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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION**

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**SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK**

ORDER INN, INC., a Nevada corporation,
Plaintiff,
vs.
TJ ENTERPRISES OF INDIANA, LLC D.B.A.
ORDER IN, an Indiana limited liability company;
TOM GANSER, an individual; and DOES 1
through 10, inclusive,
Defendants.

Case No.:

COMPLAINT

JURY DEMAND

1 : 14 -cv- 0517 TWP -DKL

Order Inn, Inc. a Nevada corporation (“Plaintiff”), alleges against TJ Enterprises of Indiana, LLC, d.b.a. Order In, an Indiana limited liability company, and Tom Ganser, an individual (collectively herein, the “Defendants”), as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 (actions arising under the Federal Trademark Act) and 28 U.S.C. 1338(a) (acts of Congress relating to trademarks).

2. This Court has personal jurisdiction over Defendant TJ Enterprises of Indiana, LLC, d.b.a. Order In (“TJE”) because said Defendant does business in this Judicial District.

3. This Court has personal jurisdiction over Defendant Tom Ganser because said Defendant resides in this Judicial District and upon information and belief, directs, controls, ratifies, participates in, and is the moving force behind the alleged infringing activities by TJE occurring in this Judicial District.

4. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

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THE PARTIES

5. Plaintiff Order Inn, Inc. is a Nevada corporation with its principal place of business in Las Vegas, Nevada.

6. Upon information and belief, Defendant TJE is an Indiana limited liability company having its principal place of business in Carmel, Indiana, and has registered to do business under the assumed name Order In.

7. Upon information and belief, Defendant Tom Ganser is an Indiana resident and an owner, member, director, officer and/or manager of TJE, and personally directed, controlled, ratified, participated in, and/or authorized the infringing and tortious activities described herein. Unless otherwise specifically stated, any references to Tom Ganser or Defendant Tom Ganser herein shall refer to Defendant Tom Ganser both in his individual capacity as well as in his capacity as an owner, member, director, officer and/or manager of Defendant TJ Enterprises of Indiana, LLC, d.b.a. Order In.

8. The true names and capacities of the defendants named herein as DOES 1 through 10 are other parties or entities who are not currently known to Plaintiff which are liable to Plaintiff for the damages complained of herein. Therefore Plaintiff sues said defendants, whether individuals, corporations, or another type of entity by these fictitious names. Plaintiff will seek leave of this court to amend its complaint to include the actual names of said defendants when their identities are determined during the course of this litigation. Plaintiff incorporates by reference herein all paragraphs of this complaint against said unknown defendants.

NATURE OF THE CASE

9. This is an action for registered trademark infringement and false designation of origin under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. §1114(1) and 15 U.S.C. §1125(a)).

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ALLEGATIONS COMMON TO ALL CLAIMS

Plaintiff's Rights to ORDER INN

10. Plaintiff is the owner of the following incontestable U.S trademark registrations for the mark ORDER INN (the "ORDER INN Mark") in connection with the described services:

- U.S. Trademark Registration No. 3,194,903 for the mark ORDER INN in connection with "On-line ordering services in the field of restaurant take-out and delivery; on-line order fulfillment services for goods and services which hotel guests, residents or businesses may wish to purchase; promoting the goods and services of others by preparing and placing advertisements in menus placed in hotels, residences or businesses; providing information in the field of on-line restaurant ordering services" (in International Class 35) and "Restaurant services provided in relation to restaurant ordering services" (in International Class 43) registered by the U.S. Patent and Trademark Office on January 2, 2007; and
- U.S. Trademark Registration No. 2,801,951 for the mark ORDER INN in connection with "food delivery services provided to hotel guests, businesses" (in Class 39) registered by the U.S. Patent and Trademark Office on January 6, 2004.

11. Since at least as early as November 2000, Plaintiff (or its predecessors-in-interest) has used the ORDER INN Mark in connection with providing online food/restaurant menus and ordering information; providing food ordering, delivery, and catering services; and promoting the services of third party food providers through in-room menus as well as online through its website <www.orderinn.com> (the "Order Inn Services" or "Plaintiff's Services").

12. As one aspect of Plaintiff's Services, Plaintiff serves as a broker or intermediary between a customer and a restaurant. When a customer places a food order with Plaintiff via an in-room menu placed in Plaintiff's hotel partners or via Plaintiff's on-line menu, the order is then fulfilled via one of Plaintiff's restaurant partners.

13. Plaintiff has spent considerable time, effort and money to advertise, promote, and market the ORDER INN Mark in connection with Plaintiff's Services throughout the United

States, including through the development of strategic partnerships with over 10000 hotels and over 700 restaurants nationwide, including exclusive contracts with numerous nationwide hotel chains.

14. By virtue of Plaintiff's extensive, continuous, and exclusive use of the ORDER INN Mark in connection with Plaintiff's Services, Plaintiff's ORDER INN Mark has come to be recognized and relied upon by consumers as identifying Plaintiff's Services and distinguishing Plaintiff's Services from similar services offered by others.

15. By virtue of Plaintiff's extensive, continuous, and exclusive use of the ORDER INN Mark in connection with Plaintiff's Services, Plaintiff's ORDER INN Mark has become distinctive and exclusively associated with Plaintiff's Services.

16. By virtue of Plaintiff's extensive, continuous, and exclusive use of the ORDER INN Mark in connection with Plaintiff's Services, Plaintiff has developed substantial goodwill in the ORDER INN Mark throughout the United States and as a result, the ORDER INN Mark has come to be associated exclusively with Plaintiff and the Order Inn Services.

Defendants' Infringing Activities

17. Upon information and belief, Defendants, long after Plaintiff's registration of the ORDER INN Mark in connection with the Order Inn Services, began using (and are still continuing to use to the present day) the mark ORDER IN (the "Infringing Mark") in connection with providing online restaurant menus, restaurant food ordering services, and food delivery services (the "Infringing Services").

18. Upon information and belief, as part of the Infringing Services, Defendants are acting as a broker or intermediary between customers and restaurants. When a customer places a food order with Defendants via Defendants' website **www.order-in.biz**, the order is fulfilled via one of Defendant's restaurant partners. Upon information and belief, Defendants have also placed its menus in the rooms of certain hotels to allow guests of such hotels to order food using Defendants' services.

19. Upon information and belief, Defendants are promoting the Infringing Services

using the Infringing Mark on Defendants' website **www.order-in.biz**, through menus placed in the rooms of hotels and motels, as well as other social media accounts including Facebook and Twitter.

20. The Infringing Mark is nearly identical in appearance to the ORDER INN Mark, and thus likely to be confused with Plaintiff's own services marketed using the ORDER INN Mark.

21. Upon information and belief, the nature of Defendants' Infringing Services is identical and/or similar to the type of services offered by Plaintiff under the ORDER INN Mark.

22. Upon information and belief, Defendants' Infringing Mark will be perceived as the same as Plaintiff's ORDER INN Mark by consumers who are likely to believe that the source and origin of the Infringing Services emanate from or are sponsored by or affiliated with Plaintiff.

23. Upon information and belief, Defendants' use of the Infringing Mark in connection with Defendants' Infringing Services has caused actual confusion, including reverse confusion, among consumers who mistakenly believe that Defendants' Infringing Services are affiliated with, connected to, or associated with Plaintiff's Services marketed under the ORDER INN Mark.

24. Specifically, Plaintiff has contacted numerous restaurants in the vicinity of the Defendants' business regarding such restaurant's interest in using Plaintiff's services. In a number of those instances, the contacted restaurant was already using Defendants' services, such that the restaurant initially believed that the Plaintiff was the Defendants as a result of the restaurant not being able to distinguish between the Plaintiff and the Defendants because of the similarity of the Infringing Mark to Plaintiff's Mark and the similarity of the services offered by Plaintiff and Defendants under their respective marks.

25. Upon information and belief, Defendants' have continued to use the Infringing Mark in connection with Defendants' Infringing Services despite having both constructive notice and actual notice of Plaintiff's rights to the ORDER INN Mark in connection with Plaintiff's

Services.

26. Upon information and belief, Defendants' continued use of the Infringing Mark to identify the Infringing Services has been done willfully, intentionally, and deliberately with full knowledge and willful disregard of Plaintiff's prior established rights in the ORDER INN Mark with respect to Plaintiff's Services.

27. Unless enjoined by this Court, Defendants' continued use of the Infringing Mark in connection with Defendants' Infringing Services is likely to continue causing consumers to be confused, mistaken, or deceived as to the affiliation, connection or association of Defendants' Infringing Services with Plaintiff and as to the origin, sponsorship, or approval of Defendants' Infringing Services by Plaintiff.

FIRST CLAIM FOR RELIEF

(Federal Trademark Infringement Under 15 U.S.C. §1114)

28. Plaintiff hereby realleges and incorporates by reference the allegations of each of the paragraphs of this Complaint as if fully set forth herein.

29. This is a claim for trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

30. Defendants' Infringing Mark is a colorable imitation of Plaintiff's federally registered ORDER INN Mark and Defendants' use of the Infringing Mark in connection with the advertising and promotion of the Infringing Services is without permission, authority or consent of the Plaintiff and said use is likely to cause confusion, to cause mistake and/or to deceive, including reverse confusion.

31. Defendants' use of the Infringing Mark in connection with the advertising and promotion of the Infringing Services has been made willfully and deliberately notwithstanding Plaintiff's well-known and prior established rights in its federally registered ORDER INN Mark and with both actual and constructive notice of Plaintiff's federal registration rights under 15 U.S.C. §1072.

32. Defendants' infringing activities have caused and, unless enjoined by this Court,

will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation and goodwill in its federally registered ORDER INN Mark for which Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(False Designation of Origin and Unfair Competition under 15 U.S.C. § 1125(a))

33. Plaintiff hereby realleges and incorporates by reference the allegations of each of the paragraphs of this Complaint as if fully set forth herein.

34. This is a claim for false designation of origin and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

35. Defendants' use of the Infringing Mark constitutes a false designation of origin, a false or misleading description and representation of fact which is likely to cause confusion, including reverse confusion, and to cause mistake, and to deceive as to the affiliation, connection or association of Defendants with Plaintiff and as to the origin, sponsorship, or approval of Defendants' Infringing Services and commercial activities by Plaintiff.

36. Upon information and belief, Defendants' selection and use of a mark that is confusingly similar to Plaintiff's ORDER INN Mark in connection with Defendants' Infringing Services was done willfully, intentionally, and deliberately with full knowledge and willful disregard of Plaintiff's well-known and prior established rights in the ORDER INN Mark.

37. As a direct and proximate result of Defendants' false designation of origin and unfair competition, Plaintiff has suffered, and unless enjoined by this Court will continue to suffer, monetary loss and irreparable injury and other damage to Plaintiff's business, reputation and goodwill in Plaintiff's ORDER INN Mark for which Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

A. That the Court enter judgment in favor of Plaintiff and against the Defendants on all claims for relief alleged herein;

B. That a preliminary and permanent injunction issue pursuant to Section 34 of the Lanham Act (15 U.S.C. §1116) enjoining and restraining the Defendants and their respective owners, parent companies, subsidiary companies, related companies, successors, assigns, officers, directors, agents, employees and attorneys, and all persons or entities in active concert, participation, or privity with any of them, from using, on or in connection with the manufacture, sale, importation, exportation, purchase, order, offer for sale, distribution, transmission, advertisement, display and promotion of any products or services, the ORDER INN Mark or other marks that are confusingly similar to the ORDER INN Mark, including but not limited to the Infringing Mark in connection with the Infringing Services as well as related goods and services;

C. That Defendants be directed to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth in detail the manner and form in which the Defendants have complied with the injunction pursuant to 15 U.S.C. §1116;

D. That Defendants be required to account to Plaintiff for any and all profits derived by Defendants and all damages sustained by Plaintiff by virtue of the actions of the Defendants complained of herein;

E. That Defendants be ordered to pay over to Plaintiff any and all profits derived by Defendants and all damages which Plaintiff has sustained as a consequence of the actions of the Defendants complained of herein pursuant to 15 U.S.C. §1117, subject to proof at trial;

F. That the damages resulting from the actions of the Defendants complained of herein be trebled pursuant to 15 U.S.C. §1117 and awarded to Plaintiff;

G. That an award of interest, costs, and attorneys' fees incurred by Plaintiff in prosecuting this action be awarded to Plaintiff; and

H. That Plaintiff be awarded all other relief to which Plaintiff is entitled and such other and further relief as this Court may deem just.

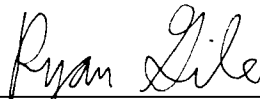
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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues raised in the Complaint which are triable by a jury.

DATED this 3rd day of April, 2014.

Respectfully Submitted,



WEIDE & MILLER, LTD.

Ryan Gile, Esq.

(pro hac vice admission to be submitted)

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