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THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

THE GREAT AMERICAN BAGEL)	
ENTERPRISES, INC.,)	
Plaintiff,)	
)	
vs.)	CAUSE NO. 3:16-cv-38
)	
UNITED HBA CORPORATION)	
AND HARBHAJAN SINGH, D/B/A)	
THE GREAT AMERICAN EAGLE)	
Defendants.)	

PLAINTIFF'S COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff, The Great American Bagel Enterprises, Inc. ("GAB"), by counsel, Jackson Kelly, PLLC, for its Complaint against Defendants United HBA Corporation ("United HBA") and Harbhajan Singh d/b/a The Great American Eagle (collectively "Defendants"), alleges as follows:

INTRODUCTION

1. This action is brought by GAB against Defendants to obtain injunctive relief and damages resulting from Defendants' improper and unauthorized use of the federally registered mark The Great American Bagel®, No. 2015665, which is comprised of the phrase "The Great American Bagel" with stars and bands (hereinafter the "Mark"). Defendants' unauthorized use of the Mark has caused customers to confuse the food products offered by GAB with those offered by Defendants.

THE PARTIES

2. Plaintiff GAB is a privately held Illinois corporation headquartered in Westmont, Illinois.

3. Defendant United HBA is an Indiana corporation headquartered in Evansville, Indiana.

4. Defendant Singh is the President and sole principal of United HBA as well as its registered agent and resides in Evansville, Indiana.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over Count I and II under 15 U.S.C. § 1121(a)(action arising under the Lanham Act) and 28 U.S.C. §§ 1331, 1338(a)(federal question) in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §§ 1051-1127.

6. This Court has supplemental jurisdiction over GAB's state law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so closely related to the federal claims brought herein as to form part of the same case or controversy.

7. Venue is proper in this district because, among other things, the facts giving rise to the acts or omissions alleged herein took place at least in part in this District and/or because Defendant is subject to personal jurisdiction in this District.

8. Personal jurisdiction is proper because Defendants are incorporated in, do business in, and/or reside in Indiana.

FACTS

9. GAB owns and operates stores known as The Great American Bagel.

10. GAB is the franchisor of The Great American Bagel stores.

11. The Great American Bagel stores sell food products at retail to customers and prospective customers.

12. GAB is the owner of the federally registered Mark.

13. GAB's Mark is::



14. In addition to securing the federal registration of the Mark, as the user of the Mark for 20 years, GAB has established a substantial amount of goodwill in the Mark.

15. United HBA operates a gas station and convenience store in Evansville, Indiana.

16. United HBS sells food products at retail.

17. United HBA is displaying a sign formerly used in connection with a The Great American Bagel store having modified it to read "The Great American Eagle." Other than rearranging the last word, removing the "B" and adding an "E," the signage displayed is precisely the same as the signage displayed at The Great American Bagel store:



18. Defendants are making use of the Mark in connection with the operation of a convenience store that sells food products at retail, causing confusion to customers and potential customers concerning the nature of the food products sold at said store.

COUNT I FEDERAL TRADEMARK INFRINGEMENT

19. GAB incorporates by reference, as though fully stated herein, Paragraphs 1

through 18 of its Complaint.

20. GAB holds a valid and existing federal registration for the Mark and has continuously used the Mark since prior to its registration in 1996.

21. Defendants have marketed, advertised and sold, and continue to market, advertise and sell, its products using the Mark.

22. Defendants' activities alleged herein have caused, and are likely to continue to cause, confusion, mistake or deception of purchasers to the detriment of GAB.

23. GAB's valuable goodwill in respect to its Mark is being damaged by the Defendants.

24. GAB will suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.

25. Defendants' use of the Mark was done without the knowledge, consent or permission of GAB and continues without the consent or permission of GAB.

26. Defendants have violated the trademark rights of GAB under the Trademark Act, thereby giving rise to a cause of action under 15 U.S.C. § 1114.

27. GAB will be irreparably harmed unless Defendants are preliminarily and permanently enjoined from any further use of the Mark.

28. GAB has no adequate remedy at law and serious damage to its trademark rights will result unless Defendants' wrongful use of the Mark is enjoined by the Court.

29. Defendants' infringement of the Mark as alleged herein has caused, and will continue to cause, GAB to suffer damages in an amount unknown at this time and has caused, and will continue to cause, Defendants to gain revenues and profits in an amount unknown at this time. Pursuant to 15 U.S.C § 1117(a), GAB is entitled to an award of monetary damages in an

amount equal to the losses suffered by GAB and the revenues and/or profits gained by Defendants.

30. Defendants have continued to use the Mark notwithstanding that they have actual knowledge of GAB's superior trademark rights as alleged herein. Defendants' infringement of the Mark accordingly constitutes intentional, willful, knowing and deliberate trademark infringement. GAB therefore seeks judgment in the amount of three (3) times its damages, together with reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

**COUNT II
FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING AND UNFAIR
COMPETITION UNDER THE LANHAM ACT SECTION 43(A)**

31. GAB incorporates by reference, as though fully stated herein, Paragraphs 1 through 30 of its Complaint.

32. The actions of Defendants as alleged herein constitute false designation of origin, false advertising and unfair competition pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

33. The actions of Defendants have and are likely to continue to deceive customers and prospective customers into believing that the food products sold by Defendants are that of GAB.

34. GAB has no control over the nature and quality of the food products sold by Defendants. Any failure or neglect by Defendants in providing such products has and will continue to reflect adversely on GAB as the believed source of origin thereof, hampering efforts by GAB to continue to protect its reputation for high quality food products, to the irreparable harm of GAB.

35. GAB has and will continue to be irreparably harmed unless Defendants are

preliminarily and permanently enjoined from any further use of the Mark.

36. GAB has no adequate remedy at law and serious damage to its trademark rights will result unless Defendants' wrongful use of the Mark is enjoined by the Court.

37. The actions of Defendants as alleged herein constitute intentional, willful, knowing and deliberate unfair competition and false advertising pursuant to Lanham Act Section 43(a).

38. Defendants' acts of unfair competition and false advertising in violation of the Lanham Act Section 43(a) as alleged here in have cause, and will continue to cause, GAB to suffer damages in an amount unknown at this time and have caused, and will continue to cause, Defendants to gain revenues and profit in an amount unknown at this time. Pursuant to 15 U.S.C. § 1117(a) GAB is entitled to an award of monetary damages in an amount equal to the losses suffered by GAB and the revenues and/or profits gained by the Defendant.

39. Defendants' infringement acts of unfair competition are intentional, willful, knowing and deliberate. GAB therefore seeks judgement in the amount of three (3) times its damages, together with reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

**COUNT III
UNFAIR COMPETITION- TRADE NAME INFRINGEMENT**

40. GAB incorporates by reference, as though fully stated herein, Paragraphs 1 through 30 of its Complaint.

41. The Mark is a word, name, symbol, device or other designation that is distinctive of GAB's business and is used to identify GAB's business and distinguishes it from the businesses of others, and is therefore a protectable trade name.

42. Defendants' use of GAB's trade name has created and continues to create

confusion as to the source of Defendants' food products.

43. GAB has and will continue to be irreparably harmed unless Defendants are preliminarily and permanently enjoined from any further use of GAB's trade name.

44. GAB has no adequate remedy at law and serious damage to its trademark rights will result unless Defendants' wrongful use of GAB's trade name is enjoined by the Court.

45. Defendants' acts of unfair competition have caused, and will continue to cause, GAB to suffer damages in an amount unknown at this time and have caused, and will continue to cause, Defendants to gain revenues and profit in an amount unknown at this time.

COUNT IV UNFAIR COMPETITION- PASSING OFF

46. GAB incorporates by reference, as though fully stated herein, Paragraphs 1 through 45 of its Complaint.

47. The Defendants' use of the Mark represents to customers and potential customers that its food products are those of GAB.

48. Defendants' use of the Mark constitutes "passing off" under Indiana's common law of unfair competition.

49. Defendants' conduct was and is willful and deliberate.

50. Defendants' use of the Mark has created and continues to create confusion as to the source of its food products.

51. GAB has and will continue to be irreparably harmed unless Defendants are preliminarily and permanently enjoined from any further use of the Mark.

52. GAB has no adequate remedy at law and serious damage to its trademark rights will result unless Defendants' wrongful use of the Mark is enjoined by the Court.

53. Defendants' acts of unfair competition have caused, and will continue to cause, GAB to suffer damages in an amount unknown at this time and have caused, and will continue to cause, Defendants to gain revenues and profit in an amount unknown at this time.

**COUNT V
UNJUST ENRICHMENT**

54. GAB incorporates by reference, as though fully stated herein, Paragraphs 1 through 53 of its Complaint.

55. Defendants have benefitted from the use of the Mark and the goodwill and economic advantage associated with the Mark.

56. This benefit was unjust and operated to GAB's detriment.

57. Defendants' retention of this benefit is unjust and violates fundamental principles of equity.

PRAYER FOR INJUNCTIVE RELIEF AND DAMAGES

WHEREFORE, Plaintiff GAB respectfully requests that this Court enter judgment against the Defendants and fashion the following relief:

A. Preliminarily and permanently enjoin Defendants, including United HBA's owners, partners, officers, directors, agents, servants, employees, representatives, licensees, and subsidiaries, jointly and severally as follows:

1. From further infringing GAB's trademark rights;
2. From using the Mark to in any way advertise, promote, or offer for sale any products using the Mark.

B. Require United HBA to remove the sign and destroy the sign in the presence of an agent designated by GAB;

C. Pursuant to 15 U.S.C. § 1117, award GAB all damages available under the Lanham Act, including but not limited to actual damages, Defendants' profits, treble damages, litigation costs, and attorney's fees;

D. An accounting for and payment of any revenues, compensation or other gain received, directly or indirectly, by Defendants from the use of the Mark or Defendant's trade name;

E. A requirement that Defendants perform corrective advertising to remedy their wrongful actions and clarify the absence of a relationship between Great American Bagel Enterprises, Inc. and The Great American Eagle;

F. Award Great American Bagel Enterprises, Inc. all other damages afforded to it by the common law of unfair competition under Indiana law;

G. Punitive damages;

H. Attorneys' fees and costs; and

I. All other relief as this Court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY

Stacy K. Newton, Attorney No. 19438-39
Jackson Kelly PLLC
221 N.W. 5th Street
P.O. Box 1507
Evansville, IN 47706-1507
E-mail: sknewton@jacksonkelly.com
Telephone: (812) 422-9444
Facsimile: (812) 421-7459

Attorneys for Plaintiff The Great American Bagel
Enterprises, Inc.