

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MISSOURI**

SWEETIE PIE’S RESTAURANT, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JAMES T. NORMAN,	)	
	)	
Serve at: 5230 Lankershim Boulevard	)	
Los Angeles, CA 91601	)	
	)	
and	)	Case No.
	)	
SWEETIE PIES HOLLYWOOD, LLC,	)	Division No:
	)	
Serve: Legalzoom.com, Inc.	)	Jury Trial Demanded
Registered Agent	)	
101 N. Brand Blvd.	)	
Glendale, CA 91203	)	
	)	
and	)	
	)	
SWEETIE PIES KITCHEN, LLC,	)	
	)	
Serve: James T. Norman	)	
Registered Agent	)	
4270 Manchester Avenue	)	
St. Louis, Missouri 63110	)	
	)	
Defendants.	)	

**COMPLAINT**

COMES NOW Plaintiff Sweetie Pie’s Restaurant, Inc. (“Plaintiff”), by and through its undersigned attorneys, and for its Complaint against Defendants James T. Norman (“Defendant Norman”), Sweetie Pies Hollywood, LLC (“Defendant Sweetie Pies Hollywood”) and Sweetie Pies Kitchen, LLC (“Defendant Sweetie Pies Kitchen”)(collectively, with Defendant Norman and Defendant Sweetie Pies Hollywood, “Defendants”), respectfully allege as follows:

### **NATURE OF ACTION**

1. This is an action for: (i) service mark infringement in violation of 15 U.S.C. § 1114(1); (ii) false designation of origin in violation of 15 U.S.C. § 1125(a); (iii) service mark and trade name infringement and unfair competition in violation of Missouri common law; (iv) violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d); and (v) conversion and money had and received under Missouri common law.

### **THE PARTIES**

2. Plaintiff is a corporation organized under the laws of the State of Missouri with its principal place of business located in St. Louis, Missouri. As alleged below, Plaintiff is the owner of the federally registered mark SWEETIE PIE'S<sup>®</sup> and the trade name "Sweetie Pie's."

3. Upon information and belief, Defendant Norman is an individual residing in the State of Missouri.

4. Upon information and belief, Defendant Sweetie Pies Hollywood is a California limited liability company.

5. Upon information and belief, Defendant Sweetie Pies Kitchen is a Missouri limited liability company.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121, because this action arises in part under 15 U.S.C. §§ 1114 and 1125.

7. Additionally, this Court has jurisdiction over Plaintiff's common law service mark infringement and unfair competition claims under 28 U.S.C. § 1338(b) because these claims are joined with, and substantially related to, Plaintiff's federal service mark claims.

8. This Court also has supplemental jurisdiction over all of Plaintiff's state law claims under 28 U.S.C. § 1367(a) because these claims are so related to claims in this action within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. The Court has personal jurisdiction over Defendant Norman because he resides in Missouri and has committed tortious acts in Missouri.

10. This Court has personal jurisdiction over Defendant Sweetie Pies Hollywood because Defendant Sweetie Pies Hollywood has transacted business and sold services with Plaintiff's federally-registered service mark within Missouri, has engaged in acts or omissions within Missouri causing injury, has distributed products and services used within Missouri in the ordinary course or trade or has otherwise made or established contacts with this State sufficient to permit the exercise of personal jurisdiction.

11. This Court has personal jurisdiction over Defendant Sweetie Pies Kitchen because Defendant Sweetie Pies Kitchen resides in Missouri, has transacted business and sold services with Plaintiff's federally-registered service mark within Missouri, has engaged in acts or omissions within Missouri causing injury, has distributed products and services used within Missouri in the ordinary course or trade or has otherwise made or established contacts with this State sufficient to permit the exercise of personal jurisdiction.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because Defendant Norman resides in this district. In addition, venue is further proper because Plaintiff and its approved affiliates own and/or operate restaurants in this district, and Defendants' infringing conduct and the harmful effects thereof that are the subject of this Complaint are substantially occurring in this district.

## GENERAL ALLEGATIONS

### **A. The Sweetie Pie's® Service Mark and Brand**

13. This action arises from Defendants' operating an identical business as Plaintiff, at least three restaurants, under a service marks and trade names, T.J.'S SWEETIE PIE'S and SWEETIE PIE'S KITCHEN, that are nearly identical to Plaintiff's trade name and federally-registered service mark for SWEETIE PIE'S<sup>®</sup>, which Plaintiff adopted nearly nineteen (19) years ago.

14. The sole owner of Plaintiff, Robbie Montgomery ("Miss Robbie") opened her first restaurant in Dellwood, Missouri in 1996 under the trade name and service mark SWEETIE PIE'S<sup>®</sup> (hereinafter the "Sweetie Pie's<sup>®</sup> Mark").

15. Plaintiff subsequently registered its service mark at the United States Patent and Trademark Office, Reg. No. 4197573, for SWEETIE PIE'S<sup>®</sup> (registered August 28, 2012) (the "Sweetie Pie's<sup>®</sup> Registration"). The Sweetie Pie's<sup>®</sup> Registration is in International Class 043 for "Restaurant services" and is attached hereto as **Exhibit 1**. Plaintiff and its authorized affiliates use the Sweetie Pie's<sup>®</sup> Mark and the Sweetie Pie's<sup>®</sup> Registration in connection with their Sweetie Pie's restaurants located in the St. Louis Missouri metropolitan area (the "Authorized Restaurants").

16. Moreover, Plaintiff has applied to federally register its standard character mark SWEETIE PIE'S (Application No. 85684994) for cook books. That application is currently pending before the United States Patent and Trademark Office.

17. Plaintiff and its approved affiliates use the following common law design mark and similar design marks on signage displayed at the Authorized Restaurants (the "Common Law Marks"):



18. The term “Sweetie Pie’s,” as used by Plaintiff and its approved affiliates to promote their restaurant services and the Authorized Restaurants is arbitrary and fanciful and thus inherently distinctive.

19. Since 1996, Plaintiff and its approved affiliates have developed and promoted their restaurant businesses under the Sweetie Pie’s<sup>®</sup> Mark. Miss Robbie now owns and operates through certain approved affiliates, multiple Authorized Restaurants. Plaintiff has also granted its authorized affiliate, SPR, LLC (“SPR”), a license to use the Sweetie Pie’s<sup>®</sup> Mark in connection with a website and a national television show about Plaintiff, Miss Robbie, and the Authorized Restaurants.

20. Since 1996, Plaintiff and its approved affiliates have continuously and extensively promoted the Authorized Restaurants under the Sweetie Pie’s<sup>®</sup> Mark.

21. Since 1996, Plaintiff and its approved affiliates have served thousands of customers and sold millions of dollars in food and beverages under the Sweetie Pie’s<sup>®</sup> Mark.

22. With respect to the internet, Plaintiff’s licensee and approved affiliate, SPR, operates and has operated a website identified by the URL [www.sweetiepieskitchen.com](http://www.sweetiepieskitchen.com) (the

“Sweetie Pie’s Website”). Plaintiff further markets and promotes its and its approved affiliates’ restaurant services and related goods and merchandise, via the Sweetie Pie’s Website.

23. In 2011, Plaintiff, Miss Robbie and her family members, the Authorized Restaurants and their employees became the subject of a national television show, *Welcome to Sweetie Pie’s* (the “Sweetie Pie’s Show”). Defendant Norman, as a member of Miss Robbie’s family, regularly appears on the Sweetie Pie’s Show.

24. The Sweetie Pie’s Show has been very successful, and the Sweetie Pie’s<sup>®</sup> Mark, the Authorized Restaurants and Miss Robbie have gained national recognition. Indeed, the Authorized Restaurants have become popular tourist destinations.

25. As a result of the recognition, fame and popularity of the Sweetie Pie’s<sup>®</sup> Mark, the Authorized Restaurants, Miss Robbie and the Sweetie Pie’s Show, Miss Robbie has recently released a cookbook entitled *Sweetie Pie’s Cookbook: Soulful Southern Recipes, from My Family to Yours* (the “Sweetie Pie’s Cookbook”). The Sweetie Pie’s Cookbook, which is sold and marketed through Barnes & Noble and Amazon online, has gained national recognition.

26. In 2015, Plaintiff decided to grant franchises under the Sweetie Pie’s<sup>®</sup> Mark. To that end, Plaintiff has engaged counsel to draft a Franchise Disclosure Document to offer franchises for additional Authorized Restaurants to third parties throughout the United States.

27. Over time, the Authorized Restaurants, all promoted under the Sweetie Pie’s<sup>®</sup> Mark, have developed a reputation for high quality food and entertainment.

28. Because of the success of the Authorized Restaurants, the Sweetie Pie’s Website, the Sweetie Pie’s Show and the Sweetie Pie’s Cookbook, the Sweetie Pie’s<sup>®</sup> Mark has gained recognition across the country.

29. By virtue of the goodwill and reputation for quality associated with the Sweetie Pie’s<sup>®</sup> Mark, the extensive restaurant sales and marketing under the Sweetie Pie’s<sup>®</sup> Mark and the

national fame and recognition of the Sweetie Pie's® Mark due to the success of the Sweetie Pie's Show and Cookbook, the Sweetie Pie's® Mark has developed significance in the minds of the purchasing public.

30. Due to the high quality of its services, its substantial advertising, promotional and sales efforts and the national fame and recognition of the Sweetie Pie's® Mark due to the national success of the Authorized Restaurants, the Sweetie Pie's Show and Cookbook, Plaintiff has achieved wide consumer acceptance for restaurant services and related goods and the reputation of the highest quality and prestige.

31. By virtue of Plaintiff's extensive use of the Sweetie Pie's® Mark and the Sweetie Pie's trade name, including its use in the Sweetie Pie's Show and Cookbook, those marks and trade name have become so well known to the trade and purchasing public that restaurant services offered in conjunction with those marks and trade name and the business operated under those marks and trade name are recognized as emanating from, or being associated with a single source.

**B. Defendants' Infringing Mark and Theft of Monies from Plaintiff**

32. Defendants are operating a restaurant in North Hollywood, California (the "California Restaurant"), under the name TJ'S SWEETIE PIE'S NOHO (the "First Infringing Mark").

33. In connection with the California Restaurant, Defendants use Sweetie Pie's® Mark in its entirety and without alteration on the Instagram page associated with the California Restaurant:

Instagram

Search

la



sweetiepiesnoho

FOLLOW

TJsSweetiePies 5230 Lankershim blvd NoHo CA, 91601 OWN  
(OprahWinfreyNetwork) Saturdays 9/8c Send pics2  
nohoneews@thesweetiepies.com w/ names 4reposts! #SweetiePies  
[www.sweetiepiesnoho.com](http://www.sweetiepiesnoho.com)

11 posts

1,637 followers

8 following

34. Moreover, Defendants have held the California Restaurant out to the public as being associated with the Sweetie Pie's Show, as evident from the TJ's Sweetie Pie's Noho's Instagram page.

35. Defendants use the following signage and design on the California Restaurant's signage, exterior, menu and social media sites, which is copied from the Common Law Marks, the Sweetie Pie's<sup>®</sup> Mark and Plaintiff's and the Authorized Restaurant's promotional materials:



36. The California Restaurant is listed on numerous electronic directories and social media sites on the Internet under the First Infringing Mark.



37. In June, 2016, Defendants opened and are now operating a restaurant in Berkeley, Missouri (the “Berkeley Restaurant”) under the name TJ’S SWEETIE PIE’S AIRPORT (the “Second Infringing Mark”). The Second Infringing Mark is identical to the First Infringing Mark but for “Airport” is substituted for “NoHo”.

38. Defendants use the Second Infringing Mark on the Berkeley Restaurant’s signage, exterior and menus, which are copied from the Common Law Marks, the Sweetie Pie’s® Mark and Plaintiff’s and the Authorized Restaurant’s promotional materials.

39. The Berkeley Restaurant is listed on numerous electronic directories and social media sites on the Internet under or referencing the Second Infringing Mark.

40. Defendants have also opened and are now operating a restaurant in Florissant, Missouri (the “Florissant Restaurant”) under the name SWEETIE PIE’S KITCHEN (the “Third Infringing Mark”). The Third Infringing Mark is identical to Plaintiff’s Common Law Marks but for “Kitchen” is substituted for “Restaurant”. The Third Infringing Mark is as follows:



41. Defendants use the Third Infringing Mark on the Florissant Restaurant's signage, exterior and menus which are copied from the Common Law Marks, the Sweetie Pie's<sup>®</sup> Mark and Plaintiff's and the Authorized Restaurant's promotional materials.

42. The Florissant Restaurant is listed on numerous electronic directories and social media sites on the Internet under or referencing the Third Infringing Mark.

43. In or around the summer of 2015, Plaintiff discovered Defendant Norman had been misappropriating Plaintiff's accounts and funds maintained in connection with his management of the Authorized Restaurant located at 4270 Manchester Avenue (the "Mangrove Restaurant").

44. Among other things, Defendant Norman withdrew substantial sums of money from Plaintiff's accounts maintained in connection with the Mangrove Restaurant.

45. Moreover, Defendant Norman has diverted revenue from the Mangrove Restaurant and misappropriated those monies for Defendant Norman's, Defendant Sweetie Pies Hollywood's and Defendant Sweetie Pies Kitchen's own uses, including operation and establishment of the California Restaurant, the Berkeley Restaurant and the Florissant Restaurant.

46. Defendant Norman's withdrawal and diversion and all of Defendants' use of the monies from Plaintiff's accounts were unauthorized and were done without Plaintiff's knowledge, permission or approval.

47. Defendants have used, and continue to use, the monies stolen from Plaintiff for their own uses, including funding and promoting Defendants' restaurants.

48. Upon discovering Defendants' actions, Plaintiff demanded return of the funds wrongfully stolen by Defendants. However, to date, Defendants have failed and refused to return the stolen monies to Plaintiff.

49. Also upon discovering Defendants' theft, Plaintiff expressly advised Defendants they could not hold themselves out as being associated with Plaintiff and/or its affiliates and their use of the Infringing Mark was unauthorized and unlawful. Plaintiff first advised Defendants of Plaintiff's service mark rights via letter dated July 24, 2015, a copy of which is attached hereto as **Exhibit 2**.

50. Plaintiff has not given Defendants any permission or approval to act for or on its behalf or to open the Berkeley Restaurant or any other restaurant using the First Infringing Mark. See letter dated October 30, 2015, a copy of which is attached hereto as **Exhibit 3**.

51. Despite Plaintiff's communications, Defendants have continued to use the First Infringing Mark, the Second Infringing Mark and the Third Infringing Mark (collectively, the "Infringing Marks").

52. Moreover, Defendants have expanded Defendants' use of the First Infringing Mark by registering the domain name [sweetiepiesnoho.com](http://www.sweetiepiesnoho.com), accessible at <http://www.sweetiepiesnoho.com> (the "Infringing Domain Name") for use in connection with promoting their restaurants under the First Infringing Mark.

53. On April 15, 2016, Defendant Norman applied to federally register SWEETIE PIE'S (Application No. 8700267) for restaurant services. That application is currently pending before the United States Patent and Trademark Office.

54. Defendants' use of the Second Infringing Mark and the Third Infringing Mark to establish, advertise and promote the Berkley Restaurant and the Florissant Restaurant impairs Plaintiff's ability to operate its restaurant services in Missouri, because doing so would place competing restaurants in the same area that are marketed and promoted under confusingly similar marks.

55. Defendants' use of the Infringing Marks to advertise and promote the California Restaurant, the Berkeley Restaurant and the Florissant Restaurant impairs Plaintiff's ability to sell a Sweetie Pie's franchise in the Los Angeles or St. Louis market areas, or to directly operate a restaurant under the Sweetie Pie's<sup>®</sup> Mark in those area, and otherwise interferes with Plaintiff's ability to market franchises in California and Missouri, because doing so would place competing restaurants in the same area that are marketed and promoted under confusingly similar marks. Further, Defendants use of the Infringing Marks and Defendant Norman's pending application with the United States Patent and Trademark Office for registration of SWEETIE PIE'S for restaurant services all would need to be disclosed by Plaintiff in its Franchise Disclosure Document, creating confusion in the minds of prospective franchisees and effectively ending any practical ability to expand through franchising.

56. Moreover, the fact Defendant Norman is identified as a member of Miss Robbie's family on the Sweetie Pie's Show, along with his position on the Show, further increases the potential of causing confusion in the market place.

57. Indeed, public confusion has in fact occurred, as evident from restaurant reviews left for the California Restaurant on the review site yelp.com. True and correct copies of reviews left on yelp.com are attached hereto as **Exhibit 4** and incorporated herein by reference.

58. Among other things, reviewers on yelp.com have reported the following as to the California Restaurant:

- “[Defendant Norman] is gonna ruin his mommas reputation and her business if he doesn't slow down and recalibrate.”
- “First of all ... welcome to the L.A. area! I've been patiently waiting for your arrival.... Ms. Robbie, my mouth was a bit disappointed but I won't give up on yall.... After all ... all those people lined up at your places in St. Louis surely weren't lined up for nothing.”
- “I am hoping things improve so Miss Robbies brand is not ruined.”

- “Since I’m a fan of the show we decided to wait [in line]. Bad idea! ... Not to mention, the prices are way too high. C’mon Ms. Robbie, you’re only charging the folks in St. Louis \$2.85 for a side.”
- “Young staff in back was goofing around and I know Ms. Robbie does not go for this.”
- “...Ms. Robbie I know you don’t play when it comes to cleanliness so when I saw the bathroom I was just shocked. It was not clean and that really surprised me.”
- “Ms. Robbie or Tim you are going to have to be onsite and get the staff and food up to your standards in order to be successful at this location.... I would have much rather taken a flight to St. Louis and had the true experience.”
- “Huge fan of the show ... love Ms. Robbie and the entire family.... The LA location is in dire need of Ms. Robbie to get the food on track.”
- “I wonder if Miss Robbie knows about the quality of food being served at this location.”
- “...I am a Super Fan of ‘Welcome to Sweetie Pie’s’ ... I believe the problem may be that they are not up to speed yet on Miss Robbie’s way of preparing the food.”
- “I do not recommend spending your time or money on this place. Maybe we all need to go Ms. Robbie’s in St. Louis.”
- “I’m curious did Ms Robbie just want to throw a restaurant on the west coast real quick because it sure tastes like it.”
- “We were pretty excited about going to Sweetie Pies after eating at the Upper Crust in St. Louis three years ago.... Nothing tasted the same the food was like St. Louis not even close.”
- “Ms. Robbie I know your food is better than what we [had] yesterday.”

59. Public confusion has also occurred regarding the Berkeley Restaurant, as evident from restaurant reviews left for the Berkeley Restaurant on Google.com. True and correct copies of reviews left on Google.com are attached hereto as **Exhibit 5** and incorporated herein by reference.

60. Among other things, reviewers on Google.com have reported the following as to the Berkeley Restaurant:

- “I have eaten at Sweetie Pies in the Grove [(Mangrove Restaurant)] and it was really good but NOT this place. I ordered 3 piece bake chicken with okra, mac and cheese and cornbread. What I received was spicy fried chicken undercooked over salted okra, bland mac & cheese and a roll. The food was not good. I will not go back there. They need to go back to focus on quality and not the number of places they have.”

61. Public confusion has also occurred regarding the Florissant Restaurant, as evident from restaurant reviews left for the Florissant Restaurant on the review site yelp.com. True and correct copies of reviews left on yelp.com are attached hereto as **Exhibit 6** and incorporated herein by reference.

62. Among other things, reviewers on yelp.com have reported the following as to the Florissant Restaurant:

- “I've been exploring outside the city lately, and it's been strange to hit places other than my favorites. However, I found a familiar face in the county, Miss Robbie and her signature soul food!”

63. Plaintiff's federally registered rights in the Sweetie Pie's<sup>®</sup> Mark are senior to any common law rights Defendants may assert in the Infringing Marks.

64. Defendants knew of Plaintiff when they adopted the Infringing Marks and adopted the Infringing Marks with the willful intent to create a likelihood of confusion with the Sweetie Pie's<sup>®</sup> Marks, deceive the public and trade off of Plaintiff's goodwill. Defendants have continued to use the Infringing Marks with knowledge of Plaintiff's rights and with the willful intent to create a likelihood of confusion with the Common Law Marks and the Sweetie Pie's<sup>®</sup> Mark, deceive the public and trade off of Plaintiff's goodwill.

#### **COUNT I – FEDERAL SERVICE MARK INFRINGEMENT**

65. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 64 of this Complaint as though fully set forth herein.

66. The Sweetie Pie's<sup>®</sup> Registration is valid, subsisting, in full force and effect and have never been abandoned.

67. The Sweetie Pie's<sup>®</sup> Mark is arbitrary, inherently distinctive and entitled to broad protection.

68. The Sweetie Pie's<sup>®</sup> Mark is owned, controlled and being used in commerce by Plaintiff.

69. By virtue of the goodwill and reputation for quality associated with the Sweetie Pie's<sup>®</sup> Mark and the extensive restaurant sales and marketing under the Sweetie Pie's<sup>®</sup> Mark, the Sweetie Pie's<sup>®</sup> Mark has developed a secondary meaning and significance in the minds of the purchasing public and serves as an identifier showing that such quality goods and services emanate from a single source.

70. Without Plaintiff's consent, Defendants have used and are using in commerce a reproduction, counterfeit, copy or colorable imitation of the Sweetie Pie's<sup>®</sup> Mark in connection with the sale, offering for sale, distribution or advertising of goods or services, which is likely to cause confusion, to cause mistake or to deceive in violation of 15 U.S.C. § 1114(1)(a).

71. Specifically, Plaintiff and Defendants both offer similar restaurant services and related goods.

72. Also, Plaintiff and Defendants both operate restaurants and/or sell restaurant franchises under confusingly similar marks. The Infringing Marks appropriates the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks in their entirety, with the only addition being a cartoon of a baby added to the Infringing Marks. The only textual variance from the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks is that the Infringing Marks include the name "T.J.'s", the geographic designation "NOHO" or "Airport" or the generic term "Kitchen". Therefore, when separately encountered by consumers in the marketplace in their various forms, the Sweetie Pie's<sup>®</sup> Mark and the Infringing Marks create a confusingly similar commercial impression.



73. Moreover, defendants have adopted the Sweetie Pie's® Mark in its entirety and have used and continue to use it on their Instagram account, which is accessible worldwide via the internet. Defendants' wholesale copy of the Sweetie Pie's® Mark on the internet creates confusion among consumers.

74. Further, because Plaintiff has concrete plans to sell franchise restaurants across the country, there is a substantial, if not inevitable, likelihood of confusion that the purchasing public will falsely conclude Defendants' restaurants are authorized Sweetie Pie's® restaurants and/or that Defendants' use of the Infringing Marks will mislead the public into believing that there is a connection between Plaintiff, on the one hand, and Defendants, on the other, or that Plaintiff sponsors or is affiliated with the activities of Defendants. Such activities by Defendants are likely to confuse the public regarding the origin or source of the directly competing services provided by Defendants.

75. Without Plaintiff's consent, Defendants have reproduced, counterfeited, copied or colorably imitated the Sweetie Pie's® Mark and are continuing to reproduce, counterfeit, copy or colorably imitate the Sweetie Pie's® Mark, and have applied and are continuing to apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints and other promotional and marketing material intended to be used in commerce upon or in connection with the sale, offering for sale, distribution or advertising of goods or services, which is likely to cause confusion, to cause mistake or to deceive in violation of 15 U.S.C. § 1114(1)(b).

76. Defendants' unauthorized use of the Sweetie Pie's® Mark, the Common Law Marks and the Infringing Marks is greatly and irreparably damaging to Plaintiff in the form of: (i) loss of income; (ii) interference with Plaintiff's ability to exploit its rights; (iii) confusion in the marketplace as to the duly authorized source of the services provided in conjunction with the Sweetie Pie's® Mark; and (iv) impairment of the goodwill Plaintiff has in its Sweetie Pie's®



Mark, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiff in the Sweetie Pie's<sup>®</sup> Mark and to the respective business, reputation and goodwill of Plaintiff.

77. Upon information and belief, Defendants' acts of service mark infringement are knowing, intentional and willful.

78. Unless and until Defendants are enjoined by this Court, Defendants will continue to commit acts of service mark infringement and will continue to confuse the public and cause irreparable harm to Plaintiff.

79. Plaintiff has no adequate remedy at law.

80. Plaintiff is entitled to injunctive relief against Defendants pursuant to 15 U.S.C. § 1116.

81. Plaintiff is also entitled to recover from Defendants their profits, all damages that Plaintiff has sustained from Defendants' infringement, prejudgment interest and the costs associated with this action pursuant to 15 U.S.C. § 1117.

82. Because Defendants' conduct is willful, Plaintiff is also entitled to recover from Defendants treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

83. The full extent and exact amount of damages are not yet determined.

WHEREFORE, Plaintiff respectfully requests that the Court enter a preliminary and permanent injunction enjoining Defendants from continuing to use Plaintiff's service mark (or any derivation or colorable imitation thereof) in conjunction with restaurant related services. Plaintiff also requests that the Court award it damages associated with Defendants' past use of the Sweetie Pie's<sup>®</sup> Mark, including but not limited to three times Defendants' profits, three times the damages sustained by Plaintiff as the result of Defendants' conduct, costs, prejudgment interest, attorneys' fees and such further and/or alternative relief this Court deems proper.

**COUNT II – FALSE DESIGNATION OF ORIGIN**

84. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 83 of this Complaint as though fully set forth herein.

85. Defendants, at and in connection with the California Restaurant, the Berkeley Restaurant and the Florissant Restaurant, have used in commerce, and continue to use in commerce, words, terms, names, marks, symbols, devices and combinations thereof and/or false designations of origin, which are likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of itself with another person, as to the origin, sponsorship and approval of their goods and commercial activities by another person in violation of 15 U.S.C. § 1125(a)(1)(A).

86. By marketing the California Restaurant, the Berkeley Restaurant and the Florissant Restaurant under the Infringing Marks, which are materially identical to the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks, Defendants' conduct constitutes false designation of origin and tends to represent falsely that Defendants' products originate from Plaintiff or that Defendants' restaurants have been sponsored, approved or licensed by Plaintiff or is in some way affiliated with or connected to Plaintiff, in violation of 15 U.S.C. § 1125.

87. The activities of Defendants complained of herein constitute willful and intentional infringement in total disregard of Plaintiff's proprietary rights, and have continued in spite of Defendants' knowledge that the use of the Infringing Marks, or any mark or trade name that is confusingly similar to the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks was and is in direct contravention of Plaintiff's rights.

88. Defendants' unauthorized use of the Sweetie Pie's<sup>®</sup> Mark, the Common Law Marks and the Infringing Marks is greatly and irreparably damaging to Plaintiff in the form of: (i) loss of income; (ii) interference with Plaintiff's ability to exploit its rights; (iii) confusion in

the marketplace as to the duly authorized source of the services provided in conjunction with the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks; and (iv) impairment of the goodwill Plaintiff has in its Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiff in the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks and to the respective businesses, reputations and goodwill of Plaintiff and its approved affiliates.

89. Upon information and belief, Defendants' actions are knowing, intentional and willful.

90. As a result of Defendants' actions, Plaintiff is suffering irreparable harm.

91. Unless and until Defendants are enjoined by this Court, Defendants will continue to commit acts of false designation of origin and will continue to confuse the public and cause irreparable harm to Plaintiff.

92. Plaintiff has no adequate remedy at law.

93. Plaintiff is entitled to injunctive relief against Defendants pursuant to 15 U.S.C. § 1116.

94. Plaintiff is entitled to recover from Defendants their profits, all damages that Plaintiff has sustained from Defendants' infringement, prejudgment interest and the costs associated with this action pursuant to 15 U.S.C. § 1117.

95. Because Defendants' conduct is willful, Plaintiff is also entitled to recover from Defendants treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

96. The full extent and exact amount of damages are not yet determined.

WHEREFORE, Plaintiff respectfully requests that the Court enter a preliminary and permanent injunction enjoining Defendants from continuing to use the Sweetie Pie's<sup>®</sup> Mark and/or the Common Law Marks (or any derivation or colorable imitation thereof) in conjunction

with restaurant related services. Plaintiff also requests that the Court award it damages associated with Defendants' past use of the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks, including but not limited to three times Defendants' profits, three times the damages sustained by Plaintiff as the result of Defendants' conduct, costs, prejudgment interest, attorneys' fees and such further and/or alternative relief this Court deems proper.

**COUNT III – COMMON LAW SERVICE MARK INFRINGEMENT  
AND UNFAIR COMPETITION**

97. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 96 of this Complaint as though fully set forth herein.

98. Defendants' use of the Infringing Marks is likely to cause consumer confusion as to whether Defendants' restaurants are associated with, affiliated or sponsored by Plaintiff, and infringes on Plaintiff's service mark rights.

99. Upon information and belief, Defendants' actions are knowing, intentional and willful.

100. As a result of Defendants' acts of service mark infringement and unfair competition under Missouri law, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

101. Unless Defendants are enjoined by this Court, they will continue to commit acts of service mark infringement and unfair competition and he will continue to confuse the public and cause irreparable harm to Plaintiff.

102. Plaintiff is entitled to recover from Defendants their profits and any damages that Plaintiff has sustained from Defendants' infringement and unfair competition.

103. Upon information and belief, Defendants' misconduct is outrageous and done with malice, an evil motive and/or with reckless indifference towards the rights of others, and so Plaintiff is entitled to an award of punitive damages.

WHEREFORE, Plaintiff respectfully requests that the Court enter a preliminary and permanent injunction enjoining Defendants from continuing to use the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks (or any derivation or colorable imitation thereof) in conjunction with restaurant related services. Plaintiff also requests that the Court award it damages associated with Defendants' past use of the Sweetie Pie's<sup>®</sup> Mark and the Common Law Marks, including but not limited to Defendants' profits, damages sustained by Plaintiff as the result of Defendants' conduct, punitive damages and such further and/or alternative relief this Court deems proper.

**COUNT IV –TRADE NAME INFRINGEMENT (FEDERAL LAW)**

104. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 103 of this Complaint as though fully set forth herein.

105. Defendants, at and in connection with their restaurant, have used in commerce, and continue to use in commerce, words, terms, names, symbols, devices and combinations thereof and/or false designations of origin, which are likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection, or association of itself with another person, as to the origin, sponsorship, and approval of its services and commercial activities by another person in violation of 15 U.S.C. § 1125(a)(1)(A).

106. By operating restaurants under the trade name TJ's Sweetie Pie's Noho and TJ's Sweetie Pie's and Sweetie Pie's Kitchen, which are materially identical to Plaintiff's trade name, Defendants' conduct constitutes false designation of origin and tends to represent falsely that Defendants' restaurants originates from Plaintiff or that Defendants' restaurants and businesses

have been sponsored, approved or licensed by Plaintiff or are in some way affiliated with or connected to Plaintiff in violation of 15 U.S.C. § 1125.

107. Upon information and belief, Defendants' actions are knowing, intentional and willful.

108. As a result of Defendants' actions, Plaintiff is suffering irreparable harm.

109. Unless and until Defendants are enjoined by this Court, Defendants will continue to commit acts of false designation of origin and will continue to confuse the public and cause irreparable harm to Plaintiff.

110. Plaintiff has no adequate remedy at law.

111. Plaintiff is entitled to injunctive relief against Defendants pursuant to 15 U.S.C. § 1116.

112. Plaintiff is entitled to recover from Defendants their profits, all damages that Plaintiff has sustained from Defendants' infringement, prejudgment interest and the costs associated with this action pursuant to 15 U.S.C. § 1117.

113. Because Defendants' conduct is willful, Plaintiff is also entitled to recover from Defendants treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

114. The full extent and exact amount of damages are not yet determined.

WHEREFORE, Plaintiff respectfully requests that the Court enter a preliminary and permanent injunction enjoining Defendants from continuing to use the Sweetie Pie's trade name (or any derivation or colorable imitation thereof) in conjunction with restaurant related services. Plaintiff also requests that the Court award it damages associated with Defendants' past use of Plaintiff's trade name, including but not limited to three times Defendants' profits, three times the damages sustained by Plaintiff as the result of Defendants' conduct, costs, prejudgment interest, attorneys' fees and such further and/or alternative relief this Court deems proper.

**COUNT V –COMMON LAW TRADE NAME INFRINGEMENT**

115. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 114 of this Complaint as though fully set forth herein.

116. Without Plaintiff's consent, Defendants adopted the trade name TJ's Sweetie Pie's and Sweetie Pie's Kitchen to identify their businesses, which is likely to cause consumer confusion, to cause mistake, or to deceive in violation of Missouri common law.

117. Upon information and belief, Defendants' acts of trade name infringement are knowing, intentional and willful.

118. As a result of Defendants' acts of trade name infringement, Plaintiff is suffering irreparable harm.

119. Unless and until Defendants enjoined by this Court, Defendants will continue to commit acts of trade name infringement and will continue to confuse the public and cause irreparable harm to Plaintiff.

120. Plaintiff has no adequate remedy at law.

121. Plaintiff is entitled to injunctive relief against Defendants.

122. Plaintiff is also entitled to recover from Defendants their profits, all damages that Plaintiff has sustained from Defendants' infringement, prejudgment interest and the costs associated with this action.

WHEREFORE, Plaintiff respectfully requests that the Court enter a preliminary and permanent injunction enjoining Defendants from continuing to use the Sweetie Pie's trade name (or any derivation or colorable imitation thereof) in conjunction with restaurant related services. Plaintiff also requests that the Court award it damages associated with Defendants' past use of Plaintiff's trade name, including but not limited to Defendants' profits, the damages sustained by

Plaintiff as the result of Defendants' conduct, costs, prejudgment interest, attorneys' fees and such further and/or alternative relief this Court deems proper.

**COUNT VI – CYBERPIRACY IN VIOLATION OF THE FEDERAL  
ANTICYBERSQUATTING CONSUMER PROTECTION ACT**

123. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 122 of this Complaint as though fully set forth herein.

124. Defendants registered the Infringing Domain Name, which is confusingly similar to the Sweetie Pie's<sup>®</sup> Mark, with the bad faith intent to profit from the confusing similarity with the Sweetie Pie's<sup>®</sup> Mark and the Sweetie Pie's<sup>®</sup> Website.

125. Defendants registered the Infringing Domain Name with knowledge of Plaintiff's established trademark rights in the Sweetie Pie's<sup>®</sup> Mark and the Sweetie Pie's Website and with the knowledge that the Infringing Domain Name is identical and confusingly similar to the Sweetie Pie's<sup>®</sup> Mark and the Sweetie Pie's Website.

126. Defendants use the Infringing Domain Name with the bad faith intent to redirect Internet traffic away from Plaintiff and to their own website and to deceive consumers that Plaintiff is affiliated with, authorizes, or sponsors Defendants and their restaurants.

127. Defendants have registered the Infringing Domain Name with a bad faith intent to profit therefrom.

128. The acts of Defendants complained of herein constitute a violation of the Federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

129. Defendants' use of the Infringing Domain Name is causing substantial injury to Plaintiff goodwill in and to its Sweetie Pie's<sup>®</sup> Mark.

130. As a result of Defendants' registration and use of the Infringing Domain Name, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law.



131. Unless Defendants are enjoined by this Court, it will continue to commit acts of cyberpiracy, and it will continue to confuse the public and cause irreparable harm to Plaintiff.

132. Plaintiff is entitled to recover from Defendants their profits and any damages that Plaintiff has sustained from Defendants' cyberpiracy.

WHEREFORE, Plaintiff respectfully requests that the Court enter a preliminary and permanent injunction enjoining Defendants from continuing to use the Infringing Domain Name, or any derivation or colorable imitation thereof, and to transfer the ownership and registration of the Infringing Domain Name to Plaintiff or, in the alternative, for cancellation of the Infringing Domain Name pursuant to 15 U.S.C. § 1125(d)(1)(C). Plaintiff also requests that the Court award it damages associated with Defendants' registration and use of the Infringing Domain Name, including but not limited to Defendants' profits, damages sustained by Plaintiff as the result of Defendants' conduct or, in the alternative, statutory damages in an amount up to the sum of \$100,000 for the Infringing Domain Name pursuant to 15 U.S.C. § 1117(a) and (b) and such further and/or alternative relief this Court deems proper.

#### **COUNT VI – CONVERSION**

133. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 132 of this Complaint as though fully set forth herein.

134. Without Plaintiff's consent, Defendants withdrew substantial sums of money from Plaintiff's accounts maintained in connection with the Mangrove Restaurant.

135. Moreover, Defendants have diverted revenue which belongs to Plaintiffs and misappropriated those monies for their own uses, including operation and establishment of the California Restaurant, the Berkeley Restaurant and the Florissant Restaurant.

136. Defendants' withdrawal of the monies from Plaintiff's accounts and diversion of revenue from the Mangrove Restaurant was unauthorized and was done without Plaintiff's knowledge, permission or approval.

137. Defendants have used, and continue to use, the monies stolen from Plaintiff for their own uses, including funding and promoting Defendants' restaurants.

138. As a result, Defendants are in possession of funds rightfully belonging to Plaintiff.

139. Upon discovering Defendants' actions, Plaintiff demanded return of the funds wrongfully stolen by Defendants. However, to date, Defendants have failed and refused to return the stolen monies to Plaintiff.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order awarding Plaintiff its damages associated with Defendants' misappropriation of Plaintiff's monies, the damages sustained by Plaintiff as the result of Defendants' conduct, costs, prejudgment interest, attorneys' fees and such further and/or alternative relief this Court deems proper.

#### **COUNT VII – MONEY HAD AND RECEIVED**

140. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 139 of this Complaint as though fully set forth herein.

141. As an employee of Plaintiff, Defendant Norman had access to Plaintiff's accounts maintained in connection with its operation of the Sweetie Pie's restaurants for purposes of paying bills and invoices and otherwise assisting in the management of Plaintiff's restaurants.

142. Without Plaintiff's consent, Defendants withdrew substantial sums of money from Plaintiff's accounts.

143. Moreover, Defendants have diverted incoming revenue to Plaintiff's restaurants and misappropriated those monies for their own uses, including operation and establishment of the California Restaurant, the Berkeley Restaurant and the Florissant Restaurant.

144. Defendants' withdrawal of the monies from Plaintiff's accounts and diversion of revenue from Plaintiff's restaurants was unauthorized and was done without Plaintiff's knowledge, permission or approval.

145. Defendants have used, and continue to use, the monies stolen from Plaintiff for their own uses, including funding and promoting Defendants' restaurants.

146. As a result, Defendants are in possession of funds rightfully belonging to Plaintiff.

147. Upon discovering Defendants' actions, Plaintiff demanded return of the funds wrongfully stolen by Defendants. However, to date, Defendants have failed and refused to return the stolen monies to Plaintiff.

148. In equity and good conscience, Defendants should not be able to keep company funds rightfully belonging to Plaintiff.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order awarding Plaintiff its damages associated with Defendants' misappropriation of Plaintiff's monies, the damages sustained by Plaintiff as the result of Defendants' conduct, costs, prejudgment interest, attorneys' fees and such further and/or alternative relief this Court deems proper.

**JURY DEMAND**

Plaintiff demands a jury trial on all Counts so triable.

Dated: July 26, 2016

LATHROP & GAGE LLP

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