

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA



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EGGLIFE FOODS, INC., an Indiana  
Corporation,

Plaintiff,

vs.

CREPINI, LLC, a New York Limited  
Liability Company,

Defendant.

Case No. 3:21-cv-388

**COMPLAINT**

**Jury Trial Demanded**

Plaintiff Egglife Foods, Inc. for its Complaint against Crepini, LLC for trade dress infringement, false designation of origin, unfair competition, and deception, states as follows:

**PARTIES**

1. Plaintiff Egglife Foods, Inc. (“**Plaintiff**” or “**Egglife Foods**”) is an Indiana Corporation with its principal place of business located at 911 N 1200 W, Wolcott, IN.
2. Defendant Crepini, LLC (“**Defendant**” or “**Crepini**”) is a New York Limited Liability Company with its principal place of business located at 700 South Drive, Suite 105, Hopewell Junction, NY.

**JURISDICTION AND VENUE**

3. This is an action for federal trade dress infringement and false designation of origin under the provisions of the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, for common law unfair competition, and for deception under Indiana Crime Victim’s Relief Act, Indiana Code § 35-43-5-3.

4. This Court has subject matter jurisdiction over the Lanham Act claims asserted in this Complaint under 28 U.S.C. § 1331 and has jurisdiction over the common law and Indiana state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District.

6. On information and belief, this Court has personal jurisdiction over Defendant because Defendant has been conducting continuous and systematic business by selling its infringing food products within the State of Indiana and within the Northern District of Indiana.

## **GENERAL ALLEGATIONS**

### **egglife egg white wraps**

7. Egglife Foods is an Indiana-based food company that currently sells one category of products: ready-to-eat wraps that are made with cage-free egg whites instead of flour (“**egglife egg white wraps**”).

8. Although often used to replace flour-based tortillas, egglife egg white wraps are multi-dimensional, and their 2019 introduction created a new category of food altogether—a grain-free egg wrap found at retail not among traditional flour tortillas, but instead in the refrigerated dairy section.

9. egglife egg white wraps were invented by Egglife Foods founder, Peggy Johns.

10. Driven by the desire to create a healthier wrap option, Ms. Johns discovered how to replace flour with egg whites through a now patented method (*See* US Patent No. 10,194,669 B2) and ultimately provided a low-carb, low-calorie, zero-sugar, gluten-free,

grain-free, and high-protein option to replace some of the most carb-heavy, high-calorie foods.

11. As evidenced by the rapid spread of egglife egg white wraps among retail stores and Egglife Foods' exponential sales growth, egglife egg white wraps quickly became popular among consumers.

12. Now available in over 3,500 retail locations across the country, egglife egg white wraps have earned a loyal following of passionate consumers.

13. In the first quarter of 2021, the egglife brand doubled its organic social following across Instagram and Facebook and now has over 40,000 fans across social media and the egglife newsletter.

14. egglife egg white wraps were the number one new product in dairy departments across many national, regional, and independent grocers in 2020.

15. Egglife Foods is on pace for more than \$30 million in retail sales of its egglife egg white wraps in 2021.

16. Egglife Foods has invested \$5 million dollars since 2019 building the egglife brand, which is now well known for its unique egg white wraps. An integral part of the egglife brand is the distinctive packaging in which the egglife egg white wraps are sold.

### **Egglife Foods' egglife Egg Wrap Trade Dress**

17. The unique combination of shapes, colors, text font and alignment, center window, and accent elements acts as an independent source identifier for egglife egg white wraps and together make the egglife egg white wraps packaging inherently distinctive

(“**egglife Egg Wrap Trade Dress**”). The particular elements of the egglife Egg Wrap Trade Dress are pictured below and include the following:



- a. Interwoven and overlapping shapes with rounded rather than squared edges that weave in and out of the front of the package
- b. The interwoven and overlapping shapes with rounded rather than squared edges are comprised of different, yellow-based colors<sup>1</sup>
- c. Transparent center window with overlaid graphics
- d. Prominent display of “egg white wraps” in the center of the transparent window in the center of the front of the package

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<sup>1</sup> Egglife sells four other egg wrap products in different flavors, each comprised of different blue-based, purple-based, green-based and orange-based colors respectively.

- e. Lowercase “egglife” brand straight across the upper quarter of the front of the package
- f. Smaller arched text centered over the “egglife” brand near the top of the front of the package
- g. All capitalized “KEEP REFRIGERATED” text at bottom of the front of the package

18. The egglife Egg Wrap Trade Dress is inherently distinctive and as a result of Egglife Foods’ widespread and exclusive use of the egglife Egg Wrap Trade Dress, it has acquired secondary meaning in the minds of consumers as identifying and distinguishing egglife egg white wrap products.

19. Since its inception, Egglife Foods has continuously used its egglife Egg Wrap Trade Dress to distinguish itself as the source of the egglife egg white wrap products.

20. Since its inception, Egglife Foods has advertised and promoted its egglife egg white wraps sold under and represented by the egglife Egg Wrap Trade Dress extensively throughout the United States in retail stores and online.

21. As a result, egglife egg white wrap products have developed a national reputation for premium quality, nutrition, versatility, and value. This well-deserved and hard-earned reputation is reflected in the substantial and valuable body of goodwill symbolized by, among other things, the egglife Egg Wrap Trade Dress.

### **Crepini’s Founding and Original Products**

22. According to its website, Crepini was founded in 2007 after founders Eric and Paula were introduced to crepes on a trip to Paris. <https://crepini.com/pages/our-story>.

23. According to its website, after Crepini was founded, “the dream of bringing crêpes into every North American household was underway.”

24. As of November 22, 2018, Crepini offered four products:

- a. Egg White Thins
- b. Egg Thins
- c. Spinach Feta Egg White
- d. Naked Crepes



See **Ex. A**, (Wayback Machine image of <http://crepini.com/DefaultShop> from November 22, 2018)

25. According to Crepini’s social media post from February 28, 2019, Crepini changed its Egg White Thins® packaging at least three times from its first iteration through 2019:



See Crepini February 28, 2019 Facebook post (<https://www.facebook.com/Crepini>).

26. Crepini owns U.S. federal trademark registrations for the marks “Egg Thins” (U.S. Reg. No. 5888044) and “Egg White Thins” (U.S. Reg. No. 5447364).

27. The 2019 “Egg White Thins” rebrand appeared to coincide with an overall rebrand by Crepini, including major changes to its website, product packaging, and product offerings. Compare **Ex. B** (Wayback Machine image of <http://crepini.com/> from December 18, 2019) to **Ex. C** (Wayback Machine image of <https://crepini.com/pages/our-story> from Dec. 15, 2018).

28. Between August 2019 and January 1, 2020, Crepini removed reference to its “Egg White Thins with no gluten ingredients” from its website but retained use of the EGG THINS trademark. Its remaining products included:

- a. Egg Thins™ With Cauliflower & Cage-Free Eggs



- b. Egg Thins™ With Cauliflower
- c. Egg Thins™ With Sweet Potato
- d. Egg Thins™ With Gluten-Free Grains
- e. Egg Thins™ With Cauliflower (8 Pack)

See **Ex. D.** (Wayback Machine image of <https://www.crepini.com/> from January 1, 2020).

29. At the time of Egglife’s egglife egg white wraps launch at the end of 2019, Crepini’s most similar product offering was its “Egg Thins with gluten-free grains”:



See **Ex. B** (Wayback Machine image of <http://crepini.com/> from December 18, 2019).

30. By November 12, 2020, the packaging for Crepini’s “Egg Thins with gluten-free grains” had been redesigned again:





See **Ex. E** (Wayback Machine image of <http://crepini.com/> from November 12, 2020).

31. Although Crepini went through multiple redesigns, most design elements remained constant. For example, the constant design elements included but are not limited to:

- a. The same font
- b. The same capitalization of the font (including all capital letters but for a lower case “i”)
- c. The same blue color for the font and accents (e.g., “peel here” and “ready to eat”)
- d. The same prominent “EGG THINS” trademark

- e. The same understated CREPINI crown design mark as the sole indicator of source
  - f. Almost exclusively transparent packaging with a simple one-color border
32. Although some of the 2019 and 2020 packaging is still in circulation and apparently being sold through, Crepini did not stick with its relaunched packaging long.

### **Crepini's Rebrand and New "Egg Wraps"**

33. According to its website, at some point after Crepini's founders created their first product—the "Naked Crepe"—they "continued to innovate, and had a eureka moment." That "eureka moment" was the creation of "their Egg Wraps—a better-for-you version of a traditional crepe." <https://crepini.com/pages/our-story>.

34. Although it is not entirely clear from the public record specifically when the "eureka moment" happened, the latest website capture of the "our-story" page of Crepini's website from December 2018 has no mention of the "eureka moment" or of "egg wraps." Instead, it focuses on the "naked crepe":

Crepini is America's Crepe - all natural, delicious, and ready to eat in seconds. Our signature product The Naked Crepe is a fusion of the classic French crepe and Russian blini, which means the perfect staple for any meal or snack in your home. Trust us, your tastebuds will thank you.

See **Ex. C.** (Wayback Machine image of <https://crepini.com/pages/our-story> from Dec. 15, 2018).

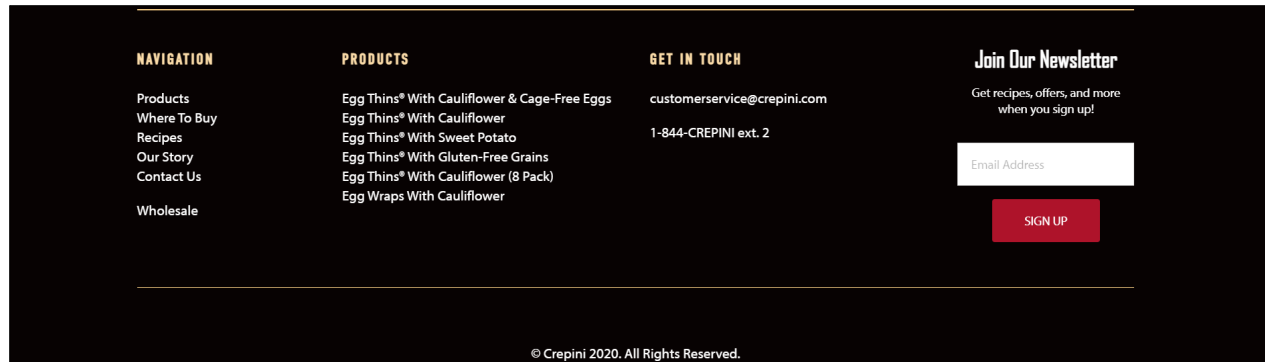
35. Crepini did for a short time refer to its now discontinued "Egg Thins" / "Egg White Thins" as a "protein egg white wrap" but that category did not survive the 2019 rebrand. See *supra* at ¶ 19.

36. Crepini's first mention of an "egg wrap" on its social media did not come until January 4, 2020, when it introduced its "new large Egg Wraps" with cauliflower:



37. But according to Crepini's website and as of November 12, 2020, all of its other products were still called EGG THINS®:





<https://web.archive.org/web/2020112022826/https://www.crepini.com/>

38. As announced on Crepini’s social media on January 1, 2021—after Crepini had rebranded at least twice in an eighteen-month period and more than a year since egglife egg white wraps hit the market—Crepini completed yet another rebrand. Only this time the packaging overhaul was more extensive, changing the name of the product to “egg wraps” and adopting an entirely new look:





39. With its 2021 rebrand, Crepini abandoned almost every element of its prior packaging, including design elements that had just been added in connection with its 2019 and 2020 rebranding efforts.

40. Crepini even abandoned its long used CREPINI design mark—a version of which had previously appeared on all product packaging, on all social media pages, and on Crepini’s ecommerce website for the last decade:



41. Crepini also abandoned use of its long-time, federally registered EGG THINS and EGG WHITE THINS trademarks in favor of “Egg Wraps”:



2019



2020



2021

42. Crepini’s new packaging copied several elements of the egglife Egg Wrap Trade Dress:

- a. Interwoven and overlapping shapes with rounded rather than squared edges
- b. The interwoven and overlapping shapes with rounded rather than squared edges are comprised of nearly identical yellow-based colors
- c. Transparent center window with overlaid graphics
- d. Lowercase brand straight across the upper quarter of the packaging
- e. Smaller arched text centered over the top of the brand near the top of the packaging
- f. Abandoned trademarked EGG THINS in favor of “egg wraps”
- g. Abandoned the long-used CREPINI and crown design trademark in favor of lowercase font across the top of the packaging
- h. Added “Keep Refrigerated” messaging in all capital letters to the bottom of the packaging



2019



2021



43. Egglife Foods has not authorized Crepini to use its egglife Egg Wrap Trade Dress in any manner whatsoever.

44. In addition to taking various elements of the egglife Egg Wrap Trade Dress, Crepini is selling its “egg wraps” in direct competition to egglife, including:

- a. at a similar (low) price point
- b. through the same channels of trade
- c. to the same consumers
- d. who exercise a low degree of care in purchasing the low-price products

45. Crepini’s new 2021 packaging pictured above is likely to and has caused consumer confusion between egglife’s egg white wraps and Crepini’s wrap products and is therefore infringing Egglife Foods’ rights (“**Crepini’s Infringing Product Packaging**”).

**Crepini’s Infringing Product Packaging Use Has Caused Consumer Confusion**

46. Egglife Foods’ concern that consumers will be confused by Crepini’s Infringing Product Packaging is not hypothetical. In just the short five months Crepini’s Infringing Product Packaging has been in circulation, Egglife Foods is aware of more than a dozen instances of actual consumer confusion based on online social media comments alone.

47. egglife egg white wraps are not sold in Costco stores, but Crepini’s “egg wraps” with the new Crepini Infringing Product Packaging are. Nonetheless and since the launch of the Crepini Infringing Product Packaging at the start of 2021, Egglife Foods has received comments from consumers through Egglife Foods’ social media platforms indicating their purchase of egglife egg white wraps at Costco:

## Facebook



**Michele Reilly Cook** Costco has them on sale right now in Washington State 😊

Like · Reply · Message · 9w



**Ricki Grable** These are really good and you can buy them at Costco

Like · Reply · Message · 1w



**Robyn Strauss Goldberg** costco has these egglife

Like · Reply · Message · 6w



**Chryste Gutt Carlson** Mark Boyce  
These look similar to the pic you posted of Costco ones?

Like · Reply · Message · 4w



**Tina Serio** Are these any good? I think Costco has them?

Like · Reply · Message · 11w



**Amy Smith** Got these on Saturday at Costco! First time trying them!

Like · Reply · Message · 12h



**Luran Queiruga-Ochoa** I found them at Fry's and Costco. Can they be fried?

Like · Reply · Message · 10h



**Bu Lee Suk** I found these at Costco this week. They are very thin... but it's nice to add to my low carb repertoire.

Like · Reply · Message · 4d



**Dawn Probasco** Shannon Kennedy-Yoder i bought some at costco

Like · Reply · Message · 9w



**Amy Smith** Got these on Saturday at Costco! First time trying them!

Like · Reply · Message · 6w





### Instagram



48. This evidences significant consumer confusion based on the very small percentage of consumers who took the time over a short five-month span to comment on Egglife Foods' social media platforms that they believed they found egglife egg white wraps at Costco. The true extent of actual consumer confusion is far greater.

49. Egglife Foods has suffered and will continue to suffer lost revenue as a result of Crepini's infringing production, marketing and sale of its egg wraps using Crepini's Infringing Product Packaging.

**COUNT I**  
**Trade Dress Infringement and False Designation of Origin**  
**15 U.S.C. § 1125(a)**

50. Egglife Foods repeats and realleges all allegations in this Complaint as if fully set forth herein.

51. The egglife Egg Wrap Trade Dress is comprised of the discrete features listed in Paragraph 17 above, is inherently distinctive and has acquired secondary meaning in the minds of consumers.

52. The egglife Egg Wrap Trade Dress, comprised of an original combination of features recognized by consumers as indicators of source of Egglife Foods products, is nonfunctional.

53. The egglife Egg Wrap Trade Dress is therefore protected under Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a).

54. Egglife Foods has used its inherently distinctive egglife Egg Wrap Trade Dress in interstate commerce in connection with the advertising, offering for sale and sale of its egglife egg white wraps.

55. Crepini's intentional adoption of the Crepini Infringing Product Packaging that is so similar to the egglife Egg Wrap Trade Dress has confused the public into believing that the Crepini wrap products are the same as egglife egg white wraps or is authorized, sponsored or approved by or affiliated with Egglife Foods.

56. Crepini's use in commerce of the Crepini Infringing Product Packaging that is confusingly similar to the egglife Egg Wrap Trade Dress constitutes infringement of Egglife Foods' rights in violation of 15 U.S.C. § 1125(a).

57. As a direct and proximate result of Crepini's actions described herein, Egglife Foods has suffered, and will continue to suffer, irreparable injury to its revenue, business, reputation, and goodwill, unless and until the Court enjoins Crepini's actions.

58. Egglife Foods' remedy at law is not adequate to compensate Egglife Foods for its injuries inflicted from Crepini's adoption and use of the Crepini Infringing Product Packaging. Egglife Foods is therefore entitled to entry of injunctive relief pursuant to 15 U.S.C. § 1116.

59. Crepini has caused Egglife Foods to suffer monetary damages in an amount to be proven at trial and Egglife Foods is entitled to recovery of Crepini's profits attributable to Crepini's use of the Crepini Infringing Product Packaging in commerce.

60. Because Crepini selected and used the Crepini Infringing Product Packaging in an effort to trade on Egglife Foods' goodwill, Crepini's infringement is willful and Egglife Foods is entitled to treble damages pursuant to 15 U.S.C. § 1117.

## **COUNT II**

### **Common Law Unfair Competition**

61. Egglife Foods repeats and realleges all allegations in this Complaint as if fully set forth herein.

62. Crepini's adoption of the Crepini Infringing Product Packaging that is so similar to the egglife Egg Wrap Trade Dress has confused the public into believing that the Crepini wrap products are the same as egglife egg white wrap products or is authorized, sponsored or approved by or affiliated with Egglife Foods.

63. Crepini's actions therefore constitute unfair competition in violation of Indiana Common Law.

64. As a direct and proximate result of Crepini's actions described herein, Egglife Foods has suffered, and will continue to suffer, irreparable injury to its revenue, business, reputation, and goodwill, unless and until the Court enjoins Crepini's actions.

65. Egglife Foods' remedy at law is not adequate to compensate Egglife Foods for its injuries inflicted from Crepini's unfair competition. Egglife Foods is therefore entitled to entry of injunctive relief.

66. Crepini has caused Egglife Foods to suffer monetary damages in an amount to be proven at trial and Egglife Foods is entitled to recovery Crepini's profits attributable to Crepini's unfair competition.

67. Crepini's unfair competition has been willful. Egglife Foods is therefore entitled to treble damages and the recovery of its reasonable attorneys' fees.

**COUNT III**  
**Deception**  
**Indiana Crime Victim's Relief Act, Indiana Code § 35-43-5-3**

68. Egglife Foods repeats and realleges all allegations in this Complaint as if fully set forth herein.

69. By engaging in the knowing intentional, deliberate, willful, and malicious actions described above, Crepini has disseminated to the general public a product and product packaging that Crepini knows is false, misleading, or deceptive, with the intent to promote Crepini's business and/or commercial interests and convert customers of Egglife Foods to customers of Crepini.

70. Crepini has committed deception under Indiana Code § 35-43-5-3.



71. As a direct and proximate result of Crepini's actions, Crepini has caused damage to Egglife Foods' business, reputation and the goodwill associated with the egglife Egg Wrap Trade Dress.

72. As a direct and proximate result of Crepini's use of intentionally deceptive product packaging targeting Egglife customers, Crepini has diverted sales from Egglife Foods to Crepini. Egglife Foods has therefore suffered a pecuniary loss as a result of Crepini's deceptive acts.

73. Crepini committed these acts of deception knowingly, willfully, deliberately, and maliciously, with the intent to cause confusion and mistake, and to deceive. Accordingly, Egglife Foods is entitled to a monetary recovery in an amount to be proven at trial and Egglife Foods seeks statutory remedies under the Indiana Crime Victim's Relief Act, Indiana Code § 34-24-3-1 for Crepini's violations of Indiana Code § 35-43-5-3(a)(6), including, but not limited to, treble damages, costs and attorneys' fees.

74. Egglife Foods has been and continues to be damaged by Crepini's willful and unlawful activities and conduct, and unless Crepini's conduct is enjoined, Egglife Foods' reputation and the goodwill associated with the egglife Egg Wrap Trade Dress will continue to suffer irreparable injury that cannot be adequately calculated or compensated by monetary damages. Accordingly, Egglife Foods is entitled to injunctive relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Enter judgment against Crepini finding that it has through its unauthorized and willful use of the egglife Egg Wrap Trade Dress infringed upon Egglife Foods' trade

dress rights, applied a false designation of origin to its “egg wrap” products, and competed unfairly with Egglife Foods, and as a result caused irreparable harm to the goodwill and business reputation of Egglife Foods in violation of Federal and State Law.

2. Preliminarily and permanently enjoin and restrain Crepini, its officers, agents, servants, employees and attorneys, and any other person in active concert or participation with Crepini who receives actual notice of the Court’s order, from using the Crepini Infringing Trade Dress and any elements of the egglife Egg Wrap Trade Dress in connection with the marketing and sale of Crepini products.

3. Award Plaintiff a monetary recovery consistent with 15 U.S.C. § 1117(a) in an amount to be proven at trial.

4. Declare that Crepini’s infringement and other wrongful acts were deliberate, willful, and in conscious disregard of Egglife Foods’ rights.

5. Require Crepini to pay to Egglife Foods an amount three times the profits of Crepini or actual losses of Egglife Foods.

6. Enter judgment ordering Crepini to pay Egglife Foods all its reasonable taxable costs and attorneys’ fees in this action in a sum and manner deemed appropriate by this Court pursuant to 15 U.S.C. § 1117(a) or other applicable law.

7. Any other relief this Honorable Court deems just and equitable.

**JURY TRIAL DEMANDED**

Egglife Foods demands a jury trial in connection with this action.

Dated: May 28, 2021

/s/ Louis T. Perry

Louis T. Perry (IN 257363-49)

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