

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

PHELAN HOLDINGS, INC.,
d/b/a **PINCHER'S CRAB SHACK,**
a Florida corporation,

Plaintiff,

v. **CIVIL ACTION NO.** _____

WENDY'S INTERNATIONAL, INC.,
an Ohio corporation,
and **VARIOUS JOHN DOES, JANE DOES,**
and **ABC COMPANIES,**

Defendants,

_____ /

VERIFIED COMPLAINT

INJUNCTIVE RELIEF SOUGHT

JURY TRIAL DEMANDED

Plaintiff **PHELAN HOLDINGS, INC.**, a Florida corporation, d/b/a **PINCHER'S CRAB SHACK** (hereinafter "Plaintiff") by and through its undersigned counsel, hereby files this Complaint against Defendants **WENDY'S INTERNATIONAL, INC.**, an Ohio corporation, and **VARIOUS JOHN DOES, JANE DOES** and **ABC COMPANIES** (hereinafter collectively referred to as "Defendants"), for Federal Trademark Infringement, Federal Unfair Competition, Federal Trademark Counterfeiting, Federal False Designation

of Origin, Federal False and Misleading Description of Fact, Federal False or Misleading Representation of Fact, Federal Passing Off, Florida Trademark Infringement, Florida Deceptive and Unfair Business Practices, Florida Injury to Business Reputation and Dilution, Florida Unfair Competition, Florida Unjust Enrichment, Florida Misappropriation, Florida False Designation of Origin, and Florida Passing Off and alleges the following:

JURISDICTION

1. This is a complaint for Federal Trademark Infringement, Federal Unfair Competition, Federal Trademark Counterfeiting, Federal Unfair Competition, Federal False Designation of Origin, Federal False and Misleading Description of Fact, Federal False or Misleading Representation of Fact, Federal Passing Off, Florida Trademark Infringement, Florida Deceptive and Unfair Business Practices, Florida Injury to Business Reputation and Dilution, Florida Unfair Competition, Florida Unjust Enrichment, Florida Misappropriation, Florida False Designation of Origin, and Florida Passing Off.
2. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, 15 U.S.C. §§ 1114, 1116, 1117, 1125 and related statutes and the principles of pendent jurisdiction.
3. The matter in controversy exceeds, exclusive of interest and costs, the sum of TWO

MILLION DOLLARS (\$2,000,000.00).

4. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(a), in that Plaintiff's claim arises in and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

THE PARTIES

5. Plaintiff is a Florida corporation, with its principal place of business in Naples, Florida and does business throughout Southwest Florida and particularly within this Middle District.
6. Upon information and belief, Defendant, **WENDY'S INTERNATIONAL, INC.**, is a corporation organized under the laws of Ohio, with its principal place of business at Dublin, Ohio and, at all times material to the issues presented herein, engaged in the illegal and infringing activities complained of hereinafter, had regular and systematic contacts with and currently does substantial business within this Middle District.
7. Upon information and belief, Defendants, **VARIOUS JOHN DOES, JANE DOES**, and **ABC COMPANIES**, upon information and belief, are corporations, subsidiaries, affiliates, individuals or associated and related business entities who, along with Defendant, **WENDY'S INTERNATIONAL, INC.**, have engaged in the unauthorized and illegal acts complained of herein. The identities of these unnamed Defendants and the details of their legal associations with the named

Defendant herein presently are not and cannot be known to Plaintiff.

8. Upon information and belief, all Defendants were acting in concert with or in a joint venture with the other, were and are the agents of each other and, in doing the wrongful acts complained of herein, each was acting within the course and scope of such agency.
9. Upon information and belief, all Defendants, either individually and/or acting by and through their principals, officers, agents, employees and other active, conscious and dominant forces behind their activities have committed the acts complained of herein in interstate commerce.
10. Upon information and belief, all Defendants, either individually or acting by and through their principals, officers, agents, employees and other active, conscious and dominant forces behind their activities have committed the acts complained of herein in this Middle District for their individual gain and profit, and are subject to the general and specific jurisdiction and venue of this Court.

PLAINTIFF AND ITS SUCCESS IN RESTAURANT INDUSTRY

11. Plaintiff is a successful and respected chain of restaurants having popular and highly frequented locations throughout Southwest Florida, including the well known PINCHER'S CRAB SHACK® restaurants and locations.
12. Plaintiff is engaged primarily in the offering of high quality prepared food, food

products, drinks, complementary items and many related goods and services.

13. Plaintiff's goods and services are offered to the public by many and various means and modes in Florida and throughout the United States in interstate commerce.
14. Plaintiff's favorable public reputation and commercial successes are well known to the consuming public as well as to its competitors, including to Defendants and, since its inception, Plaintiff has worked hard to separate itself from the competition and this hard work has been largely successful, as Plaintiff's operations have steadily grown and expanded.
15. The commercial identity and resulting valuable goodwill associated with Plaintiff's business has resulted in a vast multitude of satisfied customers, considerable acclaim, a steady stream of unsolicited favorable reviews, and great public acceptance.
16. Plaintiff's attention to detail and unequalled approach to choosing the best ingredients and menu items to provide to the public have resulted in great success and an enviable reputation, making Plaintiff a leader in its field. Plaintiff's success is due, in significant part, to diligence and hard work but is also the result of Plaintiff's significant investment in, and use of, its portfolio of valuable intellectual property rights, including its trademarks, which are used and displayed by Plaintiff in such a manner so as to be source identifiers, designations of origin and to separate it from its competition.

PLAINTIFF'S TRADEMARK RIGHTS

17. Among many other trademarks, Plaintiff is the owner of all right, title, and interest in the federally registered trademark YOU CAN'T FAKE FRESH®, United States Trademark Registration No. 3,749,600 for restaurant services (hereinafter "Plaintiff's Mark"). See **Exhibit 1**.
18. Plaintiff's Mark appears, among many other places, in the below images:



19. Plaintiff offers to the consuming public, under Plaintiff's Mark, its restaurant goods and services and many related goods and services.
20. Plaintiff's Mark is well known to the relevant consuming public, is fully valid and legally subsisting and is enforced by Plaintiff to prevent public confusion over the source of Plaintiff's goods and services.
21. Plaintiff's goods have been widely advertised and extensively offered to the public under Plaintiff's Mark. Throughout the United States, Plaintiff's Mark has been used in interstate commerce by Plaintiff since at least as early as 2004.
22. Plaintiff's Mark has become, through widespread and favorable public acceptance and recognition, an asset of substantial value as a symbol of Plaintiff, its quality goods, services and its goodwill.
23. Plaintiff enjoys considerable success and an enviable reputation in its business and commercial enterprises due in large part to its use of, and rights in, Plaintiff's Mark.
24. Plaintiff uses and promotes its goods and services under Plaintiff's Mark to create and benefit from brand and trade identity and to distinguish its goods and services from those sold by other restaurants.
25. Plaintiff has made considerable expenditures to build its brand so successfully. As a result of Plaintiff's investments, Plaintiff's Mark has become synonymous with

high quality restaurant services and goods and has become well known.

26. Plaintiff's Mark has been widely, prominently and continuously advertised and promoted to the public through many and various means and modes, including but not limited to on commercial signs, newspaper and other forms of printed and electronic materials, on menus, on radio and television ads and over the internet on its website at www.pincherscrabshack.com as is shown below:



27. By reason of such advertising and promotion, the public has come to recognize Plaintiff's goods and services offered under Plaintiff's Mark as emanating solely from Plaintiff.
28. Plaintiff's mark is beyond distinctive and unique. Upon information and belief, in all of the history of the United States, no one has applied for or registered a mark with YOU CAN'T FAKE *anything* in it for restaurant services. Plaintiff was the

first ever.

29. Plaintiff enforces its rights in Plaintiff's Mark to protect itself and the public from infringers and in order to preserve what Plaintiff has worked so hard to build as a sole and exclusive source for restaurant services under Plaintiff's Mark and Plaintiff's excellent reputation.

ILLEGAL ACTS OF DEFENDANTS



30. Defendants are in the business of operating and licensing others to operate a nationwide network of in excess of approximately 6,500 individual restaurants

- which, like Plaintiff, offer a dine-in or takeout menu of assorted foods, drinks and related goods and services.
31. Upon information and belief, Defendants maintain locations throughout the United States and in each and every state, including within the state of Florida, are one of the largest fast food chains in the United States, expend hundreds of millions of dollars each year in the advertising and promotion of their restaurant goods and services by various means and modes and generate billions of dollars in revenue from consumer sales each year.
 32. Defendants' television, radio, and internet advertising occur in this Middle District and are viewed by customers in this Middle District.
 33. Defendants and Plaintiff compete for the same and/or substantially similar restaurant-going consumers.
 34. Upon information and belief, Defendants have adopted and used the term, YOU CAN'T FAKE FRESH, for Defendants' food and restaurant services, and the same has been broadcast to the public in commercial advertising by Defendants.
 35. Defendants are responsible for openly and actively advertising, both in this Middle District and throughout the United States the following image by using the term "YOU CAN'T FAKE FRESH" for Defendants' food and restaurant services (hereinafter the "Infringing Mark 1").
 36. Defendants caused the image below, among others, to be broadcast to the

consuming public on multiple occasions:



37. The Infringing Mark 1 and Plaintiff's Mark are exactly the same.
38. The Infringing Mark 1 and Plaintiff's Mark sound exactly the same when spoken.
39. The Infringing Mark 1 and Plaintiff's Mark are marketed to exactly the same group of consumers, namely restaurant-going consumers.
40. The Infringing Mark 1 and Plaintiff's Mark are broadcast to consumers in exactly the same location, namely Southwest Florida, among other geographies.
41. The Infringing Mark 1 and Plaintiff's Mark are for the exact same services, namely restaurant services.
42. Upon information and belief, Defendants have openly and actively engaged in the unauthorized, infringing, unlicensed, and imitative use of the exact same trademark registered exclusively to Plaintiff, namely **YOU CAN'T FAKE FRESH** for the exact same services protected in Plaintiff's federal registration, namely "restaurant services", in the exact same geographic area in which Plaintiff uses its Mark, in

commercial advertising and in exact and direct competition with Plaintiff . See

Exhibit 2.

43. Additionally, as part of the illegal conduct described herein, Defendants caused the below image to be broadcast into this Middle District, in television advertising, using the term, **“YOU CAN’T FAKE FRESH:**



44. The above use of YOU CAN’T FAKE FRESH takes place within a motion picture or video presentation of Defendants’ commercial advertising.
45. The Defendants’ use of YOU CAN’T FAKE FRESH mark is, for all intents and purposes, the functional equivalent of the Plaintiff’s Mark and is intended by Defendants to, and does, give rise to the same commercial impression as the Plaintiff’s Mark.

46. Plaintiff has at no time granted to Defendants any permission or license to use the Plaintiff's Mark.
47. The use of the Infringing Mark 1, YOU CAN'T FAKE FRESH, by Defendants is unauthorized and without permission.

DEFENDANTS' USE OF YOU CAN'T FAKE **REAL**
IS FRUIT OF THE POISONOUS TREE



48. Out of the use of the Infringing Mark 1, Defendants hatched an additional plan of action. Defendants developed yet another mark for the exact same services and goods as that used under the Infringing Mark 1, namely the Defendants adopted the mark "YOU CAN'T FAKE **REAL**" (hereinafter "Infringing Mark 2").
49. It may appear to a consumer that Defendants' birth of the Infringing Mark 2 as

- proceeding from or in first conjunction with Infringing Mark 1, is “fruit of the poisonous tree”, so to speak, in that it is the progeny of infringing acts.
50. The explanatory, visual, textual, collateral, and ancillary materials used by Defendants in connection with their use of the term YOU CAN’T FAKE REAL demonstrate clearly that Defendants wish the reader and consumer to interpret the term “REAL” as being synonymous with and conveying the same commercial impression as that which is created by the term “FRESH”.
51. Defendants created a connection between the term YOU CAN’T FAKE FRESH, and the term YOU CAN’T FAKE REAL, and advertised that connection repeatedly.
52. The image immediately below is a true and accurate depiction of the content offered at <http://www.wendys.com/ads/> during the month of July 2011.



53. Infringing Mark 1 and Infringing Mark 2 are hereinafter also collectively referred to as the “Infringing Marks”.

54. Defendants' Infringing Mark 2 is confusingly similar to Plaintiff's Mark.
55. Defendants' use of both Infringing Mark 1 and Infringing Mark 2 is engendering bad will in connection with Plaintiff's innovative, first, and distinctive mark, as the public responds to particular details about how Defendants do business, such as that shown in **Exhibit 3**.
56. Defendants have apparently targeted for use of their Infringing Mark 1 and Infringing Mark 2, with special attention, those restaurants in Plaintiff's geographic area, as shown by the prominent national placement, over all other Wendy's locations, of the internet advertising for Wendy's Cape Coral, Florida location. See **Exhibit 2**.
57. Defendants' conduct harms Plaintiff and Plaintiff's trademark rights and has, and is, causing damage to Plaintiff needlessly.
58. This public offering for sale of competing goods and services under the Infringing Mark 1 and Infringing Mark 2 by Defendants is and has been without the consent, permission or authority of Plaintiff, as Defendants do not have any legitimate rights in or licenses to the Infringing Mark 1 or Infringing Mark 2.
59. Infringing Mark 1 and Infringing Mark 2 have each been used by Defendants and offered to the public utilizing this District as a forum for their infringing activities with actual and/or constructive knowledge that neither are genuine nor authorized by Plaintiff.

60. Defendants have engaged in the widespread, regular and systematic transaction of business under the Infringing Mark 1 as well as under Infringing Mark 2, have engaged in the commission of tortious acts in Florida, including within this Middle District, and are subject to the jurisdiction of this Court.
61. By using the Infringing Marks and offering services and goods for sale thereunder, Defendants, on a widespread basis, have misrepresented and falsely described to the general public the origin and source of Defendants' goods and services so as to deceive the public and deliberately create the likelihood of consumer confusion, which can include, but is not limited to, initial interest confusion and "reverse confusion" as that term is recognized under the law.
62. By using the Infringing Marks, and offering goods for sale thereunder, Defendants have caused and continue to cause mistake, or to deceive the consuming public as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods and services, or commercial activities by the ultimate purchaser as to both the source and sponsorship of Defendants' goods and services.
63. Upon information and belief, Defendants' goods and services offered under the Infringing Marks, to the extent that they are not the genuine article of Plaintiff and not fully authorized by Plaintiff, are or may be inferior in quality to the goods and services authorized to be sold by Plaintiff, and the sale thereof has, does, and will

- continue to damage and dilute the goodwill Plaintiff has developed in connection with offering legitimate, authorized goods and services under Plaintiff's Mark.
64. Defendants, upon information and belief and with full knowledge of the notoriety of Plaintiff's Mark, intended to, and did, trade on the goodwill associated with Plaintiff, and have misled and will continue to confuse, deceive and mislead the public in this regard.
65. Defendants have advertised, distributed, offered for sale, and/or sold in the state of Florida and in interstate commerce, related goods and services under the Infringing Marks, thus creating the likelihood of confusion, deception, and mistake as to the source, affiliation, connection, or association of the Plaintiff's genuine services , or as to the origin, sponsorship, or approval of Defendants' goods, services or commercial activities.
66. The use by Defendants of either or both of the Infringing Marks constitutes a knowing use of a false designation of origin and a false description or representation that wrongly and falsely designates Defendants' goods and services offered to the public by Defendants as originating from, or connected with, Plaintiff, and constitutes using false descriptions of fact or misrepresentations in commerce.
67. The imitation, reproduction, and unauthorized use of either or both of the Infringing Marks causes irreparable injury to Plaintiff, including injury to its

business reputation and dilution of the distinctive quality of Plaintiff's Mark.

68. Defendants' use of either or both of the Infringing Marks does, is likely to, cause Defendants to pass off their goods and services as those of Plaintiff's, all to the detriment of Plaintiff and to the unjust enrichment of Defendants.
69. Defendants' use of either or both of the Infringing Marks has caused, does cause, and/or is likely to continue to cause, damage to Plaintiff by tarnishing the valuable reputation and image associated with Plaintiff and its goods and services.
70. Upon information and belief, the false and deceptive advertising of Defendants, as is set forth herein, is intention and is calculated to provide Defendants with commercial benefit to the detriment of its competitors, including Plaintiff.
71. Upon information and belief, the false and deceptive advertising of Defendants, as is set forth herein, is directed to the same or similar consumers as those to which Plaintiff directs its advertising and is likely to deceive consumers into making a decision to purchase Defendant's products over those offered by Plaintiff under Plaintiff's Mark.
72. Defendants' unlawful activities results in irreparable harm and injury to Plaintiff. Among other harms, it:
 - a. deprives Plaintiff of its absolute right to determine the manner in which its goods and services are presented to the general public, including but not limited to the right to determine the scope, manner and expansion of its rights;

- b. dilutes and/or tarnishes Plaintiff's valuable and distinctive trademark rights;
 - c. deceives the public as to the origin and sponsorship of such goods and services;
 - d. wrongfully trades upon and cashes in on Plaintiff's reputation and exclusive rights in its trademarks;
 - e. deceives the public as to the nature, quality and characteristics of Defendants' goods and services and, to the extent Defendants' goods and services are or may be of inferior quality or unauthorized for sale or distribution, irreparably harms and injures Plaintiff's reputation; and
73. Among the other relief sought herein, Plaintiff is entitled to a preliminary and permanent injunction restraining Defendants, their principals, officers, agents, servants, employees, and attorneys, and all persons acting in concert with them, from engaging in any further acts in violation of the applicable law, including but not limited to 15 U.S.C. §§ 1114, 1117 and 1125.
74. Plaintiff is further entitled to recover from Defendants all of the damages available under the applicable law, including but not limited to actual damages, damages for false advertising, damages for reverse confusion, damages as for and representing corrective advertising, treble damages and/or statutory damages, interest, and attorney fees and costs it has sustained and will sustain, and any gains, profits and advantages obtained by Defendants as a result of the acts as alleged herein. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. § 1117)

75. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
76. Defendants' acts, as alleged herein, with respect to Defendants' infringement of Plaintiff's Mark, are likely to cause public confusion, mistake, or deception, and constitute trademark infringement in violation of 15 U.S.C. § 1117.
77. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
78. As a result, Plaintiff has suffered damages with interest.
79. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;

- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1117; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT II
FEDERAL UNFAIR COMPETITION
(15 U.S.C. § 1125)

- 80. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 81. Defendants' acts, as alleged herein, constitute unfair competition, of which is likely to cause confusion, mistake or deception in violation of 15 U.S.C. § 1125.
- 82. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
- 83. As a result, Plaintiff has suffered damages with interest.
- 84. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:

- i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered

by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1125;
- e. and such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT III
FEDERAL TRADEMARK COUNTERFEITING
(15 U.S.C. § 1114 and 1116(d))

- 85. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 86. Defendants' acts, as alleged herein, constitute counterfeiting under 15 U.S.C. § 1116(d), et seq.
- 87. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.

88. As a result, Plaintiff is entitled to statutory damages under 15 U.S.C. § 1117(c) plus destruction of all goods bearing the Infringing Marks.
89. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
 - iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
 - iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
 - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any

confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;

- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1117;
- e. and such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT IV
FEDERAL FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125)

90. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
91. Defendants' acts, as alleged herein, constitute a false designation of origin, of which is likely to cause confusion, mistake or deception in violation of 15 U.S.C. § 1125.
92. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
93. As a result, Plaintiff has suffered damages with interest.
94. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing

that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;

- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;

- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1125; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT V
FEDERAL FALSE AND MISLEADING DESCRIPTION OF FACT
(15 U.S.C. § 1125)

- 95. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 96. Defendants' acts, as alleged herein, constitute a false and misleading description of fact, of which is likely to cause confusion, mistake or deception in violation of 15 U.S.C. § 1125.
- 97. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
- 98. As a result, Plaintiff has suffered damages with interest.
- 99. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:

- i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered

by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1125; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT VI
FEDERAL FALSE OR MISLEADING REPRESENTATION OF FACT
(15 U.S.C. § 1125)

- 100. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 101. Defendants' acts, as alleged herein, constitute a false or misleading representation of fact, of which is likely to cause confusion, mistake or deception in violation of 15 U.S.C. § 1125.
- 102. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
- 103. As a result, Plaintiff has suffered damages with interest.

104. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
 - iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
 - iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
 - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
 - vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form,

which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;

- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1125; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT VII
FEDERAL PASSING OFF
(15 U.S.C. § 1125)

- 105. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 106. Defendants' acts, as alleged herein, constitute passing off, which is likely to cause

confusion, mistake or deception in violation of 15 U.S.C. § 1125.

107. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
108. As a result, Plaintiff has suffered damages with interest.
109. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
 - iii. from directly or indirectly using the Infringing Marks or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
 - iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
 - v. from publishing, assembling, marketing, distributing, or

otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;

- vi. to deliver up to Plaintiff all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs pursuant to 15 U.S.C. § 1125; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT VIII
FLORIDA TRADEMARK INFRINGEMENT
(Florida Statutes § 495.151)

110. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
111. Defendants' acts, as alleged herein, constitute an infringement of Plaintiff's rights in and to its trade name as set forth in Florida Statutes § 495.151 et seq.
112. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff, and, unless restrained, will continue to do so.
113. As a result, Plaintiff has suffered damages with interest.
114. Plaintiff has no adequate complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;

- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;

- d. an award of attorney's fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT IX
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES
(Florida Statutes § 501.204 et seq.)

- 115. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 116. Defendants' deceptive, unfair and commercially exploitive acts, as alleged herein, were in bad faith and are in violation of the Florida Deceptive and Unfair Trade Practices Act, in violation of Florida Statutes § 501.204, et seq.
- 117. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff, and, unless restrained, will continue to do so.
- 118. As a result, Plaintiff has suffered damages with interest.
- 119. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:

- i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered

by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT X
FLORIDA INJURY TO BUSINESS REPUTATION AND DILUTION
(Florida Statutes § 495.151 et seq.)

- 120. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 121. Defendants' acts, as alleged herein, have caused, and are likely to cause, damage to Plaintiff by tarnishing Plaintiff's valuable reputation and by diluting the distinctiveness of Plaintiff's Mark in violation of Florida Statutes § 495.151 et seq.
- 122. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff, and, unless restrained, will continue to do so.
- 123. As a result, Plaintiff has suffered damages with interest.

124. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
 - iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
 - iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
 - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
 - vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form,

which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;

- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT XI
FLORIDA UNFAIR COMPETITION

- 125. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 126. Defendants' acts, as set forth herein, constitute Florida unfair competition in

violation of the Florida common law.

127. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff and, unless restrained, will continue to do so.
128. As a result, Plaintiff has suffered damages with interest.
129. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
 - iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
 - iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
 - v. from publishing, assembling, marketing, distributing, or

otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;

- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT XII
UNJUST ENRICHMENT

130. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
131. Defendants' acts, as set forth herein, result in unjust enrichment to the Defendants, in violation of the Florida common law.
132. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff and, unless restrained, will continue to do so.
133. As a result, Plaintiff has suffered damages with interest.
134. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;

- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;

- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT XIII
FLORIDA MISAPPROPRIATION

- 135. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 136. Defendants' acts, as set forth herein, constitute misappropriation in violation of the Florida common law.
- 137. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff and, unless restrained, will continue to do so.
- 138. As a result, Plaintiff has suffered damages with interest.
- 139. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation,

or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;

- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;

- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant is not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just and proper.

COUNT XIV
FLORIDA FALSE DESIGNATION OF ORIGIN

140. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
141. Defendants' acts, as set forth herein, constitute false designation of origin in violation of the Florida common law.
142. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff and, unless restrained, will continue to do so.
143. As a result, Plaintiff has suffered damages with interest.
144. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- i. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders: from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
- ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or

further irreparable harm to Plaintiff's business reputation or goodwill;

- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff;
- d. an award of attorneys fees and costs; and
- e. such other interlocutory and permanent relief as this Court may deem just

and proper.

COUNT XV
FLORIDA PASSING OFF

- 145. Plaintiff repeats and realleges all of the above paragraphs of this Complaint as if fully set forth herein.
- 146. Defendants' acts, as set forth herein, constitute, passing off in violation of the Florida common law.
- 147. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff and, unless restrained, will continue to do so.
- 148. As a result, Plaintiff has suffered damages with interest.
- 149. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants, including:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Mark, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Mark, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing

that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;

- iii. from directly or indirectly using the Infringing Marks or any confusingly similar variant, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
- iv. from utilizing the Infringing Marks or any confusingly similar variant in any shape or manner;
- v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, printed matter, signs, or any other representations, regardless of the medium, which bear the Infringing Marks or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiff;
- vi. to deliver up to Plaintiff all literature, printed matter, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' respective possession, custody, or control and which bear the Infringing Marks or any confusingly similar variant;
- vii. to notify their direct customers, agents, and representatives that the Infringing Marks or any confusingly similar variant are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein, all monetary damages suffered

by Plaintiff, an award of attorneys fees and costs; and such other interlocutory and permanent relief as this Court may deem just and proper, and

- c. Plaintiff requests a jury trial on all issues so triable.

Respectfully submitted,

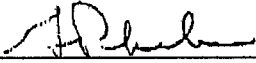
/s/JENNIFER L. WHITE LAW
JENNIFER L. WHITE LAW
WHITE LAW LEGAL GROUP
Trial Counsel for Plaintiff
PHELAN HOLDINGS, INC.
Florida Bar No. 0938629
3838 Tamiami Trail North, Third Floor
Naples, Florida 34103
Telephone: 239-262-1001
Facsimile: 239-261-0057
Email: usdcmail@whitelawfirm.com

VERIFICATION

I **DECLARE**, under penalty of perjury, that I am duly authorized in the premises,
have read the foregoing Complaint and that the same is true and correct.

Executed this 5th day of July, 2011.

PHELAN HOLDINGS, INC.

By: 
Grant Lee Phelan, Chief Operating Officer

United States of America

United States Patent and Trademark Office

YOU CAN'T FAKE FRESH

Reg. No. 3,749,600 PHELAN HOLDINGS, INC. (FLORIDA CORPORATION)
Registered Feb. 16, 2010 18148 CUTLASS DRIVE
FORT MYERS BEACH, FL 33931

Int. Cl.: 43 FOR: RESTAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

SERVICE MARK FIRST USE 12-31-2004; IN COMMERCE 12-31-2004.
PRINCIPAL REGISTER THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-778,762, FILED 7-10-2009.

STEPHANIE ALLI, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

EXHIBIT 1





About 8,140,000 results (0.24 seconds)

[Advanced search](#)

SafeSearch strict ▾

Everything

Images

Videos

News

Shopping

More

Naples, FL

Change location

Show search tools

► [Cape Coral, FL Wendy's International Inc](#)

[Locations on Citysearch](#)

national.citysearch.com/listings/cape-coral-fl-metro/81139?...

- [Cached](#)

Results 1 - 9 of 9 – Citysearch® helps you find **Wendy's** International Inc locations in Cape Coral, FL, ... You **can't fake fresh!**® That is the standard that... ...

[Naples, FL Wendy's International Inc Locations on Citysearch](#)

national.citysearch.com/listings/naples-fl-metro/81569?chainId...

- [Cached](#)

Citysearch® helps you find **Wendy's** International Inc locations in Naples ...

[Show more results from citysearch.com](#)

[Radio Ad for WENDY'S RESTAURANT in montgomery Area stations WHY? ...](#)

www.radioads.com/RadioAds.asp?ad=wendys...90.9...

- [Cached](#)

At **Wendy's** we like to say you **can't fake fresh**. Yep. So hat's why our new Baja Salad has hand made pico de Gayo. pico De Gaio! Yep. ...

[Free Wendy's Coupons. Online Printable Wendys Coupon Codes - 2011 ...](#)

bluwiki.com/go/Wendys_coupons - [Cached](#)

Mar 19, 2011 – Learn how to find **Wendy's** coupons. ... Their current campaign is "You **can't fake real**" and features many real life videos ... As tastes change, **Wendy's** always seems to change with them, introducing **fresh** menu items that ...

[Wendy's – You Can't Fake Real](#)

www.healthhabits.ca/2010/09/05/wendys-fake-real/

- [Cached](#)

Sep 5, 2010 – In their new advertising campaign, **Wendy's** says that "You **Can't Fake Real**" And maybe they're right Maybe "YOU" **can't fake real** - but **Wendy's** ...

[Willow Brook Farm & CSA: Hello Amherstview](#)

willowbrookfarmcsa.blogspot.com/.../well-lots-going-on-here-well-... - [Cached](#)

May 18, 2011 – Like I always say "you **can't fake fresh**" it's addicting. We like to choose varieties with flavour and nutrition in mind and I keep trying a ...

[Wendy's real? Not really | progressive living](#)

[aworldofprogress.com](#) › [Home](#) › [a world of progress](#)

- [Cached](#)

Wendy's real? Not really. By lisa wines | Aug 2, 2010 // 2
Comments. I don't watch TV very often. ... And yet again: You
can't fake real. Oh, yes you can. ... Or, do they fly **freshly**
slaughtered beef to each city every morning? ...

[GrubGrade | Fast Food Review: New! Berry](#)

[Almond Chicken Salad from ...](#)

[www.grubgrade.com/.../fast-food-review-new-berry-almond-chicke...](#) - [Cached](#)

Jun 13, 2011 – All that being said, I **can't** remember the last
time I actually ... but a **fresh**, light, and composed assortment
of seasonal vegetables? Haha, good luck with that. Of
course, every once in a while a place like **Wendy's** will roll
the ... that relied too much on a bitter and **fake** tasting Asiago
cheese, ...

[YouTube - wendy's](#)

[www.youtube.com/watch?v=YNDuerLmyS4](#) - [Cached](#)

Oct 22, 2009 – You **Can't fake** real balloon spoof. ... Added
to queue Danny's **Wendys** Commercial 2009by
fourmonkeysplus23838 views · Thumbnail 0:32. Add to ...

[Gigino Wagner Park - Battery Park - New York, NY](#)

[www.yelp.com](#) › [Restaurants](#) › [Italian](#) - [Cached](#)

★★★★★ 42 reviews - Price range: \$\$\$

"...was **fresh** and high-quality -- you **can't fake** a summer
tomato or olive oil. Review from **Wendy W.** Photo of
Wendy W. 0friends. 17reviews ...

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#)

[Next](#)

[Search Help](#)

[Give us feedback](#)

[Google Home](#) [Advertising Programs](#) [Business Solutions](#)
[Privacy](#) [About Google](#)

This is Google's cache of <http://politicsafter50.blogspot.com/2010/08/wendys-real-not-really.html>. It is a snapshot of the page as it appeared on Jun 26, 2011 06:08:39 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)

These search terms are highlighted: **can t fake real wendy's**

[Text-only version](#)

[Share](#) [Report Abuse](#) [Next Blog»](#)

[Create Blog](#) [Sign In](#)

Politics After 50

It's never too late to be pissed off



[Home](#)

Sunday, August 1, 2010

Wendy's: Real? Not Really.

I don't watch TV very often. I don't own one. I owned one for a while when I lived in the states, but it sat like a boat anchor on my bedroom table or on a cabinet in my living room and never had cable juice coursing through its veins until two momentous occasions: 9/11 and the arrival of a new boyfriend. Both occasions temporarily got me all riled up, but now, not so much.

However, to maintain my sense of humor while sorting through the moldy cheese, rotten vegetables, wormy meat scraps and bloated fish guts of the vast rotting wasteland of American politics (Wow, even I'm impressed by that sentence), I need to watch Jon Stewart and Stephen Colbert. Somehow, it gives me hope that those two brilliant guys (and their brilliant writers) can still manage to make jokes - 4 days a week! - about the compost bin of American media and the mostly-pasty-white-guy world of America's corporate-owned politics.

I also like to watch Rachel Maddow. She's not as funny, but she's so smart, like genius smart, that she makes me proud to be a woman.

But, let's get back to America being corporate-owned. I'm including our illustrious media in this sweeping but true generalization, of course. So, for me living in France, that means I'm blocked from watching American TV shows online. The Comedy Central mouthpieces say it's because they don't have advertising rights in my country. Because, ya know, advertisers really dictate where these independent (hahaha!) television companies can show their ads, er, I mean, independent TV shows.

The hottest places in hell are reserved for those who in times of great moral crisis maintain their neutrality.

~ Dante Alighieri

Men never commit evil so fully and joyfully as when they do it for religious convictions.

~ Blaise Pascal

The price good men pay for indifference to public affairs is to be ruled by evil men.

~ Plato 429-347 B.C.

The dogs bark, but the caravan moves on.

~ Arab Proverb

Why, madame, do I not destroy my enemies when I make them my friends?

~ Abraham Lincoln

Thou shalt not be a perpetrator; thou shalt not be a victim; and thou shalt never, but never, be a bystander.

~ Yehuda Bauer

EXHIBIT 3

But, I'm a geek. So I found a way around those bastards. I installed an add-on for Firefox that makes me look like I live in Ohio (or maybe Wasilla, right on Sarah Palin's Russia-gazing porch). It's called "X-Forwarded-For Spoofer" or spoofing, for short. This online anarchy allows me to watch the full episodes of Stewart and Colbert, instead of having to watch tiny, edited-down segments.

It also means that now, like all patriotic American consumers, I also have to watch the ads. So, I guess there's no way to get around those bastards after all. But at least I can catch up on the audacity of corporate propaganda and actually be hip to the latest Old Spice mania. Old Spice. The cologne that Jim Gardner, my first-ever date, bathed in prior to donning his Inspector Clouseau trench coat, climbing into the back seat of his dad's Mercury, directing his dad to my house, where he didn't have to face my mother or father, but just our babysitter, Mrs. Schick. From there, his dad dropped us off at the movies, where Jim yawned in order to put his arm around me and then, before the credits rolled, escorted me out back behind the theatre so he could steal one fat, lolling tongue kiss. All I remember is how giant his tongue was and how disgusting his perfume.

But, with the power of clever and humorous advertising with a deep-voiced handsome dude named [Isaiah Mustafa](#), Old Spice is having the revival of its life. It still smells like crap, though.

Meanwhile, **Wendy's** - a giant, global, fast-food restaurant - has a brand spanking new campaign with the tag line: You know when it's **real**. And yet again: You **can't fake real**.

Oh, yes you can.

Having written advertising copy most of my career, I went to Wendy's's (I couldn't resist making fun of the name they came up with that will be so "unique" in it's pain-in-the-assness, that it will surely be "memorable") website and recognized the time-honored technique: use words and phrases that suggest or imply what you want consumers to believe about your product, but never actually say anything that might be construed as a lie. Or, use all the emotional keywords you can find, in sentences that seem like they mean something, but actually mean nothing.

After all, in a country where **fake** is the norm, why not start an ad campaign trashing **fake** and implying that you, alone in the wilderness of fakedom, are the only one who is **real**. Brilliant. Except for the fact that **Wendy's** food is STILL not **real**. But, why dither with the details?

Because, I enjoy dithering. And because the very same people who believe Wendy's's's and other corporate bullshit also believe political propaganda and vote for snotty little ignoramuses like George W. Bush.

So, here's the run-down...

We become absorbed with our abstract arguments, our ideological disputes, our contests for power. And in this Tower of Babel, we lose the sound of God's voice.

~ Barack Obama

If you're idealistic, you have a moral obligation to be pragmatic.

~ Barney Frank

Facts have a well-known liberal bias.

~ Stephen Colbert

I always thought Libertarians were Republicans that smoke dope.

~ Gary Amstutz

History will have to record that the greatest tragedy of this period of social transition was not the strident clamor of the bad people, but the appalling silence of the good people.

~ Martin Luther King, Jr.

Me, Me and Moi

[About Me & Politics](#)

Subscribe:

Enter your email address:

Subscribe

Delivered by [FeedBurner](#)



[Subscribe: Feed](#)

Wake Up & Smell Le Café

FRESH, NEVER FROZEN BEEF

When you bite into a Wendy's® hamburger, you can be sure you're eating beef that's never been frozen. That way there's no loss of flavor and no freezer burn. Because quality is one thing we refuse to compromise.

*Fresh beef available in the contiguous US and CA

So, do they slaughter the cows behind each restaurant? Or do they contract with a slaughter house in each city where there's a **Wendy's**? Or, do they fly freshly slaughtered beef to each city every morning? And what do the cows eat, may I ask? Are they still injected with growth hormones? Are they force-fed

and kept in pens, never to wander or graze upon the great plains of our nation? Do they eat pesticide-laden grain?

Who gives a damn if they freeze their beef if it's poison to begin with? They're just making all this shit up. People will start saying to their friends, while discussing which fast-food joint they want to visit to assuage their hangover pangs or stoner munchies, "You know, **Wendy's** beef is never frozen!" Like this is a startling, undeniable, life-changing fact, along the same lines as, "George Bush made America safe."

CUSTOMIZE IT WITH YOUR CHOICE OF TOPPINGS

Our lettuce, tomatoes, and condiments are cut, chopped and prepared with the same dedication to quality as our fresh beef! Plus, our premium ketchup is made exclusively for us by Heinz®.

And what does "cut, chopped and prepared with the same dedication to quality" actually mean? Well, nothing. How do you chop with quality in mind? I suppose avoiding the addition of your fingertips into the tomato bits is a start.

But other than that, I **can't** imagine. And the fact that another mega-corporation, Heinz, is the exclusive maker of Wendy's's ketchup means what, exactly? Why is that a benefit to me? If the mother of the **Wendy's** day manager made the ketchup, I'd probably go there just to try it. But some big-ass corporation making the ketchup is supposed to be a selling point?

And of course, there's chicken.

We use only the best part of the chicken breast to is as tender as it is juicy.

When we say white meat, we don't mean scrap meat, gray meat or mystery meat. We m
No matter what you opt for, our chicken is prepared from the finest quality meats with th

I guess I should be happy to know that their chicken isn't mystery meat. But the only time that "finest quality meats" is true is when the chickens are pesticide-free, hormone-free and free-range. Oh, and notice that they don't say anything about whether their chicken is as unfrozen as their beef. And what about us poor sods who like dark meat? Even their "wings" are made from breasts. Oh, I forgot! It's America, where white is right and brown should be drowned in the Rio Grande before it can sneak across the border.



The Anti-TeaParty-Dote

Rescue Marriage Now!



Says Who? Says Her.



With Reservations...



Without Hesitation...

Aggressive Progressive



JStreet

**ALWAYS-IN-SEASON
FRUIT**

Our red and green apples are rotated seasonally and hand-picked at the height of their season, for the ultimate in crispness and taste.

But then, there are the apples. Just say this out loud a few times and try and think about what it means: Always-In-Season Fruit. Are they saying that they only serve fruit when it's in season? No, because the apple-pecan chicken salad is on the menu year-round.

They're saying that their red and green apples are "rotated seasonally." What

does that mean? Are they trying to say that they use green apples when they are in season and red ones when they are in season? I can only guess that since apple season (no matter what the color) is in the Fall, that they either pick the apples and store them and use them or they buy apples from other parts of the world when they are in season there. But again, they aren't sayin' that the apples are pesticide-free, so, in-season, no matter how they slice it, is a moot point.

I DID notice that Wendy's's website says that they offer Marzetti's all-natural salad dressings but they didn't say "organic" so I'm not sure they are actually using Marzetti's line of certified organic dressings, or not. At this point, I don't trust Wendy's's's. But, I really should. After all...



The fact that a giant chain of fast-food restaurants can spend a fortune to purposely design an ad campaign that pretends they are not selling factory-raised and factory-processed animals, fruits and vegetables and that this Big Lie goes unchallenged in the media and in the minds of most American consumers, is a testament to the fact that corporate marketers and Madison Avenue advertising agencies believe that American consumers are ignorant sheep.

They're laughing at us sheep (Baaahhh!), all the way to the bank.

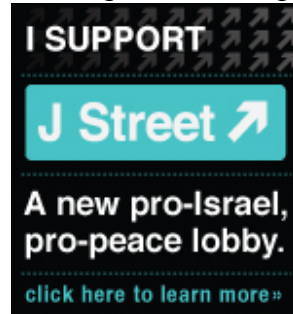
[Technorati Links](#) • [Sphere: Related Content](#) • [Save to deLicio.us](#) • [Submit to Propeller](#) • [Digg This!](#) • [Share on Facebook](#) • [outside.in: geotag this story](#) • [Discuss on Newsvine](#) • [Stumble It!](#)

Posted by Lisa Wines at [1:21 PM](#)

Labels: [advertising](#), [corporate america](#), [propaganda](#), [Wendy's](#)

Like

2 people liked this.



Progressive Radio



Randi Rhodes & Mike Malloy

Don't Click Here. You Won't Be Sorry.



To-Do List

[Arrest Dick Cheney](#)

[Ask "Why Tuesday?"](#)

[Consult I-Ching](#)

[Count Bodies](#)

[Demand Unicornism In School Curriculum](#)

[Legalize Marijuana](#)

[Make Microloan](#)

[Save Civil Liberties](#)

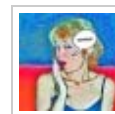
[Save Iraq Refugees](#)

[Save The Internet](#)

[Send Books To Soldiers](#)

[Separate Church 'n State](#)

About Me



[View my complete profile](#)

Followers

Add New Comment

We're sorry...

This gadget is configured incorrectly. Webmaster hint: Please ensure that "Friend Connect Settings - Home URL" matches the URL of this site.

Post as ...

Showing 1 comment

Sort by **Popular now**   [Subscribe by email](#)  [Subscribe by RSS](#)**JJ Kensington** 10 months ago

Wendy's is garbage... as is food from most chain restaurants... and sad to say, American consumers ARE ignorant sheep, look at the lines outside any Wendy's at noon. Sad to say, the American consumer market will never be like Europe's because Americans are willing to buy crap in exchange for convenience. Idiocy...

Reactions

**sexgenderbody** 11 months ago From [Twitter](#)Wendy's: Real? Not Really. <http://ff.im/-oEzjv>**SMatheson_Green** 11 months ago From [Twitter](#)

Politics After 50: Wendy's: Real? Not Really.: They're saying that their red and green apples are "rotated seasona... <http://bit.ly/cps93H>

**omyword** 11 months agoFrom [Twitter](#)

Politics After 50: B Wendy's: Real? Not Really.: I don't watch TV very often. I don't own one. I owned one for a w... <http://bit.ly/dwNZQ8>

Trackback URL <http://disqus.com/forums/pc>

My Other Sites

[My LinkedIn Profile](#)[Omyword! Blog](#)

OMYWORD! Did I Say That?

[Study In Contrasts](#)[Reading List From My Guardian](#)[Masters Novel Writing Class](#)[Analysis Paralysis: The Guardian](#)
[Master Class on Novel Writing](#)[Sex With Writers. Comma](#)[The Lies of Connards and](#)
[Courtiers](#)

Blog Archive

- ▶ 2011 (2)
- ▼ 2010 (8)
 - ▶ November (2)
 - ▶ October (1)
 - ▶ September (1)
 - ▼ August (1)
 - [Wendy's: Real? Not Really.](#)
 - ▶ June (1)
 - ▶ April (1)
 - ▶ February (1)
- ▶ 2009 (71)
- ▶ 2008 (183)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PHELAN HOLDINGS, INC., d/b/a PINCHER'S CRAB SHACK
 a Florida corporation

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Jennifer L. Whitelaw 239-262-1001
 WHITELAW LEGAL GROUP
 3838 Tamiami Trail North, Third Floor
 Naples, Florida 34103

DEFENDANTS

WENDY'S INTERNATIONAL, INC.,
 an Ohio corporation, et al

County of Residence of First Listed _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4 DEF
 Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5 DEF
 Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. § 1125 (Lanham Act), trademark infringement and related causes of action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ over \$2,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

7/11/2011

SIGNATURE OF ATTORNEY OF RECORD

Jennifer L. Whitelaw

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____