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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN**

Texas Roadhouse, Inc. and Texas)	
Roadhouse Delaware LLC,)	
)	
Plaintiffs,)	
)	
vs.)	
)	Case No.:
Texas Corral Restaurants, Inc.; Switzer)	
Properties, LLC; Texcor, Inc.; Texas Corral)	
Restaurant II, Inc.; T.C. of Michigan City,)	
Inc.; T.C. of Kalamazoo, Inc.; Chicago)	
Roadhouse Concepts, LLC; Paul Switzer;)	
Victor Spina; and John Doe Corp.,)	
)	
Defendants.)	

COMPLAINT

Texas Roadhouse, Inc. and Texas Roadhouse Delaware LLC (collectively, "Texas Roadhouse"), for their Complaint against Texas Corral Restaurants, Inc., Switzer Properties, LLC, Texcor, Inc., Texas Corral Restaurant II, Inc., T.C. of Michigan City, Inc., T.C. of Kalamazoo, Inc., Chicago Roadhouse Concepts, LLC, Paul Switzer, Victor Spina, and John Doe Corp. (collectively "Texas Corral"), allege as follows:

Parties

1. Plaintiff Texas Roadhouse, Inc. is a Delaware corporation having its principal place of business in Louisville, Kentucky.
2. Plaintiff Texas Roadhouse Delaware LLC is a Delaware limited liability company having its principal place of business in Louisville, Kentucky.
3. Upon information and belief, defendant Texas Corral Restaurant II, Inc. owns and operates a Texas Corral restaurant located at 1830 Pipestone Road, Benton Township, Michigan

49022. Upon information and belief, defendant Paul Switzer is the owner of Texas Corral Restaurant II, Inc.

4. Upon information and belief, defendant T.C. of Kalamazoo, Inc. owns and operates a Texas Corral restaurant located at 5519 W. Main Street, Kalamazoo, MI 49009.

5. Upon information and belief, defendant Texas Corral Restaurants, Inc. owns and operates a Texas Corral restaurant located at 9200 Indianapolis Boulevard, Highland, Indiana

46322. Upon information and belief, defendant Paul Switzer is the president of Texas Corral Restaurants, Inc.

6. Upon information and belief, defendant Switzer Properties, LLC owns and operates a Texas Corral restaurant located at 312 W. 81st Avenue, Merrillville, Indiana 46410.

7. Upon information and belief, defendant Texcor, Inc. owns and operates a Texas Corral restaurant located at 5880 U.S. Route 6, Portage, Indiana 46368. Upon information and belief, defendant Paul Switzer is the president-CEO of Texcor, Inc.

8. Upon information and belief, defendant T.C. of Michigan City, Inc. owns and operates a Texas Corral restaurant located at 5718 Franklin Street, Michigan City, Indiana 46360.

9. Upon information and belief, defendant Chicago Roadhouse Concepts, LLC owns and operates an Amarillo Roadhouse restaurant located at 1924 U.S. Route 41, Schererville, Indiana 46375. Upon information and belief, defendant Paul Switzer is the president of Chicago Roadhouse Concepts, LLC.

10. Upon information and belief, defendant Victor Spina, an individual, owns and operates two Texas Corral franchise restaurants located at 2103 Intelliplex Drive, Shelbyville, Indiana 46176 and 610 Birk Road, Martinsville, Indiana 46151 (the "Spina Restaurants").

11. Upon information and belief, defendant Paul Switzer, or one or more entities owned or controlled by him, is the franchisor/licensor to defendant Victor Spina pursuant to a franchise/license agreement under which Mr. Spina operates the Spina Restaurants.

12. John Doe Corp. is a fictitious name intended to represent entities or individuals whose actual identity is not currently known to Texas Roadhouse. This includes: the owner or owners of the Amarillo Roadhouse website and domain name, amarillo-roadhouse.com; the owner or owners of the Texas Corral restaurant located at 6616 W. 95th St., Oak Lawn, Illinois 60453; any other entities or individuals that are owners, licensors, or franchisors of the Texas Corral or Amarillo Roadhouse restaurant concepts or that have an ownership interests in any of the ten above-listed restaurant locations doing business as Texas Corral or Amarillo Roadhouse; and any other entities or individuals who may be liable to Texas Roadhouse for the causes of action described herein. Texas Roadhouse reserves the right to amend this Complaint upon discovery of the identity of such entities or individuals and their wrongful conduct.

13. Upon information and belief, Texas Corral owns and operates a website at www.texascorral.net. Defendant Paul Switzer, an individual, is the domain name registrant. Earlier this year, the eight Michigan and Indiana Texas Corral restaurants and the Amarillo Roadhouse restaurant were listed on the "Locations" page of the website (<http://www.texascorral.net/locations/>).

14. Upon information and belief, the defendants identified in paragraphs 3-12 use the same or substantially similar names, logos, menus, website content, and other promotional materials.

Jurisdiction and Venue

15. This is an action arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, the Copyright Act, 17 U.S.C. § 101 *et seq.*, the Michigan Trademarks and Service Marks Act, Mich. Comp. Laws § 429.31 *et seq.*, the Indiana Trademark Act, Ind. Code § 24-2-1 *et seq.*, and Michigan and Indiana common law.

16. This Court has subject matter jurisdiction over the federal claims pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a)-(b). Supplemental jurisdiction over the state law claims is conferred by 28 U.S.C. § 1367(a).

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because, among other reasons, a substantial part of the events giving rise to the claims occurred in this district and some of the defendants are located here.

Background Facts

18. Texas Roadhouse operates a restaurant concept that prides itself on being a local hometown destination for a broad segment of consumers seeking high quality, affordable meals served by friendly, attentive employees.

19. The first Texas Roadhouse restaurant opened in Clarksville, Indiana in 1993. Since then, Texas Roadhouse has spent substantial resources building and expanding its brand of high quality restaurants and restaurant services. As of March 27, 2013, there are 397 Texas Roadhouse restaurants in 47 states and three countries.

20. Each Texas Roadhouse location is required to comply with strict exterior and interior design requirements so that the look and feel is substantially identical, in material respects, across all Texas Roadhouse locations.

21. To consistently offer high-quality goods and services, Texas Roadhouse requires adherence to detailed guidelines and provides extensive, ongoing training on the operation of and services provided at each location.

22. Texas Roadhouse owns all the rights, including those based in common law and conferred through registration, in a family of Texas Roadhouse-related trademarks, service marks, trade names, logos, and designs (collectively the "Texas Roadhouse Marks"). Texas Roadhouse has continuously used the Texas Roadhouse Marks in commerce throughout the United States since their respective dates of first use. Its use of the Texas Roadhouse Marks has been substantially exclusive.

23. Several of the Texas Roadhouse Marks have been registered with the United States Patent and Trademark Office and are now incontestable, including:

- a. U.S. Service Mark Reg. No. 1,833,533, for restaurant services, comprising a design that includes "Texas Roadhouse," an outline of the State of Texas, and a stylized cowboy hat design;
- b. U.S. Service Mark Reg. No. 2,231,309, for restaurant services, comprising the word mark "Texas Roadhouse" ("Word Mark"); and
- c. U.S. Service Mark Reg. No. 2,250,966, for restaurant and bar services, comprising a marquee design that includes "Texas Roadhouse" within a stylized design, and a smaller version of the outline of the State of Texas with stylized cowboy hat design within a circle ("Marquee").

Copies of the certificates of registration for the Texas Roadhouse Marks listed above are attached as Exhibit A.

24. The Texas Roadhouse Word Mark has also been registered as a service mark with the State of Michigan Department of Consumer and Industry Services, ID No. M03-489 since 2000 and as a trademark with the State of Indiana Secretary of State, File No. 1998-0488 since 1998. Copies of the certificates of registration are attached as Exhibit B.

25. In addition to the registered Texas Roadhouse Marks listed above, Texas Roadhouse owns all rights, conferred through federal statute and based in common law, in unregistered Texas Roadhouse Marks, including:

- a. the Texas Roadhouse Horizontal Logo, comprised of the word "Texas" on the left, and to its right, an outline of the State of Texas adorned with a stylized cowboy hat, and to its right the word "roadhouse"; and
- b. the Texas Roadhouse Building Design ("Building Design"), comprised of the following elements in combination:
 - i. a first story constructed of brick and wood lap siding (or materials having the appearance thereof);
 - ii. an ornamental second story constructed of wood lap siding (or materials having the appearance thereof);
 - iii. green trim;
 - iv. close-shuttered, ornamental windows on the second story;
 - v. a metal-panel hip roof between the first story and the second story;
 - vi. a multi-peaked roofline, including a central peak; and
 - vii. flags of the United States and Texas mounted on roof peaks.

26. The Marquee design defined above constitutes copyrightable subject matter and is an original work of authorship. Texas Roadhouse has obtained a registration for this work from

the United States Copyright Office, namely U.S. Copyright Reg. No. VA 1-650-931 (the "Registered Work"). A copy of the certificate of registration is attached as Exhibit C.

27. The copyright registration identified above is valid and enforceable, and Texas Roadhouse owns all right, title, and interest in and to all the exclusive rights in the Registered Work.

28. Texas Roadhouse owns all the rights in the image and overall appearance of its restaurants (the "Texas Roadhouse Trade Dress"). Texas Roadhouse has continuously used the Texas Roadhouse Trade Dress in commerce throughout the United States since its date of first use. Texas Roadhouse's use of its Trade Dress has been substantially exclusive.

29. The Texas Roadhouse Trade Dress includes the following elements:

- a. the Building Design, as described above;
- b. identifying building and pole signage, including prominent use of the word "Texas" and a neon outline of the State of Texas with a cowboy hat positioned on the top point of the outline (this State of Texas and cowboy hat design element is often featured within a circle);
- c. a distinctive interior décor including the following elements:
 - i. wooden booths and tables with a light brown stain and green bench seat cushions;
 - ii. dish-shaped, green metal light fixtures hung over individual tables;
 - iii. Wurlitzer 1980s-styled jukebox;
 - iv. southwestern décor, including potted cacti, wall-mounted animal heads, murals of Native American men in feathered headdresses, and woven wall hangings,

- v. butcher shop-style, clear-glass, steak display cooler near the entrance;
 - vi. galvanized metal pails filled with free peanuts on the tables;
 - vii. wooden barrels containing free peanuts;
 - viii. made-from-scratch yeast rolls served in baskets at the tables;
 - ix. interior use of corrugated metal and cedar;
 - x. extensive use of neon signage throughout; and
 - xi. a central bar area having a multi-peaked interior roofline, neon accents, and pink light bulbs;
- d. upbeat country music played over the restaurant speakers; and
 - e. menus with food items organized under wood plank signage.

30. For almost 20 years, Texas Roadhouse has extensively promoted its restaurant services under the Trade Dress, Marks, and Registered Work ("Texas Roadhouse IP") in local marketing campaigns and in internet and email advertising.

31. As a result of these efforts, Texas Roadhouse has developed considerable fame, consumer recognition, and goodwill in the Texas Roadhouse IP and considers it one of its most important assets.

32. Texas Corral operates a western-themed, casual, family restaurant concept that is markedly similar in appearance to the Texas Roadhouse concept.

33. Upon information and belief, Texas Corral presently owns and operates nine restaurant locations doing business under the name "Texas Corral." Two of the restaurants are located in Michigan, six are located in Indiana, and one is located in Illinois. In addition, Texas Corral owns and operates a location that does business as "Amarillo Roadhouse" in Indiana.

34. Upon information and belief, Texas Corral routinely uses trade dress, trademarks, service marks, trade names, designs, or logos that are confusingly similar to or copies of the Texas Roadhouse IP. This use is evidenced in signage, print and electronic promotional materials, menus, décor, building design, and websites.

35. Examples of such use and how it compares to the Texas Roadhouse IP are provided below:

TEXAS ROADHOUSE	TEXAS CORRAL
	
	
	

TEXAS ROADHOUSE	TEXAS CORRAL
 	 
 	 

36. Texas Corral does not and has never had permission to use the Texas Roadhouse IP or any name, design, logo, or image that is confusingly similar to or copied from the Texas Roadhouse IP.

37. Upon information and belief, at the time Texas Corral adopted its names and designs, Texas Corral was aware of the Texas Roadhouse IP.

38. Upon information and belief, Texas Corral began using the Texas Roadhouse IP with the intent to trade on the goodwill in and the distinctiveness, strength, and value of the Texas Roadhouse IP.

COUNT I

Trade Dress Infringement

39. Paragraphs 1 through 38 are incorporated by reference as though fully set forth herein.

40. Texas Roadhouse's Trade Dress, composed of the discrete elements listed above, is inherently distinctive and has acquired distinctiveness in the minds of consumers.

41. Texas Roadhouse's Trade Dress, comprising a unique combination of identifying features, is nonfunctional.

42. Texas Corral's use of trade dress that is substantially similar or identical to Texas Roadhouse's Trade Dress has caused or is likely to cause confusion or mistake, or to deceive customers as to the affiliation, connection, or association of its products or as to the origin, sponsorship, or approval by Texas Roadhouse of Texas Corral's products, services, or commercial activities.

43. Texas Corral's use in commerce of trade dress that is substantially similar to the Texas Roadhouse Trade Dress constitutes infringement of Texas Roadhouse's rights in violation of 15 U.S.C. § 1125(a) and under common law.

44. Upon information and belief, the actions of Texas Corral were undertaken with an intentional, willful, or malicious intent to trade upon the goodwill associated with the Texas Roadhouse Trade Dress.

45. Texas Roadhouse has suffered and will continue to suffer damage to its business reputation and goodwill due to the infringing activities of Texas Corral.

46. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to infringe Texas Roadhouse's rights in the Texas Roadhouse Trade Dress.

COUNT II

Federal Trademark Infringement

47. Paragraphs 1 through 46 are incorporated by reference as though fully set forth herein.

48. By engaging in the acts described above, Texas Corral has used names and marks that are confusingly similar to the Texas Roadhouse Marks to provide or advertise restaurant services in interstate commerce.

49. Texas Corral's use is likely to cause confusion, cause mistake, or deceive consumers, prospective consumers and the public as to whether Texas Corral's services are endorsed by, sponsored by, or somehow affiliated with Texas Roadhouse or whether Texas Corral has permission from Texas Roadhouse to use the infringing names, marks, logos, and designs.

50. Upon information and belief, the actions of Texas Corral were undertaken with an intentional, willful, or malicious intent to trade upon the goodwill associated with the Texas Roadhouse Marks.

51. The actions of Texas Corral constitute trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

52. The actions of Texas Corral constitute a false designation of origin, false or misleading description, or a false or misleading representation of fact under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a)(1).

53. Texas Roadhouse has suffered and will continue to suffer damage to its business reputation and goodwill due to the infringing, false, and misleading activities of Texas Corral.

54. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to infringe Texas Roadhouse's rights in the Texas Roadhouse Marks.

COUNT III

Trademark Infringement Under Mich. Comp. Laws § 429.42

55. Paragraphs 1 through 54 are incorporated by reference as though fully set forth herein.

56. By engaging in the acts described above, Texas Corral has used names and marks that are confusingly similar to the Texas Roadhouse Word Mark as registered with the State of Michigan to provide or advertise restaurant services in interstate commerce.

57. Texas Corral's use is likely to cause confusion, cause mistake, or deceive consumers, prospective consumers and the public as to whether Texas Corral's services are endorsed by, sponsored by, or somehow affiliated with Texas Roadhouse or whether Texas Corral has permission from Texas Roadhouse to use the infringing names and marks.

58. Upon information and belief, the actions of Texas Corral were undertaken with an intentional, willful, or malicious intent to trade upon the goodwill associated with the Texas Roadhouse Word Mark.

59. The actions of Texas Corral constitute trademark infringement under Section 12 of the Michigan Trademarks and Service Marks Act, Mich. Comp. Laws § 429.42.

60. Texas Roadhouse has suffered and will continue to suffer damage to its business reputation and goodwill due to the infringing, false, and misleading activities of Texas Corral.

61. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to infringe Texas Roadhouse's rights in the Texas Roadhouse Word Mark.

COUNT IV

Trademark Infringement Under Ind. Code § 24-2-1-13

62. Paragraphs 1 through 61 are incorporated by reference as though fully set forth herein.

63. By engaging in the acts described above, Texas Corral has used names and marks that are confusingly similar to the Texas Roadhouse Word Mark as registered with the State of Indiana to provide or advertise restaurant services in interstate commerce.

64. Texas Corral's use is likely to cause confusion, cause mistake, or deceive consumers, prospective consumers and the public as to whether Texas Corral's services are endorsed by, sponsored by, or somehow affiliated with Texas Roadhouse or whether Texas Corral has permission from Texas Roadhouse to use the infringing names and marks.

65. Upon information and belief, the actions of Texas Corral were undertaken with an intentional, willful, or malicious intent to trade upon the goodwill associated with the Texas Roadhouse Word Mark.

66. The actions of Texas Corral constitute trademark infringement under Section 13 of the Indiana Trademark Act, Ind. Code § 24-2-1-13.

67. Texas Roadhouse has suffered and will continue to suffer damage to its business reputation and goodwill due to the infringing, false, and misleading activities of Texas Corral.

68. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to infringe Texas Roadhouse's rights in the Texas Roadhouse Word Mark.

COUNT V

Trademark Infringement Under Common Law

69. Paragraphs 1 through 68 are incorporated herein by reference as though fully set forth herein.

70. The use by Texas Corral of marks, names, logos, and designs that are confusingly similar to the Texas Roadhouse Marks in connection with restaurant services constitutes infringement of Texas Roadhouse's common law rights in the Texas Roadhouse Mark and has damaged Texas Roadhouse.

71. Upon information and belief, the actions of Texas Corral were undertaken with an intentional, willful, or malicious intent to trade upon the goodwill associated with the Texas Roadhouse Marks.

72. Texas Roadhouse has suffered and will continue to suffer damage to its business reputation and goodwill due to the infringing activities of Texas Corral.

73. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to infringe Texas Roadhouse's rights.

COUNT VI

Copyright Infringement Under 17 U.S.C. § 101 et seq.

74. Paragraphs 1 through 73 are incorporated herein by reference as though fully set forth herein.

75. Texas Corral copied original elements of Texas Roadhouse's Registered Work in creating its restaurant concept logos and designs.

76. Texas Corral's use, display, and reproduction of logos and designs that are substantially similar to the Registered Work constitute copyright infringement.

77. Texas Corral's infringing activities has been done knowingly and willfully.

78. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to engage in these infringing activities.

COUNT VII

Unfair Competition Under Michigan and Indiana Common Law

79. Paragraphs 1 through 78 are incorporated by reference as though fully set forth herein.

80. The acts of Texas Corral described herein constitute unfair competition with Texas Roadhouse under Michigan and Indiana common law, which have and will continue to damage Texas Roadhouse.

81. Upon information and belief, unless enjoined by this Court, Texas Corral will continue to engage in acts of unfair competition.

Relief Sought

WHEREFORE, Texas Roadhouse prays for judgment and relief as follows:

a. judgment that Texas Roadhouse, Inc. and Texas Roadhouse Delaware LLC own enforceable rights in the Texas Roadhouse IP and that all registrations for the Texas Roadhouse IP are valid;

b. judgment that the defendants have been and are directly or indirectly infringing the Texas Roadhouse IP;

c. judgment that the defendants have been and are engaging in unfair competition by their unauthorized use of the Texas Roadhouse IP;

d. judgment that defendants acted deliberately, willfully, intentionally or with malicious intent;

e. judgment that the defendants, their directors, officers, agents, servants, employees, successors, attorneys and assigns, and all those acting in active concert or in participation with them, be enjoined from directly or indirectly infringing the Texas Roadhouse IP and engaging in unfair competition with Texas Roadhouse, including a permanent injunction (i) requiring defendants to cease all current use (including but not limited to modifying existing restaurants to cease use) of trade dress, trademarks, service marks, trade names, designs, or logos likely to cause the public to believe that defendants (or their goods or services) are connected, licensed, sponsored, affiliated, or associated with Texas Roadhouse in any manner and (ii) prohibiting any future use of trade dress, trademarks, service marks, trade names, designs, or logos likely to cause the public to believe that defendants (or their goods or services) are connected, licensed, sponsored, affiliated, or associated with Texas Roadhouse in any manner;

f. judgment that the defendants shall file with the Court and serve on Texas Roadhouse a written report detailing their compliance with the Court's injunction;

g. judgment that defendants be ordered to pay monetary relief in an amount to be fixed by the Court in its discretion as just, including:

i. all gains, profits, revenues and advantages derived by defendants from promoting their services under names, marks, trade dress, designs, and logos that infringe the Texas Roadhouse IP;

ii. all damages sustained by Texas Roadhouse as a result of defendants' actions;

iii. an award equal to a reasonable royalty based on all gains, profits, revenues and advantages derived by defendants from promoting their services under Texas Roadhouse's copyrighted materials and otherwise using Texas Roadhouse's copyrighted materials;

iv. alternatively and at Texas Roadhouse's election, an award of statutory damages for copyright infringement pursuant to 17 U.S.C. § 504 (c), such award being equal to the maximum amount allowed under the statute for willful infringement; and

v. trebled damages pursuant to 15 U.S.C. § 1117;

h. judgment that this case is exceptional and that the defendants be ordered to pay all of Texas Roadhouse's attorney fees associated with this action pursuant to 15 U.S.C. § 1117 and 17 U.S.C. § 505;

i. judgment that the defendants be ordered to pay all costs and expenses incurred by Texas Roadhouse in this action; and

j. judgment that Texas Roadhouse be granted such other and additional relief as this Court may deem just and proper.

Demand for Jury Trial

Plaintiffs Texas Roadhouse, Inc. and Texas Roadhouse Delaware LLC hereby demand a trial by jury on all issues that are triable as of right to a jury.

WARNER NORCROSS & JUDD LLP

Dated: August 15, 2013

By _____
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