

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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KS EQUITY COMPANY, LLC,)	
)	
Plaintiff,)	Case No. 1:20-cv-1077
)	
v.)	
)	
RSM INVESTMENTS LLC,)	
RAGHBIR SINGH,)	
PUSHPINDER SINGH,)	
YORK MULTANI and YORK SINGH,)	
)	
Defendants.)	

COMPLAINT

For its Complaint against Defendants RSM Investments LLC (“RSM”), Raghbir Singh, Pushpinder Singh, York Multani and York Singh (referred to collectively as, “Defendants”), Plaintiff KS Equity Company, LLC (“KS”) states and alleges as follows:

PRELIMINARY STATEMENT OF CASE

KS is in the business of developing and operating convenience stores that feature an upscale dining experience. KS operates a convenience store under the name Leo’s Market and Eatery (the “Leo’s Store”) at 2212 W. Main Street (US 40) in Greenfield, Indiana, 46140, and has plans for opening several more in the near future. KS owns the following trademark registrations that are used in connection with the Leo’s Store:

- (a) U.S. Trademark Registration No. 5,886,802 for LEO’S MARKET AND EATERY® (Exhibit A);
- (b) U.S. Trademark Registration No. 5,886,803 for LEO’S Lion Head Logo® (Exhibit B);
- (c) U.S. Trademark Registration No. 5,892,871 for WAKE UP AND ROAR® (Exhibit C); and

- (d) U.S. Trademark Registration No. 5,962,680 for GET YOUR PAWS ON THIS® (Exhibit D) (collectively, the “Leo’s Trademarks”).

KS also has developed Trade Dress (“Leo’s Trade Dress”) in its business through its use of a building for the Leo’s convenience store that includes unique and arbitrary design elements that cause consumers to recognize Leo’s stores, by their appearance, as being a Leo’s convenience store. Photographs of the Leo’s Store are attached hereto as Exhibit E.

Defendants own and/or operate a convenience store/gas station under the name Leon’s at 3127 W. Washington St., Indianapolis, Indiana 46222 (the “Leon’s Store”). Photographs of the Leon’s Store are attached hereto as Exhibit F. Defendants are aware of KS’s rights in the Leo’s Trademarks, as both the Leo’s Store and the Leon’s Store are Indianapolis area-based businesses, the convenience store industry is one in which most of the participants know each other, and the Leo’s Stores’ concept is unique in the area and, as such, has generated the expected curiosity among its competitors. Additionally, KS advised Defendants prior to the filing of this complaint that Defendants were infringing KS’s trademark rights. Nonetheless, Defendants continue to use Leo’s Trademarks in connection with the Leon’s Store in disregard of KS’s rights in its marks to falsely mislead and confuse consumers that the Leon’s Store is affiliated with the Leo’s Store, in violation of the Lanham Act and common law.

PARTIES, JURISDICTION AND VENUE

1. KS is a limited liability company organized under the laws of the State of Indiana, with its headquarters located at 2700 W. Main Street, Greenfield, Indiana 46140.
2. RSM is a limited liability company organized under the laws of the State of Indiana, with its headquarters and principal place of business located at 3127 W. Washington St., Indianapolis, Indiana 46222.
3. Raghbir Singh is an individual who upon information and belief resides at 333

Lincoln Avenue, Bedford, Indiana 47421. Upon information and belief, Raghbir Singh is a principal owner, operator, and/or employee of RSM.

4. Pushpinder Singh is an individual who upon information and belief resides at 4302 W. 79th Street, Indianapolis, Indiana 46268. Upon information and belief, Pushpinder Singh is a principal, owner, operator, and/or employee of RSM.

5. York Multani is an individual who upon information and belief resides at 333 Lincoln Avenue, Bedford, Indiana 47621. Upon information and belief, York Multani is a principal, owner, operator and/or employee of RSM.

6. York Singh is an individual who upon information and belief resides at 333 Lincoln Avenue, Bedford, Indiana 47621. Upon information and belief, York Singh is a principal, owner, operator and/or employee of RSM

7. This Court has subject matter jurisdiction of this action arising under the Trademark Laws of the United States, jurisdiction being conferred by 15 U.S.C. § 1121 and 28 U.S.C. § 1338. This Court has supplemental jurisdiction over all related state and common law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

8. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(1) and (2). All of the Defendants reside in this district and a substantial part of the events giving rise to KS's claim occurred in this district.

GENERAL ALLEGATIONS

9. KS and its predecessors in interest have been in the business of operating convenience stores and gas stations since approximately 1986, having operated approximately ninety GasAmerica convenience stores (since sold to Speedway LLC).

10. Since July 2019, KS has been using Leo's Trademarks in connection with the

Leo's Store.

11. KS operating as the Leo's Store has a market presence, through reputation or otherwise, throughout the United States through serving customers driving on the National Road, US 40, a/k/a Washington Street.

12. Defendants own and/or operate the Leon's Store. The Leon's Store is approximately 22 miles from the Leo's Store, and one travelling between Greenfield, Indiana, and Plainfield, Indiana, on US 40, would pass by both the Leo's Store and the Leon's Store.

THE TRADEMARK AND THE INSTANT CONTROVERSY

13. KS owns the Leo's Trademarks for use with the Leo's Store (and future Leo's fuel selling convenience stores), and the products and services sold at its convenience stores. The Leo's Trademarks distinguish the Leo's Store from similar stores operated by others. KS has established and has maintained high quality standards for the convenience stores identified by the Leo's Trademarks. Further information about the Leo's Store and its products and services can be found at www.yourleos.com.

14. KS adopted and has continuously used the Leo's Trademarks in conjunction with its products and services since at least July 2019.

15. KS is the owner of several valid and enforceable trademarks and service mark registrations including the ones set forth above.

16. Under the Lanham Act, KS has rights in the registered Leo's Trademarks which extend back to at least October 11, 2018, the filing date of the applications that matured into the Leo's Trademark Registrations shown at Exhibits A-D.

17. KS is a significant force within its market, and the Leo's Store and the Leo's Trademarks have acquired wide renown and have become distinctive in the minds of the

purchasing public.

18. A convenience store bearing the Leo's Trademarks would be immediately identified by the purchasing public with a Leo's Store, especially one that sold Marathon fuel products.

19. The Leo's Store has come to be and is well and favorably known to the consuming public.

20. KS has built up a large and profitable business and now has valuable goodwill in the Leo's Trademarks.

21. The Leo's Trademarks have now become distinctive of the Leo's Store in intrastate and interstate commerce.

22. KS has operated its business in the State of Indiana and has served customers from many states beyond, and has engaged in advertising and promotion of its services in a variety of advertising and promotional activities, and has spent considerable sums of money to advertise and promote its products and services, all using the Leo's Trademarks.

23. Upon information and belief, the Leo's Store and its Leo's Trademarks enjoyed widespread interstate exposure in media and advertising prior to Defendants opening the Leo's Store, or when Defendants may have otherwise begun their unlawful use of Leo's and other marks and trade dress that are likely to be confused with the Leo's Trademarks.

24. As a result of these promotional efforts, the purchasing public has come to know, rely upon, and recognize the business and services of the Leo's Store by the Leo's Trade Dress, which distinguishes the Leo's Stores' services from those of others. As a result, Leo's Trade Dress is well known in the minds of the consuming public of Indiana and elsewhere as identifying or being associated with the Leo's Store exclusively. Because of the consistent

quality of the Leo's Stores' services marketed in connection with the Leo's Trade Dress, KS has established valuable goodwill and reputation for those services and its Trade Dress.

25. The Leo's Trade Dress is original, arbitrary, and nonfunctional. Through the adoption and use of the Leo's Trademarks and Trade Dress in conjunction with the promotional efforts and the sale of millions of dollars of services using the Leo's' Trademarks and Trade Dress, KS has acquired substantial trademark rights, service mark rights, and goodwill in the Leo's Trademarks and Trade Dress.

26. As a result of these acquired Trademark Rights, the Leo's Trademarks have become associated with the Leo's Stores' services in the minds of the consuming public. Even though the Leo's Trade Dress and other common law marks have not yet been registered, Leo's has acquired and does maintain substantial Common Law Trademark rights in the Leo's Trade Dress and common law marks that are enforceable against infringers.

COUNT I

Trademark Infringement - 15 U.S.C. § 1114

27. KS incorporates by reference paragraphs 1 through 26 as if fully set forth herein.

28. Defendants own and/or operate the Leon's Store, as shown in Exhibit F.

29. Defendants use their LEON mark on the sign outside the building which is confusingly similar to Leo's registered LEO's MARKET AND EATERY mark.

30. Defendants use a Lion head logo on its store, which is confusingly similar to KS's registered LION head mark.

31. The Leon's Store building bears a confusingly similar striking resemblance to the Leo's Store building, which causes the Leon's Store building to be confused with the Leo's Store building and thus infringes Leo's Trade Dress rights.

32. Among all of the branded and unbranded fuels that Defendants could have chosen to sell at the Leon's Store, Defendants chose to sell Marathon branded fuels, which further causes the Leon's Store to have an appearance that is confusingly similar to the Leo's Store, and thus exacerbates the potential for confusion between the Leon's Store and the Leo's Store.

33. KS has learned of instances of actual confusion wherein persons known to KS believed that the Leon's Store was another Leo's Store.

34. Because of the actions set forth in this Complaint, consumers and especially traveling consumers are likely to become, and actually have become, confused or mistaken, or deceived into believing that the Leon's Store is somehow related to, sponsored by, or originate from KS and the Leo's Store.

35. Defendants' unauthorized use of trade dress and trademarks that are confusingly similar to the Leo's Trade Dress and Trademarks is intended to trade upon the goodwill and substantial recognition associated with Leo's Trade Dress and Trademarks.

36. Defendants' choice of using the Trade Dress and Trademarks so similar to Leo's mark is a willful and knowing in an attempt to associate themselves with the Leo's Store or otherwise trade upon the Leo's Store's reputation and goodwill.

37. Defendants' use of trade dress and trademarks so similar to Leo's Trade Dress and Trademarks is designed to cause confusion, mistake or deception.

38. Defendants' purpose is to cause consumers and potential customers to believe that the Leon's Store is associated with or sponsored by or affiliated with the Leo's Store or its services when no such association exists.

39. Defendants have infringed and continue to infringe KS's rights in the Leo's Trademarks by Defendants' operation of a convenience store using a similar name and logo

without conducting any search of common law uses of trademarks, without any attempt to avoid infringement, and with a malicious intent to deceive and defraud the public.

40. KS previously advised Defendants that Defendants' use of Leon's, the Leon's Lion Logo, and Leon's Trade Dress infringed KS's trademark rights in its Leo's Trademarks. After KS advised Defendants of the infringement, Defendants continued to use the infringing marks and trade dress, demonstrating a willful desire to infringe Leo's Trademarks, of the type that makes this case and this infringement exceptional within the meaning of the Lanham Act.

41. Defendants' misappropriation and use of Leo's Trademarks in intrastate and interstate commerce is likely to cause, and has in fact, caused confusion and mistake, and to deceive, and has deceived, purchasers at the Leon's Store and KS's potential customers as to the relationship between the Leo's Store and the Leon's Store.

42. Defendants are likely to continue operating under the infringing Leon's mark unless enjoined by this Court.

43. The operation of the Leon's using the Leon's mark in connection therewith is likely to induce persons to buy from, use, recommend or refer to the Leon's Store based on the mistaken and confused belief that the Leon's Store is part of, licensed by, approved by or endorsed by the Leo's Store, which deception, confusion and mistake will result in great damage to KS.

44. Defendants have promoted the Leon's Store bearing the Leon's mark for the wrongful and illegal purpose of trading on the goodwill and reputation of the Leo's Store, capitalizing on the considerable sums of money spent by KS in advertising and promotion of its services and other establishment of such goodwill of the public in its convenience stores, and misleading the purchasing public into believing that the Leon's Store is legitimately connected

with, sponsored or approved by the Leo's Store.

45. Defendants have intentionally appropriated Leo's Trademarks with the intent of causing confusion, mistake and deception as to the source of its products and services and with the intent to palm off its products and those of the Leo's Store, and this confusion, deception and mistake will cause great damage to KS, and as such, Defendants have committed trademark infringement and unfair competition under federal law.

46. Despite clear and unequivocal notice, Defendants have failed and refused to cease and desist using marks and trade dress strikingly similar to Leo's Trademarks or to change their mark.

47. Defendants have unfairly traded upon and appropriated the reputation and goodwill of the Leo's Store as represented by Leo's Trademarks, and is committing fraud and deception on the public.

48. Defendants' continued infringement activity demonstrates a willful and bad faith intent to create confusion, deception, and mistake in the minds of KS's customers and potential customers, and to trade upon KS's goodwill by implying a similarity, identity and connectional relationship between the Leo's Store and the Leon's Store, and between the business of the Leo's Store and the business of the Leon's Store, as a result of which Defendants have been and will be unjustly enriched.

49. The use by Defendants of the Leon's mark for its convenience store is likely to cause confusion, mistake and deception as to the source and origin of the Leon's Store's products and services.

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

51. KS has been damaged by reasons of the acts of Defendants, as alleged herein, and KS is entitled to three times the greater of its damages or Defendants' profits; and reasonable attorneys' fees by reason of Defendants' fraud and deceit under 15 U.S.C. §1117(b) for the various trademark related infringements of KS's rights.

COUNT II

**Infringement and Counterfeiting of
Leo's Registered Trademarks and Service Marks – 15 U.S.C. § 1114**

52. KS incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

53. Defendants' unauthorized use of marks that are confusingly similar to the Leo's Trademarks in connection with the Leon's Store, that have not been approved by KS, is likely to cause confusion and mistake, and to deceive consumers as to the source or origin of the services.

54. Defendants' use in commerce of reproductions, counterfeits, copies or colorable imitations of KS's registered Leo's Trademarks in connection with the sale, offering for sale, distribution or advertising of its services is likely to cause confusion; or to cause mistake or deceive customers or potential customers.

55. The aforesaid acts of Defendants have been willful and deliberate.

56. The acts of Defendants described above infringe KS's Leo's Trademarks, and constitute a counterfeiting of the Leo's Trademarks with consequent damage to KS, and the business and goodwill symbolized by KS's federally registered marks in violation of 15 U.S.C. §1114.

57. Defendants' acts of trademark infringement and counterfeiting have caused, and continue to cause great and irreparable injury to KS, and to its marks, and to the business and goodwill represented thereby, in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury, leaving KS with no adequate remedy at law.

58. By reason of the foregoing, KS is entitled to injunctive relief against Defendants to restrain further acts of trademark infringement and counterfeiting and, after trial, to recover any damages proven to have been caused by reason of Defendants' aforesaid acts of infringement and counterfeiting of KS's registered marks.

59. The damages and profits Defendants obtained through their infringement and counterfeiting of KS's registered marks is such, that the court, in its injunction, should enter judgment for KS for three times the amount of profits, as provided for in 15 U.S.C. §1117.

60. That the willful nature of Defendants' infringement and counterfeiting of the Leo's Trademarks causes this case to become exceptional within the meaning of 15 U.S.C. §1117, thereby justifying the award of reasonable attorney's fees and costs to KS.

61. That the acts of counterfeiting performed by Defendants entitle KS to treble damages, attorneys fees, costs and/or statutory damages provided by the Lanham Act as remedies for such acts.

COUNT III

Trade Dress / False Designation of Origin – 15 U.S.C. § 1125(a)

62. KS incorporates by reference paragraphs 1 through 61 as if fully set forth herein.

63. Defendants have violated 15 U.S.C. §1125(a) by using the term Leon's and by using the Leo's LION Logo and by employing trade dress virtually identical to Leo's trade dress in connection with the Leo's Store, thereby falsely designating the origin of Defendants' products and services, and by using in connection therewith a false designation of origin, a false description or representation, including the Leo's Trademarks tending to falsely describe or represent the same, and has caused such products and services to enter into interstate commerce.

64. The foregoing acts and conduct by Defendants constitute false designation of

origin, passing off and false advertising in connection with services distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

65. KS has been damaged by Defendants' use of such false descriptions, representations or designations or advertising, in the manner herein alleged.

66. Defendants have represented and continue to represent falsely that the Leon's Store's services and products are legitimately connected with the Leo's Store; describe falsely that the Leon's Store's products and services emanate from or are sponsored or approved by the Leo's Store; designate falsely that the Leon's Store's products originated from the Leo's Store; all of which constitute violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

67. Defendants' actions are irreparably damaging to KS and will continue to irreparably damage KS unless enjoined by this Court, as a result of which KS is without an adequate remedy of law.

68. KS will not be able to precisely determine the nature or amount of damage to its reputation, or to the reputation to its products as the result of Defendants' activities.

COUNT IV

Common Law Unfair Competition

69. KS incorporates by reference paragraphs 1 through 68 as if fully set forth herein.

70. Defendants' unauthorized use of marks and design elements that are confusingly similar to Leo's Trademarks constitutes passing off and unfair competition of Leo's Trademarks and Leo's Trademarks in violation of the common law of Indiana.

71. Defendants' wrongful acts have caused and will continue to cause KS irreparable harm, and KS has no adequate remedy at law.

72. KS is entitled to a judgment enjoining and restraining Defendants' from engaging

in further acts of infringement and unfair competition.

COUNT V

Indiana Deceptive Sales Practices Act – Ind. Code § 24-5-0.5-1 et seq.

73. KS incorporates by reference paragraphs 1 through 72 as if fully set forth herein.

74. Defendants' infringing use of its marks and trade dress in a manner that suggests sponsorship, approval, characteristics or benefits that it does not have has the tendency to deceive, and/or is likely to deceive consumers into believing that Defendants' services are sponsored, approved, or licensed by the Leo's Store, or are in some way affiliated or connected with the Leo's Store.

75. Through this infringing conduct, Defendants' have traded on the goodwill of the Leo's Trademarks and Trade Dress to compete unfairly against KS and its genuine products and services.

RELIEF SOUGHT

WHEREFORE, KS prays that:

1. Defendants and each of their officers, agents, servants, employees, attorneys, and successors and all those in active concert and participation with them, be hereby preliminarily and permanently enjoined from:
 - a. using, directly and indirectly, any name, trademark or service mark of KS, including specifically the Leo's Trademarks or any colorable variation thereof, or any name or trademark or service mark which is likely to cause confusion or to cause mistake or to deceive the public with respect to Leo's Trademarks;
 - b. doing any act likely to trade upon the goodwill or business reputation of the Leo's Store or dilute the distinctive quality of the trademarks and service marks of the Leo's Store;
 - c. expressly or impliedly representing the Leo's Store or any other product or service to customers, potential customers or to the public to be affiliated in any way with the Leo's Store;

- d. in connection with the sale, offering for sale, distribution, advertising or promotion of any of Defendants' products and services, representing by words or conduct that any product or service, provided, offered for sale, sold, advertised or rendered, thereby is authorized, sponsored or endorsed by or otherwise connected with the Leo's Store;
 - e. engaging in deceptive trade practices;
 - f. infringing, damaging, disparaging, diluting or misappropriating KS's rights in its trademarks and service marks, reputation and/or goodwill therein;
 - g. using any Leo's Trademark or Trade Dress as a corporate name or as an assumed business name; or maintaining any registrations or filings with any federal state or local agencies in the name of any Leo's mark or anything confusingly similar thereto; and/or
 - h. falsely advertising any of its goods or services.
2. KS be given a judgment against Defendants in the amount of three times the greater of KS's damages or Defendants' profits and all attorneys' fees, costs, and/or expenses incurred or expended in connection therewith in accordance with 15 U.S.C. §1117(b).
 3. The Court finds that KS's Trademarks and registrations are valid and subsisting.
 4. The Court finds that Defendants have committed acts of counterfeiting one or more of KS's Trademarks.
 5. The Court finds that Defendants have infringed and have willfully infringed one or more of KS's Trademarks.
 6. The Court finds that Defendants have committed acts of palming off, unfair competition and false advertising under the Lanham Act.
 7. KS be awarded such other and further relief as is just and proper.

Respectfully submitted,

s/E. Victor Indiano

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