

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>Twin Restaurant IP, LLC,</b>	§	
<b>a Delaware Limited Liability Company,</b>	§	
<i>Plaintiff,</i>	§	
	§	
<b>v.</b>	§	
	§	<b>CASE NO: 10-2308</b>
<b>Grand Tetons, LLC d/b/a Northern Exposure,</b>	§	
<b>an Arkansas Corporation, and Kevin Laughlin,</b>	§	
<i>Defendants.</i>	§	
	§	

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**ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff Twin Restaurant IP, LLC for its Complaint against Defendants Grand Tetons, LLC d/b/a Northern Exposure and Kevin Laughlin would respectfully show the Court as follows:

**THE PARTIES**

1. Plaintiff Twin Restaurant IP, LLC is a Delaware limited liability corporation with a principal place of business at 4803 Broadway, Addison, TX 75001. Twin Restaurant IP, LLC and its predecessor-in-interest, Twin Restaurant Management, L.L.C., shall be collectively referred to as “Twin Restaurant” for the purpose of this Complaint.

2. Defendant Grand Tetons, LLC d/b/a Northern Exposure is an Arkansas limited liability corporation. Defendant Grand Tetons, LLC d/b/a Northern Exposure may be served with process via its registered agent Kenneth N. Hall, 75 N. East Ave, Suite 500, Fayetteville, Arkansas 72701.

3. Defendant Kevin Laughlin is an individual residing in Missouri who may be served with process wherever he may be found.

## **JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction in this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) because it arises under the Federal Trademark Act, 15 U.S.C. § 1052 *et. seq.* Jurisdiction over the state law cause of action is proper under 28 U.S.C. § 1338(b) because it asserts a claim of unfair competition and is joined with substantial and related claims under the Federal Trademark laws. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the common law of Texas pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

5. This Court has personal jurisdiction over Defendants because Defendants have minimum contacts with the state of Texas and maintaining this action in Texas will not offend traditional notions of fair play and substantial justice. Further, Defendants have committed a tort in whole or in part in Texas.

6. Venue is appropriate pursuant to 28 U.S.C. §§ 1391(b)-(c) because a substantial part of the events or omissions giving rise to the claims and the actual harm to Twin Restaurant occurred in this District.

## **FACTUAL BACKGROUND**

### **Twin Restaurant's Trademarks and Trade Dress**

7. Twin Restaurant is the owner of several service marks and trademarks, including the trade name and trade dress, of restaurants offering a wide variety of food and beverage items under the Twin Peaks trade name and business system ("Twin Peaks Restaurant.").

8. Twin Restaurant is the owner via assignment of U.S. Registration No. 3,252,349 for the mark TWIN PEAKS registered on June 12, 2007 in International Class 43 for Restaurant and Bar services. A copy of this registration is attached hereto as Exhibit A.

9. Twin Restaurant is the owner of a mark consisting of a stylized logo of two snowcapped mountains, which has been used in commerce in conjunction with Restaurant and Bar services for more than five (5) years. Twin Restaurant has filed an application for federal registration of this mark, which has been assigned Serial number 85175916. A copy of this application is attached hereto as Exhibit B.

10. Twin Restaurant is the owner of a mark consisting of a stylized logo of the words Twin Peaks over two snowcapped mountains, which has been used in commerce in conjunction with Restaurant and Bar services for more than five (5) years. Twin Restaurant has filed an application for federal registration of this mark, which has been assigned Serial number 85175901. A copy of this application is attached hereto as Exhibit C.

11. Twin Restaurant is the owner of the mark EATS · DRINKS · SCENIC VIEWS, which has been used in commerce in conjunction with Restaurant and Bar services for more than five (5) years. Twin Restaurant has filed an application for federal registration of this mark, which has been assigned Serial number 85175923. A copy of this application is attached hereto as Exhibit D.

12. Twin Peaks Restaurants employ a distinctive trade dress that is widely and favorably known and that conveys to consumers a specific theme of a lodge in the northern wilderness. The décor includes Adirondacks-style furniture, mounted taxidermy, and vintage posters (including vintage posters of Vargas-style vintage pin-up girls).

13. As another example of the Twin Restaurant's trade dress, servers at Twin Peaks Restaurants wear a uniform consisting of a red and black Buffalo Plaid blouse (which ties underneath and at the center of the bust line) and shorts.

14. Examples of Twin Restaurant's trade dress are attached hereto as Exhibit E.

**Mr. Laughlin approaches Twin Peaks**

15. In 2009, Kevin Laughlin filed an application to become a franchisee authorized to operate a Twin Peaks Restaurant using the Twin Peaks trade name, trademarks, and service marks.

16. In the spring of 2009, Mr. Laughlin traveled to Dallas, Texas to learn more about the Twin Peaks Restaurant concept and operations. Mr. Laughlin met with Twin Restaurant executives during this trip and learned about the unique aspects of operating a Twin Peaks Restaurant. Mr. Laughlin was given a tour of a Twin Peaks Restaurant in Plano, Texas, including areas not accessible to the public, such as the kitchen. Mr. Laughlin was also made privy to Twin Restaurant's knowledge and expertise concerning recruiting, training, motivating and retaining a staff that meets the standards the consuming public expects from and associates with a Twin Peaks Restaurant.

17. Mr. Laughlin stated that he wished to open a Twin Peaks Restaurant in Branson, Missouri. Twin Restaurant had doubts that Branson was a suitable market for a Twin Peaks Restaurant.

18. Twin Restaurant suggested that Mr. Laughlin instead consider Fayetteville, Arkansas as a potential location for a Twin Peaks Restaurant. Fayetteville was believed to be a stronger market for the Twin Peaks Restaurant concept as a result of its proximity to the University of Arkansas and the headquarters of Tyson Foods, Inc. and Wal-Mart Stores, Inc.

19. Twin Restaurant even suggested a location within Fayetteville—specifically, a building located at 643 E. Van Asche Dr. that had previously housed a restaurant known as “Smokey Bones” (hereinafter, the “Property”). Twin Restaurant assisted Mr. Laughlin in negotiating a favorable purchase price for the Property, with the understanding that Mr. Laughlin would consummate the franchise agreement and operate a Twin Peaks Restaurant at the Property.

20. Mr. Laughlin requested further assistance from Twin Restaurant in remodeling the Property in order to assure that it could effectively operate, with approval and authorization, as a Twin Peaks Restaurant. Twin Restaurant arranged for its architect to visit the Property and assisted with a remodeling plan and budget.

21. In or around May of 2009, an officer of Twin Restaurant traveled to Fayetteville. While there, he further assisted Mr. Laughlin by facilitating introductions to local distributors and contractors that Mr. Laughlin would need to operate a restaurant and bar. Twin Peaks' general contractor and the designer for its kitchen and bar also traveled to Fayetteville during this time to discuss how the Property would be converted so that Mr. Laughlin could capture the look and feel of the Twin Peaks Restaurants after consummation of the franchise agreement.

22. After months of negotiation and access to Twin Peaks' business model and operations, Mr. Laughlin informed Twin Restaurant and its related entities that he no longer wished to operate a Twin Peaks Restaurant and that, if he opened any restaurant at the Property, it would be a different concept.

23. Twin Restaurant informed Mr. Laughlin that it would pursue franchise opportunities in Fayetteville with another applicant. In other words, Mr. Laughlin was informed and well aware that Twin Restaurant would expand into Fayetteville. Twin Restaurant later sold the Fayetteville market franchise opportunity to Seven Valleys Management, LLC, which is currently working towards opening a Twin Peaks Restaurant in Fayetteville.

24. Mr. Laughlin was also informed and well aware of Twin Restaurant's trademark and trade dress rights. Indeed, not only did Mr. Laughlin have access to information concerning such rights during the negotiation period, but he was expressly warned against operating a knock-off establishment after he ceased negotiations.

**Mr. Laughlin pursues his plan to knock-off Twin Peaks**

25. Upon information and belief, and unbeknownst to Twin Restaurant, Mr. Laughlin never intended to consummate a franchise agreement, but instead feigned interest to gain access to information concerning Twin Peaks' business operations. Mr. Laughlin's actions indicate that he always planned to operate a restaurant that would knock-off both the trademarks and the valuable trade dress belonging to Twin Restaurant.

26. On July 23, 2009, Mr. Laughlin incorporated Grand Tetons, LLC in Arkansas to do business as Northern Exposure. Upon information and belief, Mr. Laughlin chose the name Northern Exposure in order to trade on the goodwill of Twin Peaks and to evoke Twin Peaks' trade dress, which conveys to consumers a specific theme—namely, a lodge in the northern wilderness. Moreover, the name “Northern Exposure” is a double entendre intentionally patterned after the name “Twin Peaks.” Both unmistakably refer to geographical elements on a literal basis while also making figurative reference—via innuendo readily understood by the targeted customers—to the physical attributes of the servers.

27. On or about October 19, 2010, Twin Restaurant learned that Mr. Laughlin and his holding company Grand Tetons were preparing to open Northern Exposure on the Property after its new franchisee in Fayetteville spotted signs for Northern Exposure that feature the slogan “GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS,” which is an intentional take-off of Twin Restaurant's mark “EATS · DRINKS · SCENIC VIEWS,” an illustration of two snowcapped mountains, and an illustration of a woman wearing clothing that is virtually identical to the uniforms that servers at Twin Peaks Restaurants wear. Copies of photographs of such signs are attached hereto as Exhibit F.

28. Upon information and belief, servers at Northern Exposure are expected to wear uniforms that are substantially similar to the uniforms that servers at Twin Peaks Restaurants wear—namely, a red and black Buffalo Plaid blouse (which ties underneath and at the center of the bust line) and shorts.

29. Upon information and belief, the look and feel of the interior of the Property, which is to house the Northern Exposure restaurant, is substantially similar to the features of Twin Peaks Restaurants, including Adirondacks-style furniture, mounted taxidermy, and vintage posters (including vintage posters of Vargas-style vintage pin-up girls).

30. Mr. Laughlin and Grand Tetons have not yet opened their Northern Exposure restaurant, but upon information and belief, Northern Exposure will open within the month.

**COUNT ONE: TRADEMARK INFRINGEMENT  
IN VIOLATION OF § 43(a) OF THE LANHAM ACT [15 U.S.C. § 1125(a)(1)]**

31. Plaintiff incorporates the allegations of paragraphs \_\_\_\_ as if fully set forth at this point.

32. Twin Restaurant owns all right, title, and interest to the mark EATS · DRINKS · SCENIC VIEWS, for use in the category of restaurant and bar services.

33. Defendants are using in commerce the words GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS, and such use is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Twin Restaurant, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by Twin Restaurant.

34. Twin Restaurant owns all right, title, and interest to pictorial mark of two snow-capped mountains for use in the category of restaurant and bar services.

35. Defendants are using in commerce a symbol of two snow-capped mountains in connection with the sale, offering for sale, distribution, and advertising of its goods and services,

and such use is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Twin Restaurant, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by Twin Restaurant.

36. Defendants' usage of the slogan "GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS" and a pictorial representation of two snowcapped mountains as marks in conjunction with the Northern Exposure restaurant constitutes trademark infringement of Twin Restaurant's trademark rights under Title 15 of the United States Code.

37. In undertaking the conduct complained of in this action, Defendants willfully, knowingly, and intentionally violated Twin Restaurant's trademark rights.

38. Twin Restaurant is entitled to recover damages as set forth in 15 U.S.C. § 1117.

39. Defendants' infringement of Twin Restaurant's marks is causing irreparable harm to Twin Restaurant, which will continue unless Defendants are enjoined by this Court.

**COUNT TWO: TRADE DRESS INFRINGEMENT  
IN VIOLATION OF § 43(a) OF THE LANHAM ACT [15 U.S.C. § 1125(a)(1)]**

40. Plaintiff incorporates the allegations of paragraphs \_\_\_\_ as if fully set forth at this point.

41. Defendants have infringed upon the trade dress used in Twin Peaks Restaurants.

42. Twin Restaurant's trade dress is inherently distinctive and/or has acquired secondary meaning.

43. Twin Restaurant's trade dress is non-functional.

44. Defendants have infringed Twin Restaurant's trade dress by using marks and/or dress that are confusingly similar to Twin Restaurant's trade dress.

45. Defendants' infringement has not been authorized by Twin Restaurant. Such use is likely to cause confusion, to cause mistake, or to deceive the public as to the affiliation, connection, or association of Defendants with Twin Restaurant, or as to source, origin, sponsorship, or approval



of Defendants' products by Twin Restaurant or a single source. Additionally, such use misappropriates the extensive goodwill built up by Twin Restaurant.

46. Defendants' acts of trade dress infringement have been committed with the intent to cause confusion, mistake, and to deceive, and were otherwise deliberate, knowing, willful and/or in bad faith.

47. Defendants' acts of trade dress infringement have damaged and are likely to continue to damage Twin Restaurant's business, reputation, and goodwill.

48. Unless Defendants are restrained from continuing their unlawful conduct now, Twin Restaurant will suffer irreparable injury.

49. Twin Restaurant is entitled to monetary damages in an amount to be proven at trial.

### **COUNT THREE: UNFAIR COMPETITION**

50. Plaintiff incorporates the allegations of paragraphs \_\_\_\_ as if fully set forth at this point.

51. Twin Restaurant seeks a declaration under the Texas Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.003, that Defendant's use of GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS constitutes infringement and dilution of Twin Restaurant's rights in the mark EATS · DRINKS · SCENIC VIEWS, which has been used in Texas by Twin Restaurant from a time long before Defendants' first use of GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS.

52. . Defendants' use of GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS is likely to cause confusion, or to cause mistake, or to deceive, the public as to the source of origin of Defendants' goods and services, or as to the affiliation or association of Defendants or Defendants' goods and services with Twin Restaurant. These acts of Defendants constitute trademark infringement under the common law of the State of Texas.

53. Defendants' use of GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS is likely to injure Twin Restaurant's business reputation or to dilute the distinctive quality of its trademark and constitutes injury to business reputation and dilution under Texas State Law.

TEX. BUS. & COMM. CODE Ann. § 16.29.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment that:

(1) that this Court preliminary and permanently enjoin Defendants, their officers, employees, agents, licensees and franchisees, and all persons acting in participation or concert with Defendants:

(a) from using the mark GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS, or any copy or colorable imitation of EATS · DRINKS · SCENIC VIEWS, in connection with the sale, advertising or promotion of any goods or services;

(b) from using a pictorial representation of two snowcapped mountains, or any copy or colorable imitation of Twin Management's mark, in connection with the sale, advertising or promotion of any goods or services;

(c) from using a pictorial representation of a woman wearing a red and black Buffalo Plaid blouse (which ties underneath and at the center of the bust line) and shorts;

(d) from using a red and black Buffalo Plaid blouse (which ties underneath and at the center of the bust line) and shorts as a uniform for any employee; and

(e) from using in commerce any other word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which is likely to cause confusion or to cause mistake or to deceive as to the affiliation, connection, or association of Defendants with Twin

Restaurant, or as to the origin, sponsorship, or approval of Defendants' goods, services or commercial activities by Twin Restaurant.

(2) that in any injunction the Court direct Defendants to file with this Court and serve on Twin Restaurant, within thirty (30) days after the service on Defendants of the injunction, a report in writing under oath setting forth in detail the manner and form in which the Defendants have complied with the injunction;

(3) that the Defendants be ordered to deliver up for destruction any and all cards, labels, signs, prints, packages, wrappers, receptacles, and advertising in the Defendant's possession bearing "GREAT STEAKS, COLD DRINKS & FREE SCENIC VIEWS," a pictorial representation of two snowcapped mountains, or a pictorial representation of a woman dressed in a red and black Buffalo Plaid blouse (which ties underneath and at the center of the bust line) and shorts;

(4) that Twin Restaurant recover any damages sustained and the costs of this action, pursuant to 15 U.S.C. § 1117(a);

(5) that Twin Restaurant recover Defendants' profits resulting from its acts of infringement in order to redress Defendants' unjust enrichment and to deter its infringement of Twin Restaurant's marks. 15 U.S.C. § 1117(a);

(6) that any damages awarded be tripled and any profits awarded be increased to the amount this Court finds just;

(7) that Twin Restaurant recover its attorneys' fees pursuant to 15 U.S.C. § 1117(a), as well as pre- and post-judgment interest; and

(9) that Twin Restaurant recover such further and other relief, legal or equitable, that this Court finds just.

**JURY DEMAND**

Twin Restaurant hereby requests a trial by jury of this action.

Dated: November 12, 2010

Respectfully submitted,

/s/ John L. Hendricks

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