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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

BOILING CRAB FRANCHISE CO., LLC,

PLAINTIFF,

v.

CC FOOD ENTERPRISE LLC and KC  
GROUPS INC.,

DEFENDANTS.

Case No. 1:20-cv-711

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Boiling Crab Franchise Co., LLC (“The Boiling Crab” or “Plaintiff”), for its complaint against defendants CC Food Enterprise LLC and KC Groups Inc. (“Defendants”), alleges as follows:

**NATURE OF ACTION**

1. This is an action for trademark infringement, trade dress infringement, and unfair competition under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a), and the common law of Indiana arising out of Defendants’ adoption and use of marks THE BOILING, THE BOILING and crab design, THE BOILING SEAFOOD, and THE BOILING CRAWFISH, CRAB, LOBSTER & BAR and design that infringe The Boiling Crab’s federally registered THE BOILING CRAB® marks, all in connection with the operation of a restaurant that is virtually identical in all material respects to The Boiling Crab’s THE BOILING CRAB® restaurants. Despite being notified by The Boiling Crab that Defendants’ use of their infringing trademarks to identify their restaurant services is likely to cause confusion, Defendants have refused to cease use of their infringing trademarks and have continued to use them in connection with the sale and provision of competing restaurant services.

**PARTIES**

2. Boiling Crab Franchise Co., LLC is a limited liability company organized and existing under the laws of the State of California, with its principal place of business located in Garden Grove, California.

3. On information and belief, defendant CC Food Enterprise LLC is a limited liability company organized and existing under the laws of the State of Indiana, with its principal place of business located in Indianapolis, Indiana.

4. On information and belief, defendant KC Groups Inc. is a limited liability company organized and existing under the laws of the State of Indiana, with its principal place of business located in Indianapolis, Indiana.

5. On information and belief, defendants CC Food Enterprise LLC and KC Groups Inc. are both majority owned and controlled by Kong F. Chen, who acts as their managing agent.

**JURISDICTION**

6. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1338(a) (jurisdiction over trademark actions), 28 U.S.C. § 1338(b) (unfair competition claim joined with a substantial and related claim under the trademark laws), and 15 U.S.C. § 1121(a) because this action arises under the Lanham Act, 15 U.S.C. §§ 1051, et seq. The Court also has supplemental jurisdiction over the claims arising out of state law pursuant to 28 U.S.C. §§ 1338(b) and 1367 because the state law claims arise out of the same operative facts as the federal claims.

7. This Court has personal jurisdiction over Defendants because Defendants reside and do business in this district and jurisdiction. Personal jurisdiction is also proper over Defendants because Defendants sell and offer for sale goods and services under the infringing marks, and

otherwise conduct business in Indiana, including in this judicial district, and have engaged in tortious conduct resulting in injury to Plaintiff in Indiana, including in this district.

### **VENUE**

8. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b), 1400(a) because among other reasons, Defendants reside and transact business within this district and offer for sale in this district goods and services in a manner that infringes The Boiling Crab's trademark rights. In addition, The Boiling Crab has suffered harm in this district and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

### **FACTS COMMON TO ALL CLAIMS**

#### **THE BOILING CRAB'S *THE BOILING CRAB*® CHAIN OF RESTAURANTS**

9. In 2004, The Boiling Crab, through its predecessor in interest, Sinhdarella, Inc., opened its first restaurant under the trademark THE BOILING CRAB®, in California. True and correct copies of photos showing the exterior signage of The Boiling Crab's first THE BOILING CRAB® restaurant, together with representative examples of the exterior signage used with additional THE BOILING CRAB® restaurant locations opened since then, are attached hereto as Exhibit A.

10. Based on the huge popularity and success of The Boiling Crab's THE BOILING CRAB® restaurants, The Boiling Crab has since expanded its chain of THE BOILING CRAB® restaurants to include locations in multiple states, including 15 THE BOILING CRAB® restaurants in California and THE BOILING CRAB® restaurants in South Miami, Florida; Houston, Texas; Plano, Texas; Las Vegas, Nevada; and Honolulu, Hawaii. The Boiling Crab is also actively exploring further expansion of its chain of THE BOILING CRAB® restaurants to additional locations throughout the United States.

11. The Boiling Crab's THE BOILING CRAB® restaurants offer a unique selection of Louisiana-style seafood, including blue crab, oysters, Dungeness crab, shrimp, and crawfish seasoned with THE BOILING CRAB® restaurants' distinctive blends of spices and seasonings. Customers of THE BOILING CRAB® restaurants are also treated to a singularly enjoyable dining experience that is characterized by the innovative food presentations, distinctive restaurant decor, unique menus, and one-of-a-kind dining experience pioneered and provided by The Boiling Crab's THE BOILING CRAB® restaurants. True and correct copies of photos showing illustrative examples of the inside of The Boiling Crab's THE BOILING CRAB® restaurants are attached hereto as Exhibit B.

12. Further contributing to The Boiling Crab's distinctive appearance and appeal, The Boiling Crab's unique past and present menus use a distinctive format, contain unique content, and are distinctively printed in an eye-catching manner. A true and correct copy of an example of THE BOILING CRAB® restaurants' unique menu used around the time that Defendants began using their infringing trademark without authorization is attached hereto as Exhibit C

13. The Boiling Crab's restaurants have also consistently featured THE BOILING CRAB® branded bibs, cups, uniforms, t-shirts, signage and other collateral. True and correct copies of illustrative examples of the THE BOILING CRAB® restaurants' branded collateral and signage, which are often incorporated into The Boiling Crab's advertising and social media, are attached hereto as Exhibit D.

14. THE BOILING CRAB® chain of restaurants has become extremely well known and respected among consumers, who have come to associate The Boiling Crab's THE BOILING CRAB® trademark with The Boiling Crab's THE BOILING CRAB® restaurants, distinctive restaurant décor, unique menus, and the one-of-a-kind dining experience that The Boiling Crab

pioneered and provides. The Boiling Crab's THE BOILING CRAB® restaurants have also received unsolicited attention from, and positive recognition by, the media, which has further contributed to consumers' widespread recognition of The Boiling Crab's THE BOILING CRAB® restaurants. For example, *The New York Times* has recognized The Boiling Crab as "a pioneer" of the Cajun seafood restaurant concept and noted that "[i]n the years since it opened, its success has inspired a dozen or more competing businesses."

15. Additionally, The Boiling Crab has expended considerable time, effort, and money promoting and advertising its chain of THE BOILING CRAB® restaurants, further contributing to the recognition and success of THE BOILING CRAB® chain of restaurants. Today, The Boiling Crab continues to promote and advertise its THE BOILING CRAB® restaurants.

16. The Boiling Crab has also used the trademark THE BOILING CRAB® extensively on the internet, and, as a result, The Boiling Crab's THE BOILING CRAB® trademark has developed a strong internet presence and recognition by consumers who use the internet. The Boiling Crab is the registrant of various domain names incorporating, in whole or in part, THE BOILING CRAB® trademark, including <theboilingcrab.com> and <boilingcrab.com>. The Boiling Crab owns and operates a website at these domain names in order to promote, and provide consumers with information concerning, The Boiling Crab's nationwide chain of THE BOILING CRAB® restaurants. The Boiling Crab's website makes extensive use of THE BOILING CRAB® trademark and embodies part of the unique look-and-feel of THE BOILING CRAB® dining experience. A true and correct copy of the home and "About" page of The Boiling Crab's website at [www.theboilingcrab.com](http://www.theboilingcrab.com) is attached hereto as Exhibit E.

17. In addition to owning and operating a THE BOILING CRAB® website at [www.theboilingcrab.com](http://www.theboilingcrab.com), The Boiling Crab also uses its trademark THE BOILING CRAB®

extensively on the internet through the popular social networking sites Facebook ([www.facebook.com/theboilingcrab](http://www.facebook.com/theboilingcrab)), Twitter ([twitter.com/theboilingcrab](http://twitter.com/theboilingcrab)), YouTube ([www.youtube.com/user/OfficialBoilingCrab](http://www.youtube.com/user/OfficialBoilingCrab)) and Instagram ([www.instagram.com/boilingcrab/](http://www.instagram.com/boilingcrab/)), among others. In particular, The Boiling Crab maintains these active social media accounts in order to further promote its THE BOILING CRAB® trademark and to provide information about and promote its chain of THE BOILING CRAB® restaurants.

18. Through The Boiling Crab’s extensive use, marketing, branding, and promotion of the its THE BOILING CRAB® trademark and THE BOILING CRAB® chain of restaurants, the trademark THE BOILING CRAB® and dining experience are recognized by consumers throughout the United States, enjoying substantial recognition, goodwill, and association with THE BOILING CRAB® restaurant chain. The public distinguishes The Boiling Crab’s goods and services from those of others who offer the same or similar goods and services on the basis of its THE BOILING CRAB® trademarks. The Boiling Crab’s THE BOILING CRAB® trademarks have acquired secondary meaning throughout the United States.

**THE BOILING CRAB’S FEDERAL REGISTRATION OF ITS  
THE BOILING CRAB® TRADEMARKS**

19. The Boiling Crab is the owner of the following United States Trademark Registrations for its THE BOILING CRAB® trademark:

Mark	Registration No.	Goods & Services
THE BOILING CRAB	3256219	Restaurant Services
	4174077	Restaurant Services

<b>THE BOILING CRAB</b>	4491054	Restaurant Services
	5374534	Restaurant Services

20. True and correct copies of The Boiling Crab's federal trademark registrations for these marks are attached hereto as Exhibit F.

21. The Boiling Crab's federal registration Nos. 3256219, 4174077 and 4491054 for its THE BOILING CRAB® trademarks have become incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence that the marks are valid and that The Boiling Crab is entitled to exclusive use of the recited marks in commerce throughout the United States for restaurant services and in connection with goods and services related thereto.

22. The Boiling Crab's federal registration No. 5374534 for its THE BOILING CRAB® trademark constitutes prima facie evidence that the mark is valid and that The Boiling Crab is entitled to exclusive use of the recited mark in commerce throughout the United States for restaurant services and in connection with goods and services related thereto.

**DEFENDANTS' INFRINGEMENT OF THE BOILING CRAB'S  
THE BOILING CRAB® TRADEMARK**

23. Defendants operate a restaurant at 14 E. Washington St. in Indianapolis, Indiana providing seafood using the identical concept pioneered and offered by The Boiling Crab's THE BOILING CRAB® restaurants.

24. Defendants opened and began operating their restaurant in Indianapolis in or about December 2019, long after The Boiling Crab first began using its THE BOILING CRAB® marks.

In an effort to confuse consumers into thinking that Defendants' restaurant was somehow associated with The Boiling Crab's THE BOILING CRAB® nationwide chain of restaurants, Defendants imitated The Boiling Crab's THE BOILING CRAB® trademark by calling Defendants' restaurant "THE BOILING SEAFOOD," and using signage and logos that combined the phrase THE BOILING SEAFOOD in red and blue with a red crab design, as well as logos that combined the phrase "THE BOILING" with a red crab design (collectively, the "Infringing Marks"), even though Defendants do not have any affiliation with, or authorization from, The Boiling Crab.



Illustrative photos depicting Defendants' use of the Infringing Marks are attached hereto as Exhibit G.

25. Defendants also adopted and began using with their knock-off restaurant a seafood concept and menu that imitated The Boiling Crab's distinctive concept and menu. True and correct copies of pictures of Defendants' menu showing Defendants' "THE BOILING SEAFOOD" and crab design logo and showing a "Seafood by Pound" concept, seasoning, and spice level description are attached hereto as Exhibit H.

26. Defendants also registered the domain name <theboilingindianapolis.com> (the “Infringing Domain Name”) and are using the domain to host a website promoting the restaurant services offered by Defendants under the Infringing Marks. Defendants have also created various social media pages on platforms such as Facebook and Instagram using variations on THE BOILING name and crab design logo, and have been using these pages to promote and advertise the restaurant services Defendants are providing under the Infringing Marks.

27. On information and belief, at the time Defendants opened and began operating the Washington St. restaurant under the Infringing Marks, Defendant knew of The Boiling Crab, The Boiling Crab’s restaurants and concept, as well as The Boiling Crab’s superior rights in the THE BOILING CRAB® marks, and knew or should have known that the unauthorized use of the Infringing Marks constitutes a violation of The Boiling Crab’s rights in THE BOILING CRAB® marks and trade dress.

28. Indeed, prior to opening the Washington St. restaurant, Defendant CC Food Enterprises had operated a restaurant at 1 N. Meridian St. in Indianapolis, Indiana that also provided seafood using the identical concept pioneered and offered by The Boiling Crab’s THE BOILING CRAB® restaurants. In an effort to confuse consumers into thinking that the N. Meridian St. restaurant was somehow associated with The Boiling Crab’s THE BOILING CRAB® nationwide chain of restaurants, Defendant CC Food Enterprises had imitated The Boiling Crab’s THE BOILING CRAB® trademark by calling the N Meridian restaurant “The Boiling Crawfish, Crab, Lobster & Bar” and using signage and logos that combined the phrase THE BOILING in red and white with a red crab design, as well as logos that combined the phrase “THE BOILING” with a red crab design even though Defendants do not have any affiliation with, or authorization from, The Boiling Crab.



29. On information and belief, Defendant CC Food Enterprise closed the N. Meridian St. location in the Fall of 2019 shortly after receiving a letter from counsel for The Boiling Crab providing express notice of The Boiling Crab's registered THE BOILING CRAB® trademarks and demanding the Defendant cease and desist from all infringement thereof.

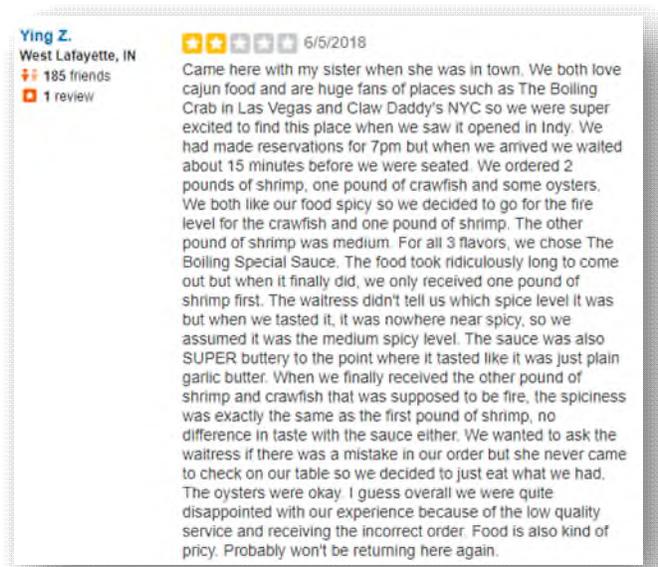
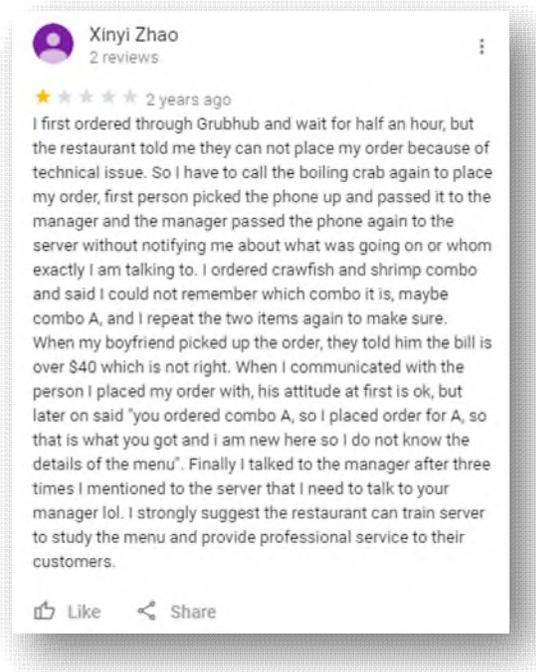
30. Accordingly, Defendants' adoption and use of the Infringing Marks was in bad faith and with the intention of capitalizing on The Boiling Crab's goodwill. Defendants' infringement of The Boiling Crab's trademarks is therefore intentional and willful.

31. Counsel for The Boiling Crab has sent multiple letters objecting to Defendants' unauthorized use of the Infringing Marks in connection with restaurant services. The letters have demanded, among other things, that Defendants immediately stop using the Infringing Marks.

32. Despite The Boiling Crab's repeated demands that Defendants stop their infringement of The Boiling Crab's THE BOILING CRAB® trademarks, Defendants have continued their willful and intentional infringement of The Boiling Crab's THE BOILING CRAB® trademarks.

33. The use of the Infringing Marks by Defendants is likely to cause confusion, mistake, and deception of consumers as to the source, quality, and nature of Defendants' services and goods, thereby proximately causing injury to The Boiling Crab and its trademark rights.

34. On information and belief, Defendants' imitation of The Boiling Crab's THE BOILING CRAB® restaurants through unauthorized use of the Infringing Marks has caused, and will continue to cause, actual confusion among consumers. This includes actual confusion in online customer reviews written about Defendants' infringing restaurants, including the following:



**FIRST CLAIM FOR RELIEF**  
**(Infringement of a Federally Registered Trademark)**  
**15 U.S.C. § 1114(1)**

35. The Boiling Crab realleges and incorporates by reference the allegations in paragraphs 1 through 34, as if set forth fully herein.

36. This claim is against Defendants for trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

37. The Infringing Marks used by Defendants are reproductions, counterfeits, copies, or colorable imitations of The Boiling Crab's registered THE BOILING CRAB® marks.

38. Defendants have used and are using in interstate commerce the Infringing Marks in connection with the sale, offering for sale, distribution, or advertising of restaurant services in such a way as is likely to cause confusion, to cause mistake, and/or to deceive the consuming public.

39. The Boiling Crab never consented to or authorized Defendants' adoption or commercial use of the Infringing Marks for any purpose. Defendants therefore have infringed and are infringing The Boiling Crab's THE BOILING CRAB® trademarks in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a).

40. On information and belief, at all times relevant to this action, including when Defendants first adopted the Infringing Marks and commenced commercial use of the same in connection with restaurant services, Defendants knew of The Boiling Crab's prior adoption and widespread commercial use of THE BOILING CRAB® trademarks in connection with restaurant services and related goods and services and knew of the valuable goodwill and reputation acquired by The Boiling Crab in connection with its THE BOILING CRAB® trademarks. Defendants' infringement of The Boiling Crab's THE BOILING CRAB® trademark is willful and deliberate.

41. The Boiling Crab has no control over the quality of Defendants' infringing restaurant services, and because of the source confusion engendered by Defendants' willful trademark infringement, The Boiling Crab's valuable goodwill in and to its federally registered THE BOILING CRAB® trademark is being significantly harmed. On information and belief, Defendants' use of the Infringing Marks, in imitation of The Boiling Crab's THE BOILING CRAB® trademarks, has caused confusion, mistake, and deception to purchasers as to the source and origin of Defendants' services and products sold under the Infringing Marks.

42. Defendants' activities are intended, and are likely, to lead the public to conclude, incorrectly, that Defendants' restaurant services originate with, are sponsored by, and/or are authorized by The Boiling Crab and its THE BOILING CRAB® brand, to the damage and harm of The Boiling Crab and the consuming public. Defendants' activities constitute willful and deliberate infringement of The Boiling Crab's federally registered trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1114(1). Accordingly, The Boiling Crab is entitled to recover Defendants' profits, together with The Boiling Crab's damages, increased monetary recoveries as provided by the Lanham Act, as well as costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

43. Defendants' activities have caused and will continue to cause irreparable harm to The Boiling Crab for which The Boiling Crab has no adequate remedy at law, in that: (i) The Boiling Crab's THE BOILING CRAB® trademarks are a unique and valuable property right that has no readily determinable market value; (ii) Defendants' infringement constitutes an interference with The Boiling Crab's goodwill and customer relationships and will substantially harm The Boiling Crab's reputation as a source of high quality goods and services, as well as dilute the substantial value of The Boiling Crab's THE BOILING CRAB® name and trademarks; and (iii)

Defendants' wrongful conduct, and the resulting damages to The Boiling Crab, are continuing. Accordingly, The Boiling Crab is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order under 15 U.S.C. § 1118 impounding all goods and other materials in Defendants' possession, custody, or control that bear the Infringing Marks.

44. The Boiling Crab also is entitled to, in addition to the other remedies described herein, the cost of corrective advertising and a reasonable royalty as a result of Defendants' infringement of The Boiling Crab's federally registered THE BOILING CRAB® trademarks.

45. This is an exceptional case, further entitling The Boiling Crab to additional remedies and also entitling The Boiling Crab to recover its attorneys' fees and costs incurred in prosecuting this action and stopping Defendants' willful trademark infringement, pursuant to 15 U.S.C. § 1117.

**SECOND CLAIM FOR RELIEF**  
**(Unfair Competition)**  
**15 U.S.C. § 1125(a)**

46. The Boiling Crab realleges and incorporates by reference the allegations in paragraphs 1 through 45, as if set forth fully herein.

47. This claim is against Defendants for trademark and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. The Boiling Crab's THE BOILING CRAB® trademarks are inherently distinctive and have acquired secondary meaning in the eyes of the public.

49. Defendants' use of the Infringing Marks is so similar to The Boiling Crab's THE BOILING CRAB® marks and/or trade dress that Defendants are likely to cause confusion, mistake, and/or to deceive the consuming public as to the affiliation, connection, and/or association between The Boiling Crab's THE BOILING CRAB® restaurants and Defendants' restaurant.

Defendants' unauthorized use of the Infringing Marks infringes The Boiling Crab's THE BOILING CRAB® trademarks and constitutes unfair competition.

50. On information and belief, at all times relevant to this action, including at the time Defendants first adopted and began using without authorization the Infringing Marks, Defendant knew of The Boiling Crab's prior adoption and widespread commercial use of the THE BOILING CRAB® mark, and knew of the valuable goodwill and reputation acquired by The Boiling Crab in connection with its THE BOILING CRAB® trademarks. Defendants' infringement of The Boiling Crab's THE BOILING CRAB® trademarks is therefore knowing, willful, and deliberate.

51. Defendants' activities are intended to, and are likely to, lead the public to conclude, incorrectly, that Defendants' restaurant services originate with, are sponsored by, and/or are authorized by The Boiling Crab and its nationwide chain of THE BOILING CRAB® restaurants, to the damage and harm of The Boiling Crab and the consuming public. Defendants' activities constitute willful and deliberate infringement of The Boiling Crab's THE BOILING CRAB® trademarks, as well as unfair competition, in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1125(a). Accordingly, The Boiling Crab is entitled to recover Defendants' profits together with The Boiling Crab's damages, an increased monetary recovery, as well as costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

52. Defendants' activities have caused and will continue to cause irreparable harm to The Boiling Crab for which The Boiling Crab has no adequate remedy at law, in that: (i) The Boiling Crab's rights in its THE BOILING CRAB® trademarks are unique and valuable property rights which have no readily determinable market value; (ii) Defendants' infringement constitutes an interference with The Boiling Crab's goodwill and customer relationships and will substantially

harm The Boiling Crab's reputation as a source of high quality goods and services, as well as harm the substantial value of The Boiling Crab's THE BOILING CRAB® trademarks; and (iii) Defendants' wrongful conduct, and the resulting damages to The Boiling Crab, are continuing. Accordingly, The Boiling Crab is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order under 15 U.S.C. § 1118 impounding all goods and other materials in Defendants' possession, custody, or control that bear the Infringing Marks.

53. The Boiling Crab also is entitled to, in addition to the other remedies described herein, the cost of corrective advertising and a reasonable royalty as a result of Defendants' unfair competition and false designation of origin.

54. This is an exceptional case, further entitling The Boiling Crab to additional remedies and also entitling The Boiling Crab to recover its attorneys' fees and costs incurred in prosecuting this action and stopping Defendants' willful unfair competition and false designation of origin pursuant to 15 U.S.C. § 1117.

**THIRD CLAIM FOR RELIEF**  
**(Unfair Competition under Indiana State Law)**

55. The Boiling Crab realleges and incorporates by reference the allegations in paragraphs 1 through 54, as if set forth fully herein.

56. Defendants' acts as detailed herein have impaired The Boiling Crab's goodwill, have created a likelihood of confusion, are likely to deceive consumers, and have otherwise adversely affected The Boiling Crab's business and reputation by Defendants' use of unfair, fraudulent, and unlawful business practices. These acts constitute unfair competition and unfair business practices under Indiana common law.

57. Absent injunctive relief, The Boiling Crab has no means by which to control Defendants' deceptive and confusing use of the Infringing Marks. The Boiling Crab is therefore entitled to injunctive relief prohibiting Defendants from continuing such acts of unfair competition.

58. As a direct and proximate result of the aforesaid acts of unfair competition, Defendants have wrongfully profited and taken the benefit of The Boiling Crab's creativity and investment of time, energy, and money. Defendants have also wrongfully taken monies from consumers as the result of the aforesaid acts of unfair competition. Defendants should therefore be ordered to perform full restitution, as permitted by law, as a consequence of their acts of unfair competition.

### **JURY DEMAND**

In accordance with the Seventh Amendment of the United States Constitution and Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, The Boiling Crab prays for entry of a judgment ordering and declaring:

1. That, preliminarily pending trial of this action and permanently thereafter, Defendants and their agents, servants, employees, successors, licensees and assignees, and all persons, firms, entities, partners, or corporations in active concert or participation with Defendants, are preliminarily and thereafter permanently enjoined from doing, threatening, or attempting to do or causing to be done, either directly or indirectly, by any means, method or device, any of the following acts:

(a) Directly or indirectly infringing, using, or displaying the trademark THE BOILING CRAB®, or any mark similar thereto, including but not limited to the Infringing Marks, in any manner or for any purpose, including, but not limited to, in advertising, promoting,

producing, distributing, selling, offering for sale, or giving away any services or products which infringe, use, or display The Boiling Crab's THE BOILING CRAB® trademarks, or any marks similar thereto;

(b) Using any term that is likely to be confused with The Boiling Crab's THE BOILING CRAB® trademarks;

(c) Falsely representing, misleading, or deceiving consumers into believing that services or products advertised, promoted, produced, distributed, sold, or offered by sale by Defendants originate from The Boiling Crab or its THE BOILING CRAB® restaurants, or are sponsored, approved, licensed by, or associated with The Boiling Crab or its THE BOILING CRAB® restaurants, or that Defendants or their services or products are in some way associated or affiliated with The Boiling Crab or its THE BOILING CRAB® restaurants;

(d) Committing any other acts calculated to or that do unfairly compete with The Boiling Crab in any manner;

(e) Filing or prosecuting any trademark application for the trademark THE BOILING CRAB® or any mark confusingly similar thereto;

(f) Filing or maintaining any business license, d/b/a, or similar document using the trademark THE BOILING CRAB® or any mark confusingly similar thereto; and

(g) Registering or using any trade name or domain name containing or consisting of the trademark THE BOILING CRAB® or any mark confusingly similar thereto;

2. That Defendants be required to account for all profits derived by Defendants from their trade, infringing conduct, unfair practices and competition, and for an order of restitution of the entire amount of those profits, in amounts to be proven at trial, to The Boiling Crab;

4. That Defendants be required to turn over to be impounded during the pendency of this action all goods and other materials in its possession, custody, or control used or involved in the trademark infringement complained of herein, and to turn over for destruction all such goods and other materials, or in the alternative that all such items be subject to seizure;

5. That Defendants be ordered to pay all of The Boiling Crab's attorneys' fees, costs, and disbursements incurred in this suit, in bringing this action for the legal enforcement of its trademark rights, and in connection with all efforts to stop Defendants' trademark infringement and unfair competition;

6. That, in addition to being ordered to pay its profits attributable to the infringing conduct complained of herein to The Boiling Crab, Defendants also be ordered to pay their infringing profits as monetary damages and reasonable royalties, to be increased by the Court by such amount as the Court deems to be just, together with The Boiling Crab's damages, all of which, according to the circumstances of this case, should be increased and trebled as provided by law, including 15 U.S.C. § 1117, and paid to The Boiling Crab;

7. That Defendants be ordered to pay exemplary or punitive damages to the extent available under, and according to, law;

8. That Defendants have willfully and deliberately committed acts of trademark infringement and unfair competition against The Boiling Crab;

9. That Defendants be ordered to pay prejudgment and postjudgment interest according to law;

10. That Defendants be ordered to pay nominal damages;

11. That Defendants be ordered to pay the costs of corrective advertising; and

12. For all such other, further, and different relief that this Court deems just and proper.

DATED this 4<sup>th</sup> day of March, 2020.

Respectfully submitted,

/s/ Gregory W. Guevara

Gregory W. Guevara (#16728-49)

Philip R. Zimmerly (#30217-06)

Bose McKinney & Evans LLP

111 Monument Circle, Suite 2700

Indianapolis, IN 46204

(317) 684-5000; (317) 684-5173 (Fax)

[gguevara@boselaw.com](mailto:gguevara@boselaw.com)

[pzimmerly@boselaw.com](mailto:pzimmerly@boselaw.com)

Steven E. Klein (OR #051165) (PHV Pending)

Davis Wright Tremaine LLP

1300 SW Fifth Avenue, Suite 2400

Portland, OR 97201-5610

(503) 241-2300; (503) 778-5299 (Fax)

[stevenklein@dwt.com](mailto:stevenklein@dwt.com)

*Attorneys for Plaintiff, Boiling Crab Franchise  
Co., LLC*

3821336