

**MARION COUNTY CIRCUIT/SUPERIOR COURT
COUNTY OF MARION
STATE OF INDIANA**

NOBLE ROMAN’S, INC.,

Plaintiff,

v.

**GATEWAY TRIANGLE CORP.,
7405 INDY CORP.,
850 INDY CORP.,
NORTHLAKE MARKETING LLC,
and THOMAS M. COLLINS II,**

Defendants.

Cause No. _____



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COMPLAINT

Plaintiff, **NOBLE ROMAN’S, INC.**, (“Noble Roman’s”) by counsel, for its claims against Defendants, **GATEWAY TRIANGLE CORP.** (“Gateway”), **7405 INDY CORP.** (“7405”), **850 INDY CORP.** (“850”), **NORTHLAKE MARKETING LLC.** (“Northlake”), and **THOMAS M. COLLINS II** (“Mr. Collins) (Gateway, 7405, 850, Northlake, and Mr. Collins are hereinafter referred to as the “Defendant(s)”), states as follows.

PARTIES

1. Noble Roman’s is an Indiana corporation with its principal place of business located in Indianapolis, Marion County, Indiana.

2. Gateway, 7405 and 850 are corporations incorporated and existing under the laws of the State of Indiana with a principal office address of 3592 North Hobart Road, Hobart, County of Lake, Indiana 46342. The Registered Agent for Gateway, 7405 and 850 is Mr. Collins and their Registered Agent’s Address is 3592 North Hobart Road, Hobart, County of Lake, Indiana 46342.

3. Northlake is a limited liability company organized and existing under the laws of the State of Indiana with a principal office address of 3592 North Hobart Road, Hobart, County of Lake, Indiana 46342. The Registered Agent for Northlake is Jared R. Tauber and its Registered Agent's Address is 1415 Eagle Ridge Drive, Schererville, Indiana 46375.

4. Gateway, 7405, 850, and Northlake shall be referred to hereafter as the "Entity Defendant(s)".

5. Mr. Collins is an Indiana citizen believed to be residing in Hobart, Indiana.

6. Mr. Collins is believed to be a principal officer and owner of each of the Entity Defendants.

7. Mr. Collins and the Entity Defendants shall hereinafter be referred to as the "Defendant(s)".

8. Defendants own a diversity of businesses in various industries operating throughout the State of Indiana under the tradename LUKE'S OIL a.k.a. LUKE.

COMMON ALLEGATIONS

9. Noble Roman's incorporates all preceding allegations.

10. Noble Roman's is in the business of franchising the operation of Noble Roman's pizza franchises that feature pizza, breadsticks, and other related food items to various franchisees throughout the world.

11. Noble Roman's is the exclusive holder of licensing and franchising rights relating to the Noble Roman's brand, including, without limitation, products, services, names, logos, images, media, goodwill, trademarks, and trade dress (the "Intellectual Property").

12. Noble Roman's is also the owner of certain property rights, including the valuable privilege to exclusively use, license, and/or franchise Noble Roman's Intellectual Property in connection with the Noble Roman's franchise system (the "Property Rights").

13. Noble Roman has expended significant amounts of money and resources on its Property Rights, including, without limitation, costs incurred in the research, development, and marketing of its products, services, and brand, and, as a result of Noble Roman's efforts, Noble Roman's Property Rights are highly valuable.

14. Defendants own a diversity of businesses in various industries, including, without limitation, over thirty (30) convenience stores operating throughout the State of Indiana under the tradename LUKE'S OIL a.k.a. LUKE.

15. On or about June 30, 2013, Noble Roman's and Gateway entered into that certain *NOBLE ROMAN'S INC. MASTER FRANCHISE AGREEMENT (NOBLE ROMAN'S PIZZA)*, as amended by that certain *AMENDMENT #1 NOBLE ROMAN'S MASTER FRANCHISE AGREEMENT* as of June 22, 2016, *AMENDMENT #2 NOBLE ROMAN'S MASTER FRANCHISE AGREEMENT* as of December 21, 2016, and *AMENDMENT #3 NOBLE ROMAN'S MASTER FRANCHISE AGREEMENT* as of October 18, 2017, (collectively, the "Franchise Agreement") (see Ex. "1") pursuant to which Gateway was licensed and authorized to sell "Noble Roman's" branded food products using Noble Roman's Intellectual Property at the following fifteen (15) LUKE'S Locations (the "Franchised Locations") only:

<u>LOC. #</u>	<u>BUSINESS NAME</u>	<u>ADDRESS</u>	<u>CITY</u>	<u>STATE</u>
1	Luke's 216	1600 E. 81st Ave.	Merrillville	IN
2	Luke's 265	3550 Sheffield Ave.	Hammond	IN
3	Luke's 270	2299 US Hwy 30	Schererville	IN
4	Luke's 293	9297 Taft St.	Merrillville	IN
5	Luke's 241	7101 W. 133rd Ave.	Cedar Lake	IN
6	Luke's 273	7277 Taft St.	Merrillville	IN
7	Luke's 249	6259 Melton Rd.	Portage	IN

8	Luke's 242	2121 Us Hwy 41	Schererville	IN
9	Luke's 251	1224 E. Ridge Rd.	Griffith	IN
10	Luke's 298	298 Melton Rd.	Chesterton	IN
11	Luke's 231	3211 W. 37th Ave.	Hobart	IN
12	Luke's 220	5695 Indpls. Blvd.	East Chicago	IN
13	Luke's 224	3 E. US Hwy 6	Valparaiso	IN
14	Luke's 226	4333 S. St.	Lafayette	IN
15	Luke's 232	500 E. 37th Ave.	Hobart	IN

16. On information and belief, Franchise Locations 1-15 are owned and/or operated by 7405 and/or Gateway, Franchised Locations 1 and 12 are also owned and/or operated by Northlake, and Franchised Location 2 is also owned and/or operated by 850.

17. The Franchise Agreement between Noble Roman's and Gateway terminated on December 31, 2019.

**COUNT I:
CIVIL ACTION UNDER INDIANA CODE § 34-24-3-1
FOR RECOVERY OF DAMAGES, COSTS AND FEES ARISING FROM
DEFENDANTS' CONVERSION OF NOBLE ROMAN'S PROPERTY RIGHTS
IN VIOLATION OF INDIANA CODE § 35-43-4-3**

18. Noble Roman incorporates by reference all preceding allegations.

19. Defendants have willfully and intentionally used Noble Roman's Intellectual Property with knowledge that Noble Roman owns the Property Rights.

20. Defendants have encumbered Noble Roman's Property Rights in connection with the sale of unauthorized products and/or services bearing Noble Roman's Intellectual Property without authorization and with knowledge that the Property Rights were owned by Noble Roman.

21. Defendants advertised and sold unauthorized products utilizing Noble Roman's Intellectual Property without the authorization of Noble Roman's.

22. Defendants sold unauthorized products utilizing Noble Roman's Intellectual Property at (at least) one (1) non-Franchised Location without the authorization of Noble Roman's.

23. After the termination of the Franchise Agreement, Defendants continued to utilize Noble Roman's Intellectual Property to advertise and sale their products and services.

24. Noble Roman lost value in its Property Rights when Defendants advertised and sold unauthorized products in connection with Noble Roman's Intellectual Property.

25. By using Noble Roman's Intellectual Property in connection with Defendants' products, Defendants have attempted to profit by encumbering Noble Roman's Property Rights.

26. In connection with its unlawful activities, Defendant knowingly or intentionally exerted unauthorized control over Noble Roman's Property Rights in connection with the advertisement, distribution, sale, and use of unauthorized products and/or services.

27. As the owner of the Property Rights, Noble Roman alone has the right to control and authorize the use of Noble Roman's Intellectual Property in connection with the sale of products and/or services.

28. The Property Rights constitutes valuable property.

29. Defendant obtained, took, sold, conveyed, encumbered, possessed and/or transferred all or a valuable part of Noble Roman's Property Rights through the advertisement and sale of products and/or services utilizing Noble Roman's Intellectual Property.

30. In connection with their unlawful activities, Defendants obtained, took, sold, conveyed, encumbered, possessed and/or transferred all or a valuable part of Noble Roman's Property Rights for Defendants' own use and benefit and in exclusion and defiance of Noble Roman's rights in its Property Rights.

31. Defendants sold products in connection with Noble Roman's Intellectual Property without Noble Roman's consent and in a manner or to an extent other than that to which Noble Roman had consented.

32. Gateway sold products in connection with Noble Roman's Intellectual Property in a manner or to an extent other than that to which Noble Roman had consented.

33. In connection with their unlawful activities, Defendants encumbered Noble Roman's Property Rights for their own use and benefit.

34. As a result of Defendants' conversion, Noble Roman was damaged in an amount to be determined and seeks its statutory remedies under the Indiana Crime Victim's Act, Indiana Code § 34-24-3-1, for Defendant's violation of Indiana Code § 35-43-4-3, including, but not limited to treble damages, costs, and attorney's fees.

**COUNT II:
CIVIL ACTION UNDER INDIANA CODE§ 34-24-3-1
FOR RECOVERY OF DAMAGES, COSTS AND FEES ARISING FROM
DEFENDANTS' THEFT OF NOBLE ROMAN'S PROPERTY RIGHTS
IN VIOLATION OF INDIANA CODE§ 35-43-4-2**

35. Noble Roman incorporates by reference all preceding allegations.

36. Defendants have willfully and intentionally used Noble Roman's Intellectual Property with knowledge that Noble Roman owns the Property Rights.

37. Defendants have encumbered Noble Roman's Property Rights in connection with the sale of unauthorized products and/or services bearing Noble Roman's Intellectual Property without authorization and with knowledge that the Property Rights were owned by Noble Roman.

38. Defendants advertised and sold unauthorized products utilizing Noble Roman's Intellectual Property without the authorization of Noble Roman's.

39. Defendants sold unauthorized products utilizing Noble Roman's Intellectual Property at (at least) one (1) non-Franchised Location without the authorization of Noble Roman's.

40. After the termination of the Franchise Agreement, Defendants continued to utilize Noble Roman's Intellectual Property to advertise and sale their products and services.

41. Noble Roman lost value in its Property Rights when Defendants advertised and sold unauthorized products in connection with Noble Roman's Intellectual Property.

42. By using Noble Roman's Intellectual Property in connection with Defendants' products, Defendants have attempted to profit by encumbering Noble Roman's Property Rights.

43. In connection with its unlawful activities, Defendant knowingly or intentionally exerted unauthorized control over Noble Roman's Property Rights in connection with the advertisement, distribution, sale, and use of unauthorized products and/or services.

44. As the owner of the Property Rights, Noble Roman alone has the right to control and authorize the use of Noble Roman's Intellectual Property in connection with the sale of products and/or services.

45. The Property Rights constitutes valuable property.

46. Defendant obtained, took, sold, conveyed, encumbered, possessed and/or transferred all or a valuable part of Noble Roman's Property Rights through the advertisement and sale of products and/or services utilizing Noble Roman's Intellectual Property.

47. In connection with their unlawful activities, Defendants obtained, took, sold, conveyed, encumbered, possessed and/or transferred all or a valuable part of Noble Roman's Property Rights for Defendants' own use and benefit and in exclusion and defiance of Noble Roman's rights in its Property Rights.

48. Defendants sold products in connection with Noble Roman's Intellectual Property without Noble Roman's consent and in a manner or to an extent other than that to which Noble Roman had consented.

49. Gateway sold products in connection with Noble Roman's Intellectual Property in a manner or to an extent other than that to which Noble Roman had consented.

50. In connection with their unlawful activities, Defendants encumbered Noble Roman's Property Rights for their own use and benefit.

51. As a result of Defendants' theft, Noble Roman was damaged and seeks an award of actual damages resulting from Defendants' violations of Indiana Code § 35-43-4-2, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

**COUNT III:
BREACH OF FRANCHISE AGREEMENT**

52. Noble Roman incorporates by reference all preceding allegations.

53. All conditions precedent to the commencement of this action including but not limited to any requirements for notice of default or demand have occurred or been waived or otherwise excused.

54. The Franchise Agreement is a valid and enforceable contract between Noble Roman's and Gateway.

55. Gateway has breached the Franchise Agreement in connection with the sale of unauthorized products and/or services.

56. In violation of the Franchise Agreement, Gateway advertised and sold unauthorized products and/or services utilizing Noble Roman's Intellectual Property at Franchised Locations.

57. After the termination of the Franchise Agreement, Gateway continued to utilize Noble Roman's Intellectual Property in violation of the Franchise Agreement.

58. After the termination of the Franchise Agreement, Gateway continued to utilize Noble Roman's Intellectual Property to advertise and sale unauthorized products and/or services in violation of the Franchise Agreement.


59. In violation of the Franchise Agreement, Gateway advertised and sold unauthorized products and/or services utilizing Noble Roman's Intellectual Property at non-Franchised Locations.

60. As a result of Gateway's breaches, Noble Roman has been damaged in an amount to be determined.

61. Noble Roman's is entitled to recover any and all damages as a result of Gateway's breach of the Franchise Agreement, plus prejudgment and post judgment interest at the statutory rate, plus attorneys' fees, collection fees and costs.

**COUNT IV:
TRADEMARK INFRINGEMENT**

62. Noble Roman's incorporates all preceding allegations.

63. Noble Roman's registered the Noble Roman's® word mark on the Principal Register of the United States Patent and Trademark Office in 1974 under Registration No. 987,069, THE BETTER PIZZA PEOPLE® word mark in 1995 under Registration No.1,920,428, and the design mark  on the Principal Register of the United States Patent and Trademark Office in 1992 under Registration No. 1682308 (hereinafter, collectively, the "Marks").

64. The registrations of the Marks are valid and incontestable and enjoy the statutory presumptions of validity and ownership.

65. Noble Roman's has used the Marks in commerce continuously since 1972 in connection with marketing, identifying, and promoting its franchises.

66. Defendants traded unfairly upon Noble Roman's well-established goodwill and reputation by confusing the public as to the origin of its products, including the sale of non-conforming items at Defendants' Franchised Locations and non-Franchised Locations while

holding themselves out to the public as a vendor of Noble Roman's products and/or in connection with Noble Roman's Marks.

67. Defendants' use Noble Roman's Marks was without the authorization or consent of Noble Roman's.

68. Gateway's use Noble Roman's Marks was without the authorization or consent of Noble Roman's and/or outside the scope of permission granted in the Franchise Agreement.

69. Defendants' acts constitute trademark infringement, a violation of 15 U.S.C. § 1114(1), as well as a false designation of origin in violation of 15 U.S.C. § 1125.

70. Defendants' acts also violate Indiana's Trademark Act, Indiana Code Chapter 24-2-1.

71. Noble Roman's has been damaged by Defendants' willful infringement and false designation of origin.

72. Noble Roman's is entitled to recover any and all damages, treble damages, plus attorneys' fees, collection fees and costs, as a result of the trademark infringement, false designation of origin and violation of the Lanham Act and Indiana's Trademark Act.

**COUNT V:
UNJUST ENRICHMENT**

73. Noble Roman's incorporates all preceding allegations.

74. Defendants' use of Noble Roman's Intellectual Property was without the authorization or consent of Noble Roman's.

75. Defendants have been unjustly enriched by knowingly utilizing and benefiting from Noble Roman's Property Rights and Intellectual Property without authorization and without paying for the same.

76. Noble Roman's is entitled to recover any and all damages and other amounts available at law and/or in equity as a result of such unjust enrichment.

WHEREFORE, Noble Roman's, by counsel, hereby respectfully requests the Court enter Judgment in its favor and against Defendants, as applicable, for conversion, theft, breach of the Franchise Agreement, trademark infringement, false designation of origin, violation of the Lanham Act, violation of Indiana's Trademark Act, and for unjust enrichment as set forth above and for all other just and proper relief.

Date: October 14, 2020.

Respectfully Submitted,

DAVIS & SARBINOFF, LLC, an Indiana limited liability company,

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