Trademark Office in 1974 under Registration No. 987,069, THE BETTER PIZZA PEOPLE® word mark in 1995 under Registration No. 1,920,428, and the design mark:



on the Principal Register of the United States Patent and Trademark Office in 1992 under Registration No. 1682308. Noble Roman's has also registered the Tuscano's® mark on the

Principal Register. The registrations of such marks (“the Marks”) are valid and incontestable and enjoy the statutory presumptions of validity and ownership.

9. Noble Roman’s has used the Marks in commerce continuously since 1972 in connection with marketing, identifying, and promoting its pizza franchises.

10. On or about June 27, 2005, Noble Roman’s and Sahara entered into two Franchise Agreements (the “Agreements”), true and accurate copies of which are attached hereto as Exhibits “A” and “B”. Under the terms of the Agreements, Sahara became a franchisee of Noble Roman’s licensed and authorized to sell “Noble Roman’s” and “Tuscano’s” branded food products using Noble Roman’s licensed intellectual property assets, subject to the obligations in the Agreements, including but not limited to accurate reporting of sales and timely payment of franchise and other fees.

11. Sahara has breached the Agreements by failing to pay royalties as required under the Agreement and by misreporting sales, among other things.

12. Sahara has purposely, intentionally and knowingly misreported its sales to Noble Roman’s for the purpose of avoiding payment of franchise fees and/or royalties which are justly owing.

13. Sahara elected not to renew the Agreements, effective as of March 19, 2014. However, Sahara has violated certain post-termination provisions of the Agreements, including but not limited to those which require Sahara to: (1) cease to use any Noble Roman’s proprietary products; and (2) remove from public view and display any signage or other articles containing or depicting the Marks.

14. Sahara is in violation of the non-competition covenants contained in Section X of the Agreements to the extent modified by Paragraph 6 of the Amendment thereto, copies of

which are attached hereto and marked as Exhibit “C” and Exhibit “D”, in that Sahara has sold, after termination of the Agreements, pizza, sandwiches, salads, and soups that are not associated with an existing pizza or sandwich concept, which can be utilized without knowledge gained from Noble Roman’s.

#### **IV. Count One (Trademark Infringement)**

15. Noble Roman’s incorporates herein by reference the allegations in paragraphs 1-14 in this Complaint as if fully alleged herein.

16. Sahara has used the Marks in commerce and in connection with the sale of non-Noble Roman’s pizza and other menu items, and/or products configured with an unauthorized combination of approved and non-approved ingredients.

17. Sahara’s use of the Marks is without the authorization or consent of Noble Roman’s, and outside the scope of permission granted in the Agreement.

18. Sahara’s acts constitute trademark infringement, a violation of 15 U.S.C. § 1114(1), as well as a false designation of origin in violation of 15 U.S.C. § 1125.

19. Noble Roman’s has been damaged by Sahara’s willful infringement and false designation of origin in an amount to be proven at trial.

#### **V. Count One (Breach of Contract)**

20. Noble Roman’s incorporates herein by reference the allegations in paragraphs 1-19 in this Complaint.

21. All conditions precedent to the commencement of this action including but not limited to any requirements for notice of default or demand have occurred or been waived or otherwise excused.

22. The Agreements are valid and enforceable contracts between the parties in that the covenants violated by Sahara survive termination of the Agreements.

23. Noble Roman's has performed all obligations and terms of the Agreements on its part to be performed.

24. Sahara knowingly breached the Agreements by failing to report all of its sales to Noble Roman's for the purpose of avoiding payment of franchise fees and/or royalties which are justly owing.

25. Noble Roman's has been damaged by Sahara's breach of the Agreements in an amount to be proven at trial, and in excess of \$75,000.

26. Under the terms of the Agreements, in addition to compensatory damages for breach of the Agreements, Sahara is liable for interest, costs of collection, and reasonable attorney fees.

#### **VI. Count Two (Fraud)**

27. Noble Roman's incorporates herein by reference the allegations in paragraphs 1-26 in this Complaint.

28. As a result of Sahara's intentional and willful misreporting of its sales to Noble Roman's, Sahara is liable for punitive or exemplary damages in an amount sufficient to punish Sahara and deter similar conduct in the future.

#### **VII. Count Three (Injunctive Relief)**

29. Noble Roman's incorporates herein by reference the allegations in paragraphs 1-28 in this Complaint.

30. Noble Roman's is being irreparably harmed by Sahara's violations of trademark law, false designation of origin, and breach of the non-competition covenants in the Agreements.

31. The post-termination restrictive covenants in the Agreements are valid and enforceable under applicable law.

32. Noble Roman's has no remedy at law as effective and efficient as an injunction entered by this court of equity.

33. The balance of equities and public interest favor the entry of an injunction prohibiting Sahara's violations of trademark law, false designation of origin and violation of the non-competition covenants in the Agreements.

**WHEREFORE**, Plaintiff, Noble Roman's, Inc., by counsel prays for judgment in its favor and against the Defendant, Sahara Sam's Indoor Water Park, LLC, in amount to be proven at trial, together with interest, punitive damages, cost of collection and reasonable attorney fees, for an injunction against Sahara's continuing trademark infringement, false designation of origin and unlawful competition, and for all other relief right and proper in the premises.

Dated this 1<sup>st</sup> day of April, 2014.

Respectfully submitted,

/s/ Steven K. Huffer

Steven K. Huffer, Atty. No. 8459-49

S.K. HUFFER & ASSOCIATES, P.C.

12821 East New Market Street, Suite 250

Carmel, IN 46032

Telephone: (317) 564-4808

Facsimile: (317) 564-4812

Email: [steveh@hufferlaw.com](mailto:steveh@hufferlaw.com)

*Attorney for Plaintiff, Noble Roman's, Inc.*

**DEMAND FOR JURY TRIAL**

Noble Roman's demands a jury trial for all issues that may be tried to a jury.

Respectfully submitted,

Date: April 1, 2014

/s/ Steven K. Huffer

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Steven K. Huffer (IN Atty. No. 8459-49)  
S.K. HUFFER & ASSOCIATES, P.C.  
12821 East New Market Street, Suite 250  
Carmel, IN 46032  
Phone: 317-564-4808  
Fax: 317-564-4812  
Email: [steveh@hufferlaw.com](mailto:steveh@hufferlaw.com)  
*Attorney for Plaintiff, Noble Roman's, Inc.*