

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



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La Michoacana Meat Market TM Holdings, LLC,)
)
)
Plaintiff,)
)
v.)
)
Cacimiro Galan and)
Carniceria y Fruteria La Morenita LLC,)
)
Defendants.)

Case No. 2:21-cv-87

Jury Trial Demanded

PLAINTIFF’S COMPLAINT

Plaintiff, La Michoacana Meat Market TM Holdings, LLC (“Plaintiff”), for its Complaint against Defendants Cacimiro Galan and Carnicería y Frutería La Morenita LLC (collectively, “Defendants”), states as follows:

PARTIES

1. Plaintiff is a Delaware limited liability company with its principal office at 8845 Long Point, Houston, Texas 77055.
2. Upon information and belief, Defendant Cacimiro Galan is the owner of the Defendant entity and resides in Lake County, Indiana.
3. Upon information and belief, Defendant Carnicería y Frutería La Morenita LLC is an Indiana limited liability company with its principal place of business at 330 Central Avenue, Lake Station, Indiana 46405. It may be served at the address of its registered agent, Cacimiro Galan, at 330 Central Avenue, Lake Station, Indiana 46405.

JURISDICTION AND VENUE

4. This Court has both diversity and federal question jurisdiction over this case.
5. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are citizens of different States and the amount in controversy exceeds seventy-five thousand (\$75,000) dollars.
6. This Court has original and exclusive jurisdiction over the Lanham Act claims pursuant to 15 U.S.C.A. § 1121 and 28 U.S.C.A. §§ 1331, 1338.
7. This Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C.A. § 1367.
8. This Court has personal jurisdiction over Defendants because they do business in this judicial district, and/or because the conduct complained of in this Complaint occurred in this judicial district.
9. Venue is proper in this Court pursuant to 28 U.S.C.A. § 1391(b)(1) and (2) because Defendants reside in, and do business in, this judicial district.

SUMMARY OF FACTS

Plaintiff's Trademark Rights

10. Plaintiff owns a family of registered marks including the words "LA MICHOACANA". Below is a list of seven of Plaintiff's federal trademark registrations (the "LA MICHOACANA" marks):

	MARK NAME	FEDERAL REG. NO.
1	LA MICHOACANA MEAT MARKET	REG NO. 3669454
2	LA MICHOACANA MEAT MARKET	REG NO. 4662100
3	LA MICHOACANA MEAT MARKET (& DESIGN)	REG NO. 4662101
4	LA MICHOACANA MEAT MARKET (& DESIGN)	REG NO. 4662104

5	LA MICHOACANA MEAT MARKET KIDS	REG NO. 4771484
6	LA MICHOACANA MEAT MARKET KIDS RAFITA (& DESIGN)	REG NO. 4784267
7	LA MICHOACANA MEAT MARKET KIDS RAFITA (& DESIGN)	REG NO. 4784268

True and correct copies of the Registration Certificates are attached as Exhibits A1-A7.

11. Plaintiff's federal registration, number 3669454, for "LA MICHOACANA MEAT MARKET" (without any stylistic limitations) is incontestable. *See*, Exhibit A1.

12. Since at least as early as 1986, Plaintiff has used its LA MICHOACANA marks in connection with the operation of La Michoacana Meat Markets. La Michoacana Meat Markets are Mexican-styled grocery stores, carnicerías (meat markets), fruterías (fruit shops), taquerías (restaurants) and panaderías (bakeries). Attached hereto are true and accurate copies of Plaintiff's trademark registrations for the LA MICHOACANA marks. *See*, Exhibits A1-A7.

13. Additionally, the LA MICHOACANA marks are used on private label products for a variety of goods such as, coffee, tea, cookies, bread, pastries, salt, rice, beans, canned goods, seasonings and spices and water in its 146 La Michoacana Meat Market stores. The goods are marketed at www.lamichoacanameatmarket.com, and available for purchase at www.elvenadofoods.com.

14. As a result of Plaintiff's long experience, care, and skill in selling goods under the LA MICHOACANA marks, it has become widely known and has become identified in the public mind as the seller of the services of Mexican-styled grocery stores, carnicerías (meat markets), fruterías (fruit shops), taquerías (restaurants) and panaderías (bakeries). Plaintiff has expended substantial sums promoting its LA MICHOACANA marks.

15. As a result of the above-described and other activities, the LA MICHOACANA marks are widely recognized symbols, and have considerable marketplace goodwill.

16. Because of Plaintiff's substantial use and promotion of its LA MICHOACANA marks, those marks have become well-known and distinctive marks, controlled by Plaintiff. Plaintiff has developed an excellent reputation for its LA MICHOACANA marks.

17. Plaintiff has never given Defendants permission: to use any of its LA MICHOACANA marks or any variance thereof; to hold themselves out as associates in any way with Plaintiff; and/or to hold themselves out as being endorsed in any way by Plaintiff.

18. Prior to filing this suit, Plaintiff apprised Defendants of the infringement and requested that Defendants stop all use of the LA MICHOACANA marks.

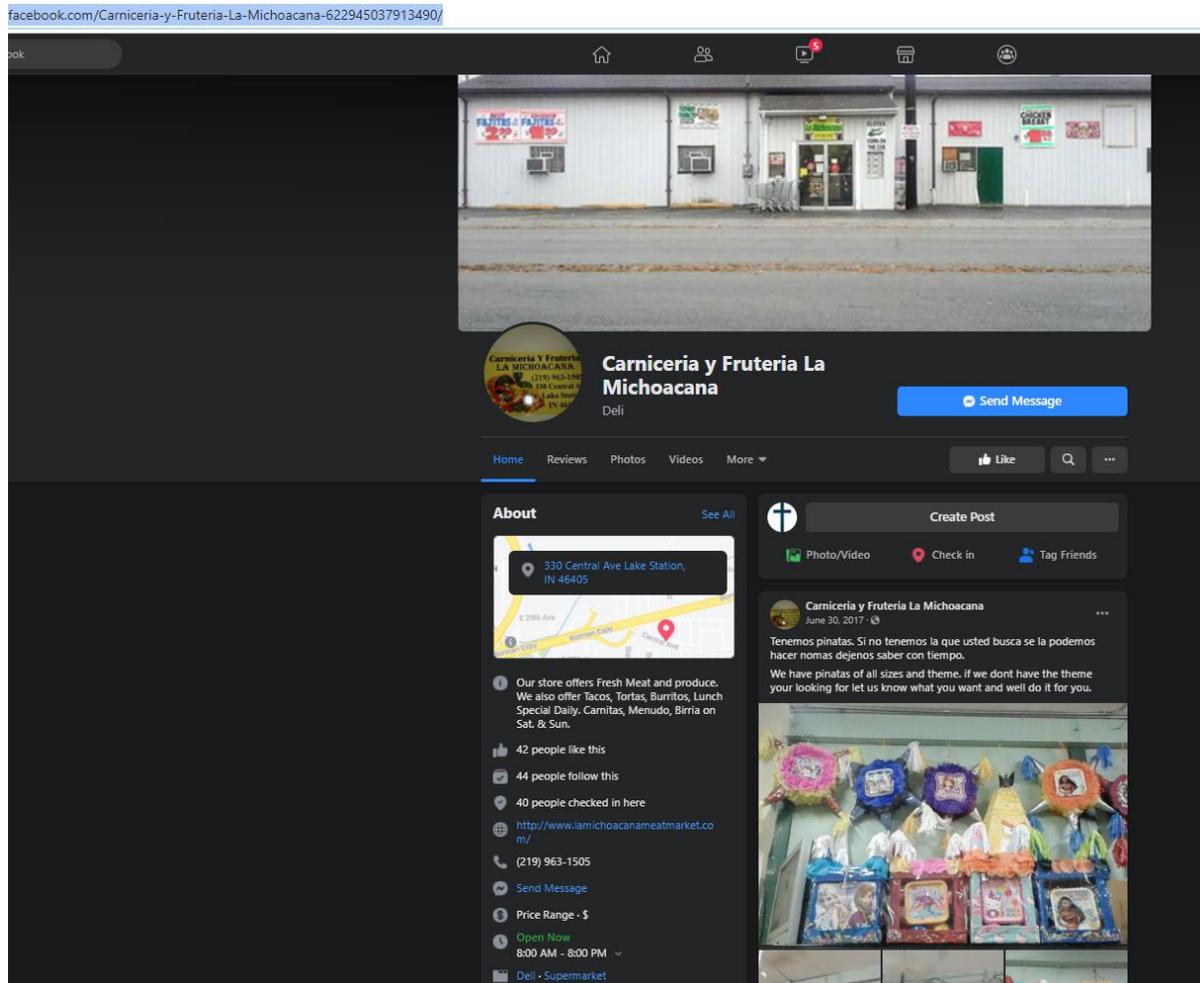
19. Defendants ignored the request.

Defendants' Infringement

20. Defendants own and operate at least one Mexican-themed grocery store, using the name "Carniceria y Fruteria La Michoacana," subsequent to Plaintiff's federal registration no. 3669454. By using this name in conjunction with "Carniceria," or "meat market" in English, Defendants authorize, participate in, and/or direct conduct that directly infringes on Plaintiff's LA MICHOACANA marks

21. Defendants also used the phrase "Michoacana" or "La Michoacana" to promote their meat market by running the Facebook account titled "Carniceria y Fruteria La Michoacana." The URL for this website is: <https://www.facebook.com/pages/category/Deli/Carniceria-y-Fruteria-La-Michoacana-622945037913490/>. This website actually includes a link to Plaintiff's own website for the La Michoacana Meat Market (lamichoacanameatmarket.com) to improperly give the

impression that Plaintiff is affiliated with or has licensed the mark to Defendants. No such license or affiliation exists.



22. “LA MICHOACANA” is the dominant element used by Defendants in the promotion of their meat market. Defendants’ advertisements are used in connection with food-related goods and services so similar to those offered by Plaintiff, and within the same trade channels as Plaintiff, that there is a high likelihood of confusion with Plaintiff’s LA MICHOACANA marks.

23. Defendants’ use of “Michoacana” and “Carniceria” is confusingly similar in appearance, sound and commercial impression to Plaintiff’s LA MICHOACANA marks.

24. Defendants' use of the LA MICHOACANA marks constitutes infringement of Plaintiff's federally registered trademarks and common law trademarks and will cause Plaintiff irreparable harm which will continue unless enjoined by this court.

COUNT ONE—Federal Trademark Infringement Under Section 32 of the Lanham Act

25. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

26. By the acts and omissions set forth above, Defendants have infringed and continue to infringe upon Plaintiff's rights in its federal trademark registrations, in violation of Section 32(1) of the Lanham Act, 15 U.S.C.A. § 1114(1)(a).

27. Defendants' conduct is likely to cause confusion, mistake or deception among the general purchasing public as to the origin, sponsorship, affiliation, or approval of Defendants' goods or services.

28. Defendants' conduct interferes with Plaintiff's ability to use its LA MICHOACANA marks as a cohesive brand with the highest quality control.

29. Plaintiff has suffered, is suffering, and will continue to suffer irreparable injury for which Plaintiff has no adequate remedy at law. Plaintiff is therefore entitled to a permanent injunction against Defendants' further infringing conduct.

30. Defendants have profited and are profiting from such infringement, and Plaintiff has been and is being damaged by such infringement. Plaintiff is therefore entitled to recover damages from Defendants in an amount to be proved at trial, as a consequence of Defendants' infringing activities.

31. Defendants' infringing conduct has been willful, wanton and malicious, and done with an intent to deceive. Plaintiff is entitled to an award of its reasonable attorneys' fees and costs, and treble its actual damages, pursuant to 15 U.S.C.A. § 1117(a).

COUNT TWO—False Designation of Origin and Unfair Competition Under Section 43(A) of the Lanham Act

32. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

33. By the acts and omissions set forth above, Defendants have infringed and continue to infringe upon Plaintiff's rights, in violation of the Lanham Act § 43(a)(1)(B), 15 U.S.C.A. § 1125(a).

34. Defendants have used the aforementioned marks in interstate commerce on their goods or in connection with their services, which uses constitute false and misleading descriptions of fact, or false and misleading representations of fact, which are likely to cause confusion or to cause mistake, or to deceive in a material way, as to the affiliation, connection, or association with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods or services.

35. Defendants' acts constitute false designation of origin, unfair competition, and false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C.A. § 1125(a).

36. Plaintiff has been damaged and will continue to be damaged by Defendants' misleading descriptions and misrepresentations due to interference with Plaintiff's ability to use its LA MICHOACANA marks as a cohesive brand with the highest quality control.

37. Plaintiff has suffered, is suffering, and will continue to suffer irreparable injury for which Plaintiff has no adequate remedy at law. Plaintiff is therefore entitled to a permanent injunction against Defendants' further infringing conduct, pursuant to 15 U.S.C.A. § 1116(a).

38. Defendants have profited and are profiting from such infringement, and Plaintiff has been and is being damaged by such infringement. Plaintiff is therefore entitled to recover damages from Defendants in an amount to be proved at trial, as a consequence of Defendants' infringing activities.

39. Defendants' infringing conduct has been willful, wanton, and malicious, and done with an intent to deceive. Plaintiff therefore is entitled to an award of its reasonable attorneys' fees and costs, and treble its actual damages, pursuant to 15 U.S.C.A. § 1117(a).

COUNT THREE—Common Law Unfair Competition

40. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

41. Defendants have engaged in unfair competition with Plaintiff in violation of the common law of Indiana by selling and/or offering, and promoting its products and services with the intention of trading upon the goodwill established by Plaintiff and are thereby misappropriating the benefits of substantial effort and money expended by Plaintiff in establishing its trademark rights, passing off its goods and services for those of Plaintiff's, and causing a likelihood that consumers will be confused as to the source or sponsorship of Defendants' goods and services.

42. The aforesaid conduct of Defendants is of the nature, probable tendency, and effect to deceive the public so as to "pass off" Defendants' goods or business as the goods or business of Plaintiff.

43. Defendants' conduct is willful and deliberate.

44. Defendants' conduct has caused Plaintiff irreparable injury and unless restrained and enjoined by this Court, will continue to cause irreparable damage, loss, and injury to Plaintiff for which Plaintiff has no adequate remedy at law.

45. Defendants' conduct has injured Plaintiff in an amount to be determined at trial.

46. Defendants' acts are in violation of Indiana law and Plaintiff is entitled to a permanent injunction prohibiting Defendants from unfairly competing with Plaintiff.

COUNT FOUR—Unjust Enrichment

47. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

48. By engaging in the conduct described above, Defendants have directly and knowingly benefitted, including without limitation unjust benefits from its unlawful use, misappropriation and infringement of Plaintiff's trademarks and goodwill.

49. As a result, Defendants have been unjustly enriched by taking advantage of the LA MICHOACANA mark and Plaintiff's reputation, trade, brand, trademarks, all of which Plaintiff invested significant economic value and time into developing.

50. Unless restrained and enjoined by this Court, Defendants will continue to be unjustly enriched from its use of Plaintiff's intellectual property, causing Plaintiff irreparable injury.

51. In addition, Defendants have financially benefitted from their wrongful use of the LA MICHOACANA mark and paying Plaintiff no royalty or other fees in return for that benefit. Plaintiff is entitled to just compensation under the common law of the State of Indiana.

52. Defendants' failure to compensate Plaintiff under circumstances where it would be unjust to do so without payment constitutes unjust enrichment and has damaged Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. Trial by jury on all issues so triable;
2. A final judgment that Defendants have
 - a. violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
 - b. engaged in unfair competition that is likely to cause consumer confusion in violation of the common law of Indiana.
3. An order permanently enjoining Defendants, their respective officers, agents, servants, employees, and attorneys, and any other persons in active concert or participation with Defendants, from directly or indirectly carrying out the following activities:
 - a. Using the word or phrase “Michoacana” or “La Michoacana” or a derivative of these words and phrases;
 - b. Using Plaintiff’s LA MICHOACANA marks, or any other confusingly similar mark, including but not limited to any other mark that is likely to cause confusion in any manner, or that violates the rights of Plaintiff;
 - c. Using the Facebook account titled “Carniceria y Fruteria La Michoacana” with the accompanying URL <https://www.facebook.com/pages/category/Deli/Carniceria-y-Fruteria-La-Michoacana-622945037913490/>; and
 - d. Falsely designating the origin, sponsorship, or affiliation of Defendants’ products with Plaintiff or its affiliated entities.
4. An order that Defendants pay to Plaintiff the compensatory damages sustained by Plaintiff as a consequence of the unlawful acts alleged herein, and that such damages be trebled pursuant to 15 U.S.C.A. § 1117 because of the willful and unlawful acts as alleged herein.

5. An order that Defendants pay Plaintiff punitive damages as a consequence of the willful and wonton acts alleged herein.
6. Defendants be required to account for and pay over to Plaintiff all gains, profits and advantages derived by it from the unlawful activities alleged herein, and/or as a result of unjust enrichment.
7. Defendants be required to destroy all infringing works, business materials, brochures, web pages, advertising, signage, temporary signage or logos, invoices, business cards, or business materials, sales decks, and the like within the care, custody, or control of Defendants, that violate any right of Plaintiff.
8. Defendants be ordered to pay to Plaintiff the cost of corrective advertising for Defendants' unauthorized use of Plaintiff's mark.
9. Defendants be required to pay to Plaintiff all of Plaintiff's litigation expenses, including but not limited to reasonable attorneys' fees and the costs of this action.
10. Plaintiff be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff La Michoacana Meat Market TM Holdings, LLC hereby demands trial by jury.

Respectfully submitted,

/s/ Ann O'Connor McCready

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CERTIFICATE OF SERVICE

I certify that on March 9, 2021, I electronically filed the foregoing utilizing the Court's CM/ECF filing system. Notice of this filing was sent via certified mail to the following:

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330 Central Avenue
Lake Station, IN 46405

Carniceria y Fruteria La Morenita LLC
c/o Cacimiro Galan, Registered Agent
330 Central Avenue
Lake Station, IN 46405

/s/ Ann O'Connor McCready