

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

**THREE FLOYDS BREWING LLC**, an  
Indiana limited liability company,  
Plaintiff,

v.

**FLOYD’S SPIKED BEVERAGES LLC**, a  
New Jersey limited liability company, and  
**LAWRENCE TRACHTENBROIT**, an  
individual,  
Defendants.



Provided by:  
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Case No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Three Floyds Brewing LLC (“Three Floyds”), by its counsel, for its Complaint against Defendants Floyd’s Spiked Beverages LLC and Lawrence Trachtenbroit (collectively, “Defendants”) states as follows:

**NATURE OF THE ACTION**

1. This is an action seeking damages and injunctive relief for Defendants’ intentional and willful trademark infringement under 15 U.S.C. § 1114(1), unfair competition and false designation of origin under 15 U.S.C. § 1125, and common law trademark infringement and unfair competition.

**PARTIES**

2. Three Floyds is an Indiana limited liability company with its principal place of business in Munster, Indiana.

3. Defendant Floyd’s Spiked Beverages LLC (“Floyd’s”) is a New Jersey limited liability company with its principal place of business in in Basking Ridge, New Jersey.

4. Defendant Lawrence Trachtenbroit (“Trachtenbroit”) is an individual and the principal of Floyd’s and, upon information and belief, resides in Basking Ridge, New Jersey.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction because this is an action arising under the trademark laws of the United States joined with related state law claims. Jurisdiction is conferred by 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). Because the parties are diverse and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, this Court also has jurisdiction under 28 U.S.C. § 1332. This Court has jurisdiction over the related state and common law claims under 28 U.S.C. §§ 1338(b) and 1367.

6. This Court has personal jurisdiction over Defendants because they transact business and solicit customers in Indiana and within this district, they have committed acts of infringement and have caused infringing products to be distributed and sold within this district, they have caused injury in Indiana and within this district, and expected or reasonably should have expected their acts to cause injury to Three Floyds in Indiana and within this district. Defendants have purposefully directed their business activities toward Indiana and this district by, among other things, marketing and promoting their infringing products to Indiana consumers through an interactive website located at [www.drinkfloyds.com](http://www.drinkfloyds.com), at which prospective purchasers can locate stores in Indiana and in this district selling infringing products.

7. Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391(b)(2) and N.D. Ind. L.R. 3-1.

### **FACTS**

#### **THREE FLOYDS AND ITS TRADEMARKS**

8. Three Floyds is one of the top craft brewers in the United States and has been producing and selling beer under the trade name and mark THREE FLOYDS since 1996.

9. Three Floyds has enjoyed enormous success and its beers have won numerous awards and considerable public recognition and acclaim. Three Floyds was most recently ranked on RateBeer.com among the top ten craft brewers worldwide out of more than 36,000 brewers. *See* <https://www.ratebeer.com/ratebeerbest/BestBrewers-World2019.asp>. Three Floyds has consistently ranked among the top ten craft brewers worldwide, and it has also been chosen as the best craft brewer in the world based on independent craft beer consumer reviews on RateBeer.com.

10. Three Floyds has sold many millions of dollars of beer under the THREE FLOYDS name and mark and it has invested significantly in marketing and promoting its beer under the THREE FLOYDS name and mark. Three Floyds' enormous success under the THREE FLOYDS name and mark has also led it to expand its brand to craft distilled spirits.

11. In addition to its strong common law trademark rights, Three Floyds owns the following registrations, among others, with the U.S. Patent and Trademark Office ("USPTO") on the Principal Register:

<b>Trademark</b>	<b>Registration Number</b>	<b>Date of Registration</b>	<b>Goods/Services</b>
THREE FLOYDS	3,853,136	September 28, 2010	Beer
3 FLOYDS	4,759,863	June 23, 2015	Beer
THREE FLOYDS	4,341,332	May 28, 2013	Bar services; brewpub services; restaurant services
THREE FLOYDS	5,781,941	June 18, 2019	Distilled spirits

12. The above registrations are valid and subsisting and constructive notice of Three Floyds' ownership of the marks pursuant to 15 U.S.C. § 1072. Copies of the registrations are attached hereto as **Exhibit A**.

13. Registrations Nos. 3,853,136 and 4,341,332 are incontestable in accordance with 15 U.S.C. § 1065 and are “conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce” in accordance with 15 U.S.C. § 1115(b).

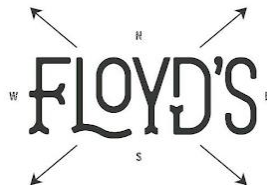
14. The above registered marks and the THREE FLOYDS name are collectively referred to hereinafter as the “THREE FLOYDS Marks.”

15. By virtue of Three Floyds’ continuous and extensive use of the THREE FLOYDS Marks, the public has come to identify them exclusively with Three Floyds and its successful, high-quality products, and Three Floyds has built up tremendous goodwill and value in the THREE FLOYDS Marks. Moreover, consumers frequently shorten the THREE FLOYDS Marks to “FLOYDS” and refer to “FLOYDS” as the source of Three Floyds’ products and services.

#### **DEFENDANTS’ UNLAWFUL ACTIONS**

16. Defendants develop, market, and sell alcoholic lemonade and tea beverages under the infringing FLOYD’S trade name, mark, and logo, which Trachtenbroit claims to own.

17. On May 15, 2018, Defendant Lawrence Trachtenbroit d/b/a Floyd’s filed U.S. Trademark Application Serial No. 87922801 with the USPTO to register the stylized FLOYD’S logo shown below (the “FLOYD’S logo”) for “Alcoholic beverages, except beer” and claimed he had used it in commerce since at least May 1, 2018:



18. On November 5, 2018, Defendant Lawrence Trachtenbroit d/b/a Floyd’s Spiked Beverages filed U.S. Trademark Application Serial No. 88181124 with the USPTO to register the

mark FLOYD'S for "Beer-based coolers" and claimed he had used it in commerce since at least January 1, 2018.

19. The USPTO refused Trachtenbroit's application under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), because the Examining Attorney found the mark FLOYD'S so resembles three of the THREE FLOYDS Marks as to be likely, when used for the applied-for goods, to cause confusion, mistake, or deception. The application has been abandoned.

20. Three Floyds has opposed Application Serial No. 87922801 for the FLOYD'S logo in the USPTO's Trademark Trial and Appeal Board ("TTAB") (Opposition No. 91249966). Contemporaneous with the filing of this civil action, Three Floyds is filing a motion with the TTAB to stay the TTAB proceedings pending the outcome of this civil action on ground that this action will likely have a bearing on the opposition proceeding and be dispositive of it.

21. Upon information and belief, Trachtenbroit has personally caused one or more third parties to produce these products on behalf of Defendants under the infringing FLOYD'S name, mark, and logo.

22. Upon information and belief, Trachtenbroit has controlled and manipulated Floyd's and has so ignored its separate form, that Floyd's is nothing more than Trachtenbroit's alter ego and an instrumentality for Trachtenbroit's knowing and willful acts of infringement.

23. Upon information and belief, there now exists, and at all relevant times there has existed, a unity of interest and ownership between and among Defendants, such that any individuality and separateness between them has ceased to exist, and Defendants, and each of them, are the alter egos of each other.

24. Upon information and belief, each Defendant committed acts of infringement leading to Three Floyds' damages, were acting in concert and active participation with each other

in committing the wrongful acts alleged herein, and Trachtenbroit personally directed such acts of infringement.

25. Defendants have actual knowledge of and are willfully infringing Three Floyds' rights in the THREE FLOYDS Marks as evidenced by, among other things, their use of the FLOYD'S mark, name, and logo after the USPTO refused Application Serial No. 88181124 under Section 2(d) of the Lanham Act based on the THREE FLOYDS Marks.

26. Trachtenbroit not only claims personal ownership of the infringing FLOYD'S name, mark, and logo, but also, upon information and belief, personally caused the infringing products to be manufactured and knowingly and willfully directed and participated in the sales of infringing products to at least one distributor in Indiana and this District and elsewhere, knowing they infringe the THREE FLOYDS Marks.

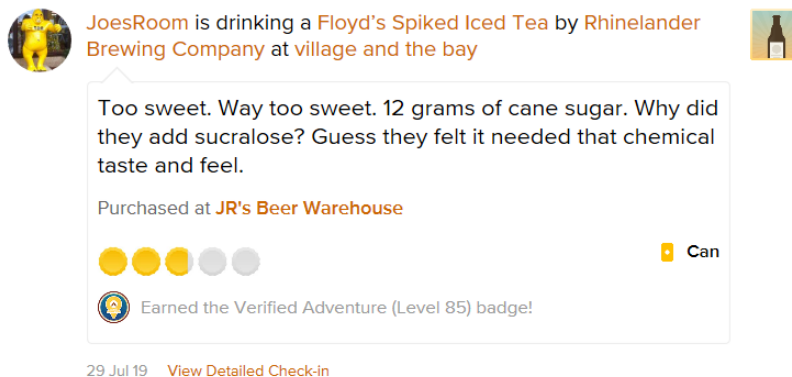
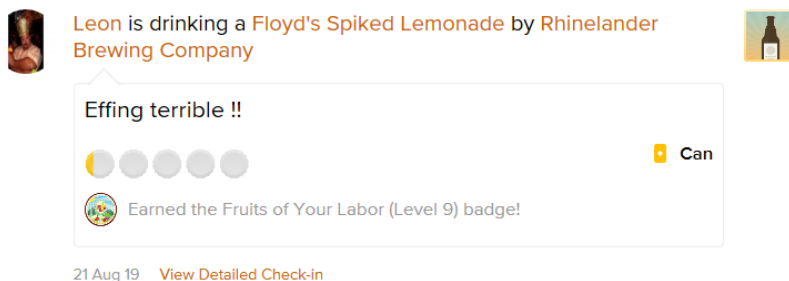
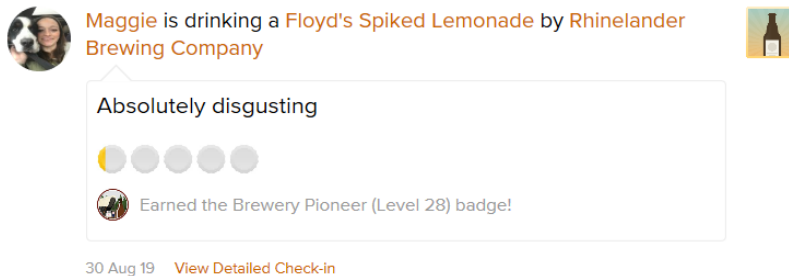
27. Three Floyds recently became aware of Defendants' knowing and willful infringement of the THREE FLOYDS Marks and operation of a website located at [www.DrinkFloyds.com](http://www.DrinkFloyds.com) to market and promote infringing products under the FLOYD'S name, mark, and logo to consumers in this District. *See* <https://www.drinkfloyds.com/store-locator> (click "Store Locator" button; then search "Hammond, Indiana" and set radius to "20 mi"). **Exhibit B** attached hereto is a screenshot from Defendants' website showing retail stores carrying infringing products in and around Hammond and Munster, Indiana.

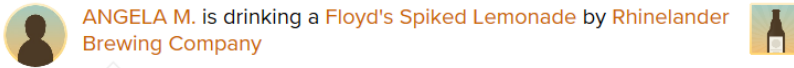
28. Three Floyds has priority and superior trademark rights to any alleged rights of Defendants in the FLOYD'S name, mark, and logo by virtue of its long prior use and valid and subsisting registrations of the THREE FLOYDS Marks.

29. Defendants' use of the FLOYD'S name, mark, and logo is without the consent or authorization of Three Floyds.

30. As a result of Defendants' unauthorized use of the infringing FLOYD'S name, mark, and logo, Three Floyds has suffered and will continue to suffer damage to its business, reputation, and goodwill, and will continue to sustain loss of revenue and profits.

31. Many consumers have complained that Defendants' infringing products are of poor and inferior quality. Any perceived association between Three Floyds and poor and inferior quality products thus threatens irreparable harm to its reputation and goodwill. Representative examples of consumer complaints that have been posted on [www.untappd.com](http://www.untappd.com) concerning the inferior quality of Defendants' infringing products appear below:

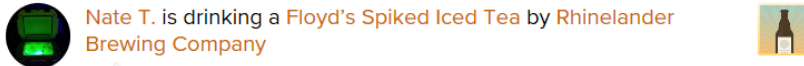




Since when do alcoholic beverages utilize artificial sweeteners? I thought something was hinky at 120 cal per can. Sucralose is bad news.

Earned the Newbie badge!

18 Jul 19 [View Detailed Check-in](#)

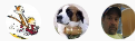


Terrible

Can

16 Aug 19 [View Detailed Check-in](#)

3



Truly awful

Purchased at **Centre Liquor**



Can

14 May 19 [View Detailed Check-in](#)

2



### **COUNT I** **(Trademark Infringement Under 15 U.S.C. § 1114)**

32. Three Floyds repeats and realleges paragraphs 1 through 31 as if fully set forth herein.

33. Defendants' unauthorized use of the FLOYD'S name, mark and logo and the DrinkFloyds.com domain name is likely to cause confusion or mistake or to deceive consumers to believe that Defendants' infringing products originate with Three Floyds or that Three Floyds has approved, sponsored, or is otherwise connected with Defendants and their business.

34. Defendants' unauthorized use of the FLOYD'S name, mark, and logo and the



DrinkFloyds.com domain name is likely to cause confusion or mistake or to deceive consumers to believe that Defendants' infringing products originate with Three Floyds or that Three Floyds has approved, sponsored, or is otherwise connected with Defendants and their business.

35. The foregoing constitutes trademark infringement in violation of 15 U.S.C. § 1114(1).

36. Defendants are using the infringing FLOYD'S name, mark and logo with full knowledge of and in willful disregard of Three Floyds' rights in the THREE FLOYDS Marks and with the intent to exploit and trade on the reputation and goodwill consumers associate with THREE FLOYDS Marks.

37. Defendants' acts constitute willful trademark infringement under 15 U.S.C. § 1114.

38. Defendants' acts have caused and will continue to cause great and irreparable injury to Three Floyds unless such acts are enjoined by this Court. Three Floyds has no adequate remedy at law.

**COUNT II**  
**(Trademark Infringement, False Designation of Origin, and  
Unfair Competition Under 15 U.S.C. § 1125(a))**

39. Three Floyds repeats and realleges paragraphs 1 through 38 as if fully set forth herein.

40. Three Floyds owns the common law trademarks THREE FLOYDS and 3 FLOYDS for beer and THREE FLOYDS for distilled spirits.

41. Defendants' acts are likely to cause confusion or mistake, or to deceive consumers as to Defendants' affiliation, connection, or association with Three Floyds, or as to the origin, sponsorship, or approval of Defendants' products.

42. Defendants are using the infringing FLOYD'S name, mark, and logo with full

knowledge of and in willful disregard of Three Floyds' rights in the THREE FLOYDS Marks with the intent to exploit and trade on the reputation and goodwill consumers associate with the marks.

43. Defendants' acts constitute willful trademark infringement, false designation of origin and unfair competition under 15 U.S.C. § 1125(a).

44. Defendants' acts have caused and will continue to cause great and irreparable injury to Three Floyds unless such acts are enjoined by this Court. Three Floyds has no adequate remedy at law.

**COUNT III**  
**(Common Law Trademark Infringement and Unfair Competition)**

45. Three Floyds repeats and realleges paragraphs 1 through 44 as if fully set forth herein.

46. Defendants' acts are likely to cause confusion or mistake, or to deceive consumers as to Defendants' affiliation, connection, or association with Three Floyds, or as to the origin, sponsorship, or approval of Defendants' products.

47. Defendants are using the infringing FLOYD'S name, mark, and logo with full knowledge of and in willful disregard of Three Floyds' rights in the THREE FLOYDS Marks with the intent to exploit and trade on the reputation and goodwill consumers associate with the marks.

48. Defendants' acts constitute trademark infringement and unfair competition with Three Floyds and result in Defendants' unjust enrichment under the common law of the State of Indiana.

49. Defendants' acts have caused and, unless such acts are enjoined by this Court, will continue to cause great and irreparable injury to Three Floyds. Three Floyds has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Three Floyds prays for relief and judgment against Defendants as follows:

A. That Defendants and their agents, servants, employees, successors, and assigns, and any and all persons acting in concert or participating with them, and any of their successors or assigns, be both preliminarily and permanently enjoined from directly or indirectly:

i. using the FLOYD'S name, mark, and logo and the DrinkFloyds.com domain and any other marks, trade names, or domain names consisting of or containing the term FLOYDS, or any variations thereof, in whole or in part, that are confusingly similar to any of the THREE FLOYDS Marks;

ii. using the FLOYD'S name, mark, or logo in any manner likely to cause others to believe that Defendants' products are endorsed, sponsored by, affiliated with Three Floyds; and

iii. doing any act or thing likely to induce the belief that Defendants' goods or services are in any way connected with, sponsored, or approved by Three Floyds.

B. That Defendants, and all persons controlled by or acting in concert with them, be required to deliver to Three Floyds for destruction all products, literature, signs, billboards, labels, prints, packages, wrappers, containers, advertising materials, stationery, and other items in their possession, custody, or control bearing the FLOYD'S name, mark, or logo or any other trademark or trade name that is confusingly similar to the THREE FLOYDS Marks pursuant to 15 U.S.C. § 1118.

C. That Defendants be required to account to Three Floyds for Defendants' sales and profits from sales of products under the FLOYD'S name, mark, or logo and be required to disgorge

all their profits and other ill-gotten gains resulting from their wrongful conduct.

D. That Defendants be required to file with this Court and serve on Three Floyds, within thirty days after entry of an injunction issued by this Court, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the terms of the injunction as provided in 15 U.S.C. § 1116.

E. That Defendants be required to pay Three Floyds its actual damages sustained as a result of Defendants' wrongful conduct in accordance with 15 U.S.C. § 1117 and under Indiana law.

F. That Defendants be required to pay to Three Floyds the greater of three times the damages Three Floyds has suffered as a result of the complained-of acts of Defendants or three times Defendants' profits in accordance with 15 U.S.C. § 1117.

G. That Defendants be required to pay to Three Floyds punitive damages sufficient to deter Defendants from future acts similar to those complained of in this action.

H. That Three Floyds be awarded its attorneys' fees pursuant to 15 U.S.C. § 1117(a).

I. That Three Floyds recover all taxable costs of this action and both pre- and post-judgment interest.

J. That Three Floyds be awarded such other relief as this Court deems just, equitable, or proper.

**JURY DEMAND**

Three Floyds demands trial by jury of all issues triable by a jury.

Date: September 25, 2019

Respectfully submitted,

A handwritten signature in blue ink that reads "Glenn Rice". The signature is fluid and cursive, with the first name "Glenn" and last name "Rice" clearly distinguishable.

By: \_\_\_\_\_

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